



**Planning Commission Minutes: 02 February 2012**

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## Cache County Planning Commission

Minutes from 02 February, 2012

**Present:** Chris Harrild, Josh Runhaar, Chris Sands, Jason Watterson, Clair Ellis, Leslie Larson, Phillip Olsen, Chris Allen, Denise Ciebien, Jon White, Megan Izatt

**Start Time: 5:31:00** (Video time not shown on DVD)

**Larson** welcomed and **Ellis** gave opening remarks.

**5:33:00**

### Agenda

*Passed*

### Minutes

*January 5, 2011 – Passed with noted changes.*

**5:35:00**

### #1 Pine Canyon Gravel Pit Rezone (Thomas G. Maughan and Dorcus M. Kleinschuster)

**Harrild** reviewed Mr. Thomas G Maughan and Ms. Dorcus M. Kleinschuster's request for a recommendation of approval to the County Council for a rezone of 135.51 acres from the Agricultural (A-10) Zone to the Mineral Extraction (ME) Zone located at approximately 4879 West 4600 South, Wellsville. The land is part of an existing subdivision; the land is part of the Sand and Gravel Overlay which is not a zoning district but functions to identify potential sand and gravel deposits. There are currently two gravel pits near the proposed site, one to the north and one to the south. Access to the site is from 4600 South (500 North in Wellsville) and is initially adequate but the width and quality of the road deteriorates as you travel to the site. The unimproved and substandard portions of the road will need to be improved and will be addressed at the time of application for a conditional use permit. There is no water supply currently at the site. Any requirements for fire suppression will be addressed at the time of application for a conditional use permit. The home adjacent to this property is owned by a relative of the applicant and staff has received no complaints concerning the proposal.

**Tom Maughan** I and my sister are in control of my father's estate which is being divided out at this time.

**White** When it comes time for the CUP will we notify Wellsville?

**Harrild** the applicant has contacted Wellsville City and they provided a letter. The only request Wellsville City made was that access to the gravel pit be 4600 South (500 North).

**Mr. Maughan** I attended a city council meeting and let them know what was going on.

**Bryant Barlow** I live east of where the access would be. Are they going to leave the road surface gravel or are they going to pave it? I'm concerned with the dust that would carry over to my property. Also, the

access goes right by Willow Valley Middle School and there are a lot of children that walk to school from the surrounding homes and I'm concerned with that issue.

**Larson** those concerns will be addressed through the CUP.

**Staff and Planning Commission** discussed the location of the proposed rezone. There are a couple of other gravel pits on the west side of the valley at the base of the Wellsville Mountains. The commission might want to think about the base of the Wellsville's becoming a string of gravel pits. Commission members asked that the ordinance regarding gravel pits be looked over and gone through. A draft of the ordinance that would make a gravel pit overlay rather than having a Mineral and Extraction Zone has been drafted. The overlay also changes other areas of the ordinance and staff is reviewing those rewritten sections impacted by the overlay. The overlay would be more easily tailored to the areas that gravel pits are suitable for and would be more functional overall compared to how the ME zone functions now. The Commission also asked that staff look at ground water infiltration in the areas where gravel pits could be located.

**Curtis Maughan** I own a home adjacent to this property. It's not my intent to inhibit my neighbor's ability to do what they want to with their property. You are going to affect several homes and prospective home sites as this gravel pit further north and it will probably force all of us to sell. It's probably the only profitable use for our land because you can't farm it due to it being completely gravel. This zoning will affect more than just vacant property. I'm concerned about the width of the road and with the city allowing parking on the road in front of the school. The width of the county road probably needs to be discussed. The noise levels, the dust levels, the EPA levels probably will be discussed at another meeting but I did want them on record.

*Ellis motioned to recommend approval to the County Council of the Pine Canyon Gravel Pit Rezone with the findings of fact noted in the staff report; Allen seconded; Passed 6, 0.*

**5:52:00**

## **#2 Cherry Peak Ski Area Master Plan Conditional Use Permit (Logan Checketts)**

**Harrild** reviewed Mr. Logan Checketts request for a conditional use permit to allow recreational skiing and other winter sports activities consisting of a ski resort base and mid-mountain facilities including four (4) ski lifts, a terrain park, a zip line, three (3) water storage reservoirs, and one (1) cable tow for a tubing hill to operate on 203 of 285.97 acres of property in the Forest Recreation (FR-40) Zone located at approximately 11000 North 3200 East, east of Richmond; continued from the Jan. 5, 2012 meeting under the 90 day continuance from the December meeting. Staff would like to discuss the completed review of the wildlife study, amendments to the conditions of approval and findings of facts, and comments that have been received since the last meeting. JUB Engineers was contracted by the County to review the Wildlife Study done by Stantec. Concerning the adequacy of the Stantec wildlife study for the proposed use, the review from the JUB biologist (Exhibit A) stated that "the conclusions that were derived in terms of potential wildlife impacts are consistent with the caliper of the proposed project action". The JUB review also identified and recommended further mitigation to address impacts. Additionally, staff requested that the biologist identify the impact night skiing may have. The JUB biologist stated (Exhibit B) that there is not a significant additional impact from night skiing beyond the impact that occurs with the activity in the daylight hours.

**Staff and the Commission** discussed the wildlife study. Many members of the Commission feel that the review of the wildlife study answered their questions and supported the wildlife study that was completed by the applicant. Staff has written several conditions and all those conditions must be met prior to

recording. If elements of the required infrastructure are not able to be completed, the applicant must provide a form of financial surety for any infrastructure that has not been completed prior to recording. Currently there are no restrictions on hours of operation. There are many permitting processes that need to happen and most of those will be handled administratively.

**Mary Gilbert Palmer** I am a very close neighbor to the proposed development. I would like to address what it is like to be a neighbor in an area that is surrounded by national forest and state owned land, where our life is quiet, rural. We mostly do gardening, ride horses, rest, and enjoy the quiet area. It is very disturbing to think that a ski development could come in that would bring 600 vehicles per day and the pollution and noise that those vehicles would also bring. We currently live above the inversion and I am concerned that 600 vehicle trips would have us in the inversion. I'm also concerned about night skiing and the noise that running the cats would bring later in the night when most of us who live in that area go to bed early. I'm also concerned with the light pollution that will come. That will change the dynamic of where we live. I'm concerned with snow making equipment and the water issues and the possible ground water contamination. I have 47 acres that I have developed. I came before the board in 1997 for the subdivision. I gave 10 acres to the state for the wildlife preserve. I'm very concerned about the quality of life. My subdivision has very specific covenants that limit where we live, the type of building materials that can be used, and the house and lawn have to be under 1/3 of an acre.

**Larson** you have exceeded the 3 minutes, could you please conclude.

**Ms. Gilbert Palmer** ...it affects the area because people aren't going to want to live up there because the dynamic of the area will change. I have four more lots to sell and if the lifestyle changes people aren't going to buy them. This will forever alter the lifestyle up there. Our quality of life is going to be badly compromised.

**Ellis** could you point out where you live.

**Ms. Gilbert Palmer** if you go to the north end of the development and go due west you run right into my home (approximately 1 mile from the proposed site).

**Christina Richards** we own the 27 acres that borders the wildlife area and part of that has been taken by Richmond City for a water tank. We are active duty military and hope to retire in the near future and build our home in this area. I think it would be fun to have a ski resort in this area. I am very concerned about my neighbors and with the water rights in the area. I think if this is done well it can be a great asset to the area.

**Joel Pedersen** I am one of the residents and landowners in this area. I'm here to talk to you about water. I am a geologist by profession. While the county has addressed water, I feel there are two main issues that haven't been discussed. I would like to talk about the ground water and the surface water pollution that will come off this resort. This bottom map shows a series of blue dots around the mouth of the canyon. This is the database of the water rights in that area. There are a lot of water rights in that area and that is already tapped. There are a lot of surface water rights, spring rights, and well rights. Our whole neighborhood is filled with people who get the water from springs or wells. Although those two parts are different, a recent study suggests that the springs are connected hydrologically. If you pump water for a big well it will affect the springs in the area also. This is a map you may have already seen, but what this is showing wells and ground water travel times. This green is where the city is drilling a well right now. The green is water gradients and shows where water is currently moving through the resort. The county has only dealt with the culinary needs of the resort. If you look at the proposal, the developer under-represents their water needs. They will need twice as much water as they stated.

**Larson** have you forwarded your calculations to staff?

**Mr. Pedersen** yes.

**Larson** have you gone through those calculations?

**Runhaar** not in detail because in the end we don't regulate water, the state does. The state will provide their own calculations for the required water for the use.

**Mr. Pedersen** my point is that the amount of water being used here is wrong. The amount of water needed for snow making is also under-represented. Their current numbers only represent a snow depth of one foot. On a year like this year, they are going to have to make and remake their snow. My point is these folks are going to drill a well and they need 10's of millions of gallons of water. They are going to affect the springs and wells of mine and my neighbors.

**Larson** we don't regulate water, correct?

**Runhaar** we don't. The state regulates the water. We require that they bring us a copy of the final decision from the state. The state is the agency that determines the water needs. The only water requirement that will be determined by the county is that needed for fire suppression.

**Larson** this objection should be directed to the State Water Division.

**Mr. Pedersen** the developer will have to go in front of the state engineer to get the water rights needed. For me and the other residents of the county, this board is who we come to and tell our concerns and you are our protection. I do have a specific suggestion and that is that the developer do a ground water test that shows how they are going to draw down on the water. I suggest that a ground water study be a condition.

**Runhaar** the only water right the county has any say over is what is needed for fire suppression. However, the county does require that a copy of the water rights for culinary use be submitted to staff and staff is also asking that if the resort does decide to make snow that a copy of the water rights for that water be submitted also. However, if someone would like to protest the well, or water rights they may do so at the state level.

**Dwayne Chadwick** maybe I misunderstood, but you said 7 ½ million gallons. What this gentleman said was there would be a foot of snow, but it would actually be 10 feet of snow. His calculations are incorrect.

**Larson** if you are speaking to the water issue, that is not in our control and you need to contact the state water engineer.

**Runhaar** one of the comments was on runoff and that would be addressed here. But the pumping of ground water we do not.

**Tom Nelson** I am a licensed professional geologist and a hydrogeologist. Cherry Creek is a losing stream which means that the creek water drains off into the ground water system. This shallow ground water system directly feeds Richmond City and other private springs and wells. It is also a recharge source for deeper water aquifers in the area. Runoff that travels over the resort's road and parking lots will pick up contaminants that will affect the quality and taste of the drinking water. This is confirmed by a study done by the Forest Service specifically for waste runoff from ski resorts. The resorts contaminated runoff

would go into Cherry Creek which feeds the shallow ground water system that supplies the springs and wells in the area. They need to install drains around the parking lots and road and the drains need to be permanent drains that will be used not only during construction but during operations also. They also need to establish a runoff monitoring program so that they will know how much water is actually coming out of the drainage system. Those samples should be sent to a lab for studies to determine the amount of contaminates. I believe that they need to calculate the total contaminate load running off into Cherry Creek, and that the results of those tests be sent to a lab and to Richmond City since part of the area is within a water source protection area. I think they need to meet the EPA contaminate levels and if they exceed these levels they should have to work with Richmond City to rectify the problem.

**Runhaar** part of the issues brought up by Mr. Nelson are covered in conditions 12D, 12E, and 18 of the staff report. However, when constructions drawings are completed all of that would be looked at in depth and would be discussed and handled then.

**Glen Gantz** I'm not sure I'm in favor but I'm not opposed. The commission is charged with deciding the compatibility of the project with the surrounding area. This is your job and you are supposed to make sure of that.

**Ron Vance** I work for the Forest Service in the Logan District. I would like to provide some follow up to our previous comments. The initial proposal for this area was actually Forest Service property and that is a significant part of the ski area. After this was clarified the new routes for ski runs were identified. The previous ski runs were removed. It is hard to see the scope of this from a flat scale (looking at a map). This would relatively be the forest service boundary. We have a lift coming up this area and the lift would serve the ski area. What we have looked at was what was on the proposal originally. What we are concerned with in these areas is that the dominant processes for avalanche control would not be permitted outside the boundaries of the ski resort. Also, search and rescue would be hampered because we have to have authorization to take mechanical equipment into the wilderness area. This boundary is going to be very hard to manage. We're going to have as much skiing going onto our property as what is going on in the resort. Skiing is allowed in the wilderness area but we do feel it is going to have a significant impact on our management of the neighboring property.

**David Rosenberg** I am an assistant professor of civil and environmental engineering at USU. Most of my professional work is looking at large scale infrastructure projects like dams, reservoirs, desalination plants, etc. Looking at this project, it hasn't made a lot of sense to me. The ordinance requires that the project contribute to the well being of the county and the surrounding community. I would like to see, having read the proposal, what data and evidence actually show that this project will actually contribute to the county's well being. Most importantly, as the ski area fails, as is inevitably proved by the rain and snow data available, how is general well being going to be served? This graph shows the last 30 years of rain days in Richmond during the ski season. The average number of days is 14 and skiers don't like rain.

**Watterson** what was your ski season?

**Mr. Rosenberg** the same season they have proposed, early November to late April. This is a photo taken of the site on Jan. 3, 2012 and there is no snow. The proposed ski runs and lifts are shown on this site. This year is admittedly an odd year for snow pack, but as you continue, this abnormal year is going to be much better than years in the future. That is due to the Utah weather warming up. Mr. Checketts mentioned a couple meetings ago that low elevation ski areas are profitable and that's true. But that is in the past and that is not going to continue into the future. The ski season is going to shorten by weeks in the future.

**Ellis** where did your measurements take place?

**Mr. Rosenberg** they were taken at the Richmond well; at approximately the same area of the resort. The ski area is going to be about 10 minutes closer, but when you consider everything else, is it really a big enough benefit for the valley?

**Ellis** I've read the well being requirement in the ordinance and I've thought about that for quite awhile. If someone is willing to spend the money to build this then I think they have done the studies to decide if that is good. It's not spelled out in the ordinance on how to determine on what is worthwhile to build, we've always had to leave that to the private interest and how the ordinance addresses well being.

**Mr. Rosenberg** I think the real issue is the impacts.

**Larson** we never get into evaluating someone's business plan. I appreciate the comments but those should probably be directed to Mr. Checketts.

**Logan Checketts** I was at the Canyons ski area 2 days ago and I was at Cherry Peak a week before that. We have just as much snow as they do. One thing about the water, at the Canyons they pull the water right from the ski runs; they are right under where everyone skis. The creek they collect their water from goes into a settling pond, and then through their treatment facility. This isn't new territory with what we are doing here. It is possible for that water to be dealt with and taken good care of. With the days that it rained in Richmond City I was up at Cherry Peak. It did not rain at the top of Cherry Peak, there is 3 ½ feet of snow on the actual ski area. In regards to the actual pictures that were shown, we were just as well off then as many of the other ski areas in the state. The snow is on the hill where it needs to be so that you can ski.

**Chris Daines** I am an attorney for the applicant. My reason for the being here is to make sure your records are complete. I didn't hear if there was anything in staff's verbal report in regards to roads and access. Is the commission aware of the interactions between the applicant and your attorney's office about the roads?

**Runhaar** I think we have addressed everything in the staff report that has come through the attorney's office.

**Mr. Daines** we have some correspondence as late as yesterday where there were two letters sent between me and Mr. Linton. There was something said about another letter that should be attached. Since these deal with access and condition 12a, I feel compelled to make sure your packet is complete.

**Larson** Our understanding is that the road is taken care of.

**Mr. Daines** in regards to 12a there is a sentence that states the applicant will secure any necessary rights of ways or easements and I wanted to be direct with the commission and be certain that you understand that we regard that such easements and right of way with the DWR are unnecessary.

**Ciebien** that is not our requirement. We are just saying that we aren't going to do your legal work for you and that is between you and the DWR. They may have a different opinion than the county attorney, Don Linton does, and we don't want you to rely on those conclusions. We don't want to be your legal advocate.

**Mr. Daines** to be more specific, I believe the county acknowledged that it was unnecessary for the applicant to obtain permits for right of ways or easements from the state for construction for infrastructure, utilities, maintaining the road ways, etc. That was part of the correspondence between the

county attorney's office and I. We don't think that the county is bound by that and we are holding the county harmless from any problems if a dispute with DWR arises. We don't expect any problems. With that said, in regards to the conditions we don't want the county to expect us to come forth with any recordation of easements or rights of ways.

**Ellis** all we are asking is that the applicant secures all necessary rights-of-way, correct? If a right of way from the state is unnecessary, then they don't need to worry about that.

**Runhaar** what we've determined, as best we can, is that there doesn't need to be a right of way from the state because the county already owns the road. What we don't have is a legal description of that, we are asking them to get a legal description and record that. Otherwise it's difficult to issue permits there.

**Mr. Daines** my client doesn't own the county road and he doesn't own the fee title underneath. He's not in a position to record anything in the County office describing a road way across DWR's land. The conditions expressed there are fine and we can get into the details of that later. I just wanted the commission to know that we don't believe it is necessary to record anything.

**Ellis** the text of 12a is fine?

**Mr. Daines** yes, because it includes the qualifier, necessary.

**Ciebien** if it is necessary they are going to have to address that with DWR. We are approaching every road one road at a time and we don't have the resources to invest regarding the parameters. It is a county road; it's been on maps for several years. If DWR has a different legal opinion we don't have the finances to fight that battle; that is why they have to hold us harmless.

**Dave Rayfield (From the Elk Foundation)** I think when DWR was here they weren't protesting the roads. But they did state that NEPA studies might be required where that land was bought with some federal funds. From the Elk Foundation we aren't arguing against or for this project but this will affect the animals in this area. We have spent a lot of money to make this area conducive for winter habitat for deer and elk herds. We don't have habitat space elsewhere in the valley. We have one little bastion and this is it and the ski resort will have a huge impact on that area.

**Laura Fisher** I sent a letter to Mr. Harrild yesterday and hopefully you have received it.

**Harrild** any information received prior to and including Jan. 27 was handed out, but anything after Jan. 27 would not have been given to the Commission but will be included in the file.

**Ms. Fisher** I'm concerned with the overall tone and style of this application. I'm sensitized to what we now refer to as bubble activity. There are some aspects of that in the financial activity. I know for a fact that the description of water access has a distinct bubble feel to it because these facts are not being obtained or explained to you. I disagree very much to leave this responsibility to the state water engineer because I know for a fact that they accept drainage or derivatives rights from far away locations and pretend that that water will be transported magically to the site where the proposal is being contemplated. That will not happen, but it will be the legal base from the engineer. The concept is a bubble concept and that is how the state's water engineer does it these days. I think things are bundled up into masses of information that no one really understands and I think there is a habitual tendency to pass things on up. The commission right here is making very important decisions and I don't think passing this up is going to do anything positive.



**Larson** I think we will bring this back to the board for comment. We do appreciate your comments and the time you have spent to be here.

**Ciebien** I do want to clarify that the applicant will have to come to the county for an encroachment permit as does everyone else.

**Mr. Daines** I need to acknowledge an error I made. I used 12b and I should have used 12a. We do acknowledge the applicant does need to apply for encroachment permits for road improvements.

**Staff and Commission** members discussed their thinking on their decision process. Many members of the commission are pro-property rights and don't feel that limiting the proposed project due to the surrounding property owners feelings and ideas on the project are substantial enough to sway their decision. Many of the members are concerned with the impacts to wildlife, but wildlife do adapt to their surroundings. The applicant has met the requirements for the ordinance that are in place for this type of project. A member of the Commission feels that the project has too many impacts that cannot be mitigated and will affect the wildlife in ways that are not possible to mitigate and that the impacts to Richmond City are too great. Some members suggest that the ski resort store water from the snow melt to offset the water needs.

**Staff and Commission** members discussed the possibility of limiting the ski resort's hours of operation. The master plan that was submitted specified night skiing would take place until 10:00 pm. The resort could not operate skiing hours past what has been specified.

**Mr. Checketts** if we are concerned about the sound of the ski area being as an impact to people, then I think the knowledge of it being 1 to 1.3 miles from a home; that is a long way away. If we're talking about the impact of the equipment on the slopes in proximity to animals then I would think it would be worth considering the tractors that are in those fields below the ski area. That's what a snow cat is, a tractor with snow tracks. I find it really hard to put a limitation on a tractor because we're taking care of the snow when weather permits. It's a very important to be able to take care of the snow weather permitting because it is my main product. It'll be a big impact on my business to not be able to take care of the snow.

**Ellis** the snow compaction at night, would that be done by the snow cat or the illumination of the hill?

**Mr. Checketts** that's done with the lighting from the snow cat, not full illumination of the hill.

**Sands** would you expect that after 10 pm the lights would be shut off?

**Mr. Checketts** at 10 pm you prohibit skiers from using the lifts, you do a sweep of the hill with the ski patrol and then shut the lights off.

**Sands** my knowledge of other ski resorts is that they stop night skiing at 9 pm and do a sweep of the hill and then have their lights shut off by 10 pm. Your asking to go to 10 pm, are you flexible on that?

**Mr. Checketts** yes most ski resorts run that way. My thinking and reasoning for 10 pm is that skiers are closer to their homes and so they can stay a little later to ski and then go home. That's the reasoning for the 10 pm shut down time. I would really like to be able to stay open until 10 pm.

**Sands** the night skiing seems to be an integral part of your proposal. Of the information that has been presented to us probably the night skiing is the most impactful on wildlife. However, it seems like night

skiing is an integral part of your business. I think if you were to get rid of night skiing that would go a long ways to mitigating everything, but that doesn't seem to be an option.

**Mr. Checketts** right, night skiing is very important to my business plan and it's not something that I can remove.

**Mr. Checketts** the lighting is really addressed in the conditions. It's very specific down pointed lighting, it will be contained to the property as best as light can be.

**Ellis** is there a reason for the business to keep the lighting on all night long?

**Mr. Checketts** just for the runs, maybe we should have Mr. Seeholzer address this as he is the professional in the room. But I can't think of anything that would justify the lights being on all night.

**Sands** it is a concern that has been brought up by the public.

**Mr. Checketts** it has been addressed by the wildlife study and it has been considered as part of their study. In the review done by the JUB engineer he specifically said that the misplacement of animals would already be done with the day skiing and would not be increased due to night time skiing.

**Sands** I was more concerned with light pollution.

**Larson** would your night skiing be every night or specific nights?

**Mr. Checketts** that would be market driven. I don't want to limit myself.

*Allen motioned to approve the Cherry Peak Ski Resort Conditional Use Permit with the stated findings of fact and the conditions of approval in the staff report and called for a question on the motion; Olsen seconded; Passed 5, 1 (Sands voted nay)*

**7:56:00**

### **#3 Amendments Title 17 – Sections 17.07 and 17.09**

**Runhaar** updated the commission on the clean ups done through the ordinance. Overlays and base zoning is being gone through and will hopefully be done by the next agenda.

Staff and Commission discussed the possibility of a clustering ordinance. It is in the works and will be brought to the commission in the next couple of months.

**8:00:00**

**Adjourned**