



PLANNING COMMISSION MINUTES

06 JUNE 2013

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Present: Chris Harrild, Josh Runhaar, Rob Smith, Jason Watterson, Leslie Larson, Chris Sands, Clair Ellis, Jon White, Denise Cieben, Megan Izatt

Start Time: 5:34:00

Larson welcomed and **Watterson** gave opening remarks/pledge.

5:37:00

Agenda
Passed

Minutes
Passed with noted changes.

05:39:00

Consent Agenda

#1 White Pine Subdivision (Kelly Newman)

Harrild Kelly Newman is requesting a recommendation of approval from the County Council for a 3-lot subdivision and one remainder parcel on 140.55 acres of property in the Forest Recreation (FR40) Zone, Logan Canyon. The applicant has decided to fix the width of the bridge to meet county requirements.

#2 Harold Falslev Subdivision (Kevin Falslev)

Harrild reviewed Mr. Kevin Falslev's request for a recommendation of approval from the County Council for a 2-lot subdivision and agricultural remainder on 22.69 acres of property located in the Agricultural (A10) Zone at approximately 3700 West 3000 North Benson.

*Ellis motioned to recommend approval of the consent agenda to the County Council with the stated conditions and findings of fact; **Watterson** seconded; **Passed 5, 0.***

05:42:00

Regular Agenda:

#3 Thain Subdivision and Boundary Line Adjustment (Danny Thain)

Harrild reviewed Mr. Danny Thain's request for a recommendation of approval to the County Council for a 2-lot subdivision and a boundary line adjustment on 131.69 acres of property in the Agricultural (A10) Zone at approximately 4748 North 3200 West, Benson. This item was continued from March 7th, 2013. No agreement with the property owners regarding access has been able to be reached at this time. Due to request's lack of adequate access to the existing homes staff is recommending denial. One of the parcels contains two homes, one of which was placed without permits. To meet the ordinance an agreement regarding access needs to be in place or the house is going to have to be removed.

Staff and Commission discussed the application. An illegal structure is one for which no permits were acquired. A non-conforming structure is one that had a permit and then the ordinance changed. This home is illegal; it is a double wide trailer that has been there since approximately the 1970s.

Ryan Thain when the mobile home was put there in 1977 there were mobile home permits and then they went away. We were never aware that there was a problem and now we're trying to fix it. Danny is currently looking for the permits.

Larson is there record of the permit?

Harrild the county does not have any evidence that a permit was issued. If he has a copy of it we are more than willing to look at it.

Larson if there is a permit does it change anything?

Runhaar no because those permits were meant to be temporary permits to begin with.

Staff and Commission discussed mobile home permits. The county has no provision for those type of permits anymore and hasn't for decades.

Mr. R. Thain we understand the problem and the only option is to put that other road in to meet the conditions.

Harrild have you had any luck with reaching an agreement since we talked?

Mr. R. Thain a little bit, but I haven't heard anything since a couple of nights ago.

Kay Paul Thain I'm Danny Thain's older brother. The top map shows the current right-of-way and that has been functional for 80+ years. We built our home in 1981 and the southern most home was built in 1934 and was sold about a year ago and since that sale the right-of-way has been challenged. It has been quite an extensive ordeal including legal authorities debating the proper solution. We would like to offer some of the steps we've been through to resolve this issue because currently the southern two homes don't have an access.

Staff and commission discussed the chart showing where the homes are located and the reasons for the new access.

Lori Thain the new access would be gravel up to the point of that house and then we would put in an asphalt road to our home. When the Berbert's home was sold we found out that we didn't have a legal right-of-way and the underwriters don't like that, they want it assigned. The proposed right-of-way cannot be built or used until Danny Thain satisfies the county's conditions. So we must have a road built to our home which has been estimated to be \$7,000 to \$10,000.

Mr. K. Thain the yellow line [red] at the bottom; that proposed route will end before it reaches our property and we will need to extend it.

Ms. Thain we aren't opposed to the road. We have \$5,000 in an escrow fund that the Berbert's requested to show that we are pursuing a legal right of way. We've had an attorney and his last recommendation was to sue Danny for the right-of-way. We can't sell our home as it is. So far the Berbert's have given no response to release the escrow money to help with the road. This is becoming a divisive issue and I don't know what the answer is but I would like to have a legal right-of-way so that we can sell our home.

Sands so you're not opposed to the new road?

Ms. Thain I'm not, but the Berbert's are.

Sands so one home doesn't want the road and one home does.

Ms. Thain it's considered a driveway because it is only servicing two homes. That's been an issue because we want it to be substantial and the minimum requirements aren't good. We've talked to road engineers and they said the minimum driveway will just disintegrate after a little while because they are irrigating on both sides and we would probably need a dike or something on both sides and there is no requirement for that. So anyone doing the work is probably going to want to do just the minimum amount of work.

Larson so the proposed driveway would be private, so it would have to meet fire code but not county standards?

Harrild the minimum standard for a private driveway in the county is 10 inches of material.

White but they could make it 20 if they want.

Harrild yes, but Danny Thain would like to stay on the minimum end of the requirements and the others would like a higher standard.

White you will own the road?

Mr. R. Thain yes, it will still be our property but they will have a legal right-of-way.

White so you'll own road and they will have a legal right-of-way?

Mr. R. Thain yes and we are paying for the road to be built.

Staff and commission discussed the road. Currently the Berbert's, the other southern home, access their home from the existing road. However, that road doesn't meet county standards for four homes. The Berbert's are contesting the requirement for a new road stating they already have an existing right of way. Staff cannot solve this issue because it is a civil, legal matter.

Staff and commission discussed the possibility of continuing the item.

John Berbert my wife Monica and I moved into the southern most home last August and we didn't know anything about the easement until the last day of buying the home. The mortgage company said we needed Danny Thain's signature and he refused. Luckily we had enough down payment for the home and they approved us anyway. I've researched Utah property law and easement by prescription. I feel that's what we have here and I don't know why the recorder won't record it that way because it's a legal access by prescription. But I also understand Danny and Ryan's concerns about trucks and cars driving in front of their homes. I don't know how to settle this other than the County Recorder doesn't recognize that easement by prescription.

Smith so you are opposed to the proposed right-of-way?

Mr. Berbert only because it would be an inferior road and we didn't factor the cost of maintaining the road into the cost of our home. We are willing to help maintain the current access; that's why we put \$5,000 in an escrow account.

Larson are you concerned if you ever go to sell your house?

Mr. Berbert we are because the recorder won't recognize this easement prescription.

Staff and planning commission discussed a continuance of the item.

Larson continuing the item for 180 days does not mean you have to wait that full time; you may come back as soon as you resolve the road issue.

Ms. Thain what is the point of continuing?

Larson if we were to deny tonight you would have to reapply and pay a new fee. If you get this resolved you can come back next month.

Mr. R. Thain if we get this settled and it's all agreed upon they don't have to wait to sell their house until the road is built do they?

Harrild that is up to the lender.

Ms. Thain it has to be a signed legal document.

Larson that's something to work out with the title company.

Smith motioned to continue the item up to 180 days or the limit allowed by law; *Ellis* seconded; **Passed 5, 0.**

06:16:00

#4 North Valley Landfill Conditional Use Permit (Issa Hamud)

Harrild reviewed Mr. Issa Hamud's request for a recommendation of approval to the County Council for a conditional use permit (CUP) to allow the placement of a solid waste facility on

320.26 acres of property in the Agricultural (A10) Zone and Public Infrastructure (PI) Overlay Zone at 14200 Stink Creek Road, ~4.50 miles north of Clarkston.

Staff and commission discussed the landfill CUP. Staff report Attachment A outlines all the county ordinance requirements and states which requirements have been met and which have not. A summary of public comments and staff's response is also included. Potential impacts and mitigations are listed on page three of the staff report. Typically staff folds the requirements for other needed permits into the county's permit requirements. Staff does not check to see if those secondary permits are obtained; that is left up to the agency that is in charge of that permit. In order to reject a permit staff and the commission would have to have a reasonable discussion as to why the permit requirements are not adequate. The county doesn't have the staff necessary to check all the requirements for those other permits so leaves it to the other agencies. If extra information is needed staff typically researches it out. Also, the county cannot be broader than the state requirements but can be stricter. No comment has been received from the DWR concerning wildlife. There was a comment regarding an adequate regulatory body and the state is the regulatory body for a landfill permit. The County's permit is a land use permit, not a landfill permit. Any conditions required by the State for the landfill will be regulated by the State. Typically if there are complaints received regarding an area that another agency has regulatory control over, staff sends those complaints on to that regulatory body. If that body decides to take no action, the county is not going to take action. If the state pulls a permit, then county's CUP would also be pulled. If the CUP were to be pulled the state would look heavily into why. Out of county trash was discussed.

Mr. Issa Hamud there are several permits issued by the state and the one that we have is for a Class 1 Landfill and it states that we can only accept trash for the municipalities that we serve. If we were to move to a commercial entity that would require a different permit.

Sands the existing permit restricts that also?

Mr. Hamud that means that we can only accept trash from municipalities that we have service agreements with.

Runhaar so service area 1.

Mr. Hamud yes.

Larson so any change in the state permitting requires a new CUP or a new condition?

Harrild that requirement is typically included on to all CUP's issued.

Ellis does that effect emergency situations? Such as Davis has an agreement that they would accept our trash in an emergency.

Mr. Hamud those agreements are different from the permit. We are the community that is landlocked and we are most likely to need to transport our trash elsewhere because of our location.

Runhaar the state trumps the county in many requirements. The county can regulate hours of operation and landscaping. The county cannot regulate the type of waste accepted at the landfill. Reclamation is covered by the State but the county can look at it also. The county cannot put a condition in place that makes it so the state conditions cannot be met. On slopes over 30% the county can restrict or allow development. For rights-of-way the conditions will be written so that they have to have that access to get the permit. The county can recommend which route that they feel would be best. If the landfill cannot meet the requirements for access they will not receive the CUP. Additional rights-of-way may need to be purchased and that may fall under eminent domain but needs to be researched further by legal counsel. Questions about how the landfill works with the comprehensive plan were discussed. In cases where the application is contrary to the comprehensive plan then a CUP can be denied. In this case the rezone has already been completed and that decision was upheld by the County Council. The ordinances tend to be more direct and legally binding than the comprehensive plan. There have been requests to enforce HB357; however, the County cannot do that because the bill was not made law until May 2013 and this application was received in March 2013. Also the edits for HB357 do not go into effect until July 2013 nor do they impact local regulation of landfills, only the state's permitting of such uses. The Planning Commission can require a traffic study if needed. Traffic studies look at safety concerns and volume. Volume isn't going to be an issue because there are not going to be 2,000 trips on a local road. Turning movements may also be looked at and that could include the addition of turning lanes if needed. There have been requests and comments about the financing of the project and typically that is not looked at here. However Logan City, the applicant, is a government entity and is required to meet GRAMA requests as is Cache County. Public comment has been received regarding studies needed and the validity of studies that have been received. Unless the Planning Commission sees a need for further information or clarification, staff accepts what is given. If however there needs to be further studying done, and if it's on issues staff is not familiar with then a consultant will need to be hired. After a list of questions and concerns are compiled staff can sit down with the state permit authority and discuss the issues and find out how the decisions for those areas were made.

Mr. Hamud our hours of operation as stated are generally 8 to 5. But we do have trucks that collect trash as early as 4 o'clock in the morning. I would like to see a specific reason for why restricting the hours would be necessary so if we need to request a change we know what we need to do. Currently we don't go into residential areas before 7 am.

Runhaar I don't think we're talking about collection hours.

Mr. Hamud I understand, but if those trucks that collect at 4 am need to be dumped, those trucks need to go to that landfill, however the landfill itself would not be in operation.

Larson so hours of operation, that is a bit of a misnomer.

Mr. Hamud exactly. We will not operate the landfill but the truck will go there and dump.

Larson in the public's eye that is operating the landfill.

Mr. Hamud we need that transport to not be restricted.

White if you don't operate in communities before seven why is that?

Mr. Hamud in residential communities, because they have ordinances.

White okay because of the noise. If you're going to be driving through this residence isn't that the same noise?

Mr. Hamud if such ordinance exists that limits all the truck traffic we will comply.

White but you're not operating in communities before seven now.

Mr. Hamud the main roads, the county and the state, are permitted to drive through before seven o'clock. What is restricted is the minor roads. Those roads are affected by the ordinance. You can still drive through Main Street, and 400 North at four o'clock in the morning.

Runhaar it would be like the commercial truck traffic restrictions in Logan.

Ellis I would think our scope would be more of the receiving hours.

Runhaar the actually issue of when you drive on the road would be are we going to restrict other vehicles?

Larson you can effect it by regulating the hours of receiving.

Runhaar is there an impact on dumping trash or what is the impact going to be?

Sands most people would consider anything happening on the property.

Ellis trucks coming and going.

Larson and to flush out the realities of it. I would think that most of us assumed that that hours of operation includes any receiving or dumping of trash. But if you consider the hours of operation to be when you will have your dozers in there operating that's something that I think that kind of information needs to be flushed out and dealt with.

Mr. Hamud the reason for that is there are areas of the county, such as schools, that we can't get in there and collect the trash after 4 o'clock in the morning because there are children and vehicles there. So it's the reason why we collect those hours.

Watterson are those the areas that will be coming directly to the landfill?

Mr. Hamud only one day of the week. The other days they will go to the transfer station and that shouldn't be an issue at all and we can haul it later. But there is that one day of the week.

Watterson and I was under the impression that was in that part of the county where they are going directly to the landfill.

Mr. Hamud exactly.

Staff and Commission discussed the hours of operation. On the day of northern collection the trucks will need to go directly to the landfill and that needs to be discussed. There needs to be a definition for hours of operations. The hours of operation on site and the transport to the landfill needs to be looked at. There also may need to be some deference given to high volume activities that may happen around the Clarkston Cemetery. At some point there needs to be a decision of whether or not the application is going to be allowed or not. Typically not allowing an application happens if a concern arises that cannot be mitigated. Currently staff has not seen an issue that can't be mitigated. That does not mean they are not out there but that at this point none have been identified.

Nathan Whiting I'm the one that read the letter from Representative Menlove. We are not requesting that you enforce HB357 because it is unenforceable in this case. We are requesting that you act in line with section B of the bill. In my opinion, and Representative Menlove's, requiring an outside entity to come in, such as a traffic study, as well as requiring financial disclosures from Logan City is to protect the public interest. It's valuable information for the Board of Trustees, which is the County Council, as they make their decision.

Runhaar a UDOT traffic study is not what we could require. However, the traffic study that we do have is roughly portioned off of UDOT's requirements.

Larson so who would do that, Lynn Zollinger?

Runhaar no, typically it's something we require of the applicant and they contract out for the study, submit it, and we review it. As far as financial disclosures, their budget is public knowledge, so I'm not sure what else we would need.

Larson are you asking for financial disclosures from Logan?

Whiting projected impacts on fees, construction cost.

Larson so on the part of Logan.

Whiting the impacts on the part of Logan to the county at large. Basically on how the fees are going to be impacted on potential road constructions and maintenance cost and things like that.

Larson it's an interesting point you raise. It seems to me that the people who really ought to be here is the Logan City citizen because Logan City is who the county to looking to contract with and it's their taxes and expenditures.

Whiting it's the county at large that is impacted because the county pays for the trash collection.

Larson and it's a monopoly and I'm with you on that. There are hundreds of different directions we can go with this politically, but it's not a political decision. It's a land use decision and that's where we need to stay.

Whiting it specifically talks about deemed necessary for the public. Whether my interpretation is the same as yours I can't control.

Larson is it not in the public interest to have a waste disposal site?

Whiting clearly it is. But it's also in the public interest to see that it's the most feasible, economical waste disposal site available. If this is that option so be it.

Larson but the word there is operative word is available. So help us with that, I just had a discussion with Josh about this. Who else has submitted a proposal?

Runhaar I think everyone in this room would think Box Elder is a good solution, but it's not available.

White well it's not a good economic decision, it's more expensive, but it is an out of county solution.

Larson the information that has been provided has been very good. The citizenry here has been very thoughtful on this but we hope you appreciate the perimeters that we have to work within. Help us with that.

Whiting I understand that. The only other thing that I want to make sure they are aware of is that there is a letter from the Mayor of Weston asking for an agreement about the water that any water testing results been resolved.

Heidi Hodgson I want to thank you for the discussion tonight, I feel like this discussion has been better than any other during the last 12 years. I would like to bring some clarification because we have been involved since 2003, the first thing to talk about is that the State approved the applicant's application and most of the responses here refer back to that as though that is an iron clad piece of work. It is a little suspect and I want you to be aware that an application to the state has never been denied. That does not mean that all the facilities have been built. For example, the White's Valley proposal was approved but when it came to that county it was denied in the CUP process. One of you mentioned that it would have to go to the legislative level and you could require that but you didn't have any teeth in this, but you do. You can deny the CUP. If this isn't in the best interest of the county you can recommend denial. As I said the way this has been approached is a completely different level. There are many problems with this proposal that should have been addressed years ago and some of those could be show stoppers. In terms of the general plan, I agree that it is a philosophical guide for the county but it should not be relegated to some general nice idea. It represents the philosophy that should guide our county. County ordinance 17.06.050 letter A would apply to your decision to agree or disagree with this applicant "the use does not have an adverse affect on sensitive areas as defined by this title"; this is a pristine, completely untouched site. We want to have a more environmentally friendly protected area in our valley. This makes no sense here, it is in direct contradiction to the purpose and the specifics outlined in our general plan. The underlying problem with this proposal is that every single part about it has been crafted, implemented, and moved forward in favor of Logan with little to no regard of the impacts to the county. For example, we've talked about wildlife sensitive areas, in 12 years if there had been any good faith to comply with the requirements that

were already requested by the regulatory committees they would have been done. Someone questioned, why haven't they responded? If you look at the executive study, back in 2004, you have an example of studies from the Department of the Interior, Wildlife Fish and Game, and the DWR. They request a multi-year study of the Columbian Sharp Tail Grouse population and mitigation of impacts by restoring or acquiring the same amount of habitat that will be impacted. Something else about that, the Sharp Tail Grouse is the reason Cache Valley farmers can have CRP. That's a huge economic impact to us. There are plenty of comments in this 2004 study that have been ignored. There is an unhealthy relationship between the State and Logan City so please do not assume that everything has been done in a manner that reflects the interest of the county. We have an email through the freedom of information act from the head of the regulatory agency for permitting solid waste disposal, Ralph Bond, to his deputy Ron Taylor, that says that Logan City is concerned that the permit be issued before the legislative session. That was a clear direct State agency trying to subvert the legislative process much more important to them, and protecting Logan's financial interested, there are more evidences of this kind of thing and I know these are serious comments and they are substantial. You need to be careful that everything done at the State is on the up and up. Logan's engineer is also on the State board and there is a really strange triangle and relationship there. The financial analysis that has been talked about has been wholly inadequate. However, every bit of it has been concerned with the impacts on Logan that's why they don't want to send it to Box Elder and that's a whole other problem.

Ellis it would maybe be better to have all of this in writing.

Ms. Hodgeson I can send it in writing.

Larson If you could summarize those that would be helpful.

Ms. Hodgeson I just want to say that it's been in Logan's interest the whole time. No financial analysis has been done in terms of what is beneficial to the county.

Larson Jon, isn't the Council part of the board?

White some of them. We don't know what it is going to cost to truck it out there, it just depends on where you're looking at. The last comment that was made, I met with Box Elder. I was there when they said they don't want it and it's insulting to me to have you stand up and say that. For you to say that we haven't done that is untrue. Logan was not there when we met with them.

Ms. Hodgeson was Darrel Gibbons there?

White no, it was myself and Lynn Lemon.

Ms. Hodgeson ok and I appreciate that but that is a lot of water under the bridge. Box Elder's landfill is losing money and they don't have enough waste.

White they don't want it.

Larson we need to cut this off now if you could provide it in writing.

Ms. Hodgeson I understand that. Jon made a very good comment saying surely they consulted the general plan and the county wide perspective as they should have but that has not happened. However, that is not how it happened and the perspective has always been what is best for Logan and not what is best for Cache County. No request for proposals from any other entity has been looked at.

Larson I don't believe that is accurate. I've pursued that and been concerned about it and don't believe it's accurate. We need to cut this off at this point and please submit your comments in writing so that they might be posted to the website where the public comment is.

Ms. Hodgeson thank you.

White Leslie, the whole valley was looked at; soil samples from the valley were looked at.

Larson I think there is a public perception that we are just giving this thing to Logan City and that troubles me as a citizen and I've looked into that and for what I can tell that is not accurate but I don't want to debate that. Let's hear from the last couple of comments.

Tyler Godfrey I do agree with Jon, I know Box Elder County has stated that they don't want the trash. However to say that the costs would be the same is not accurate. The current proposal is still more expensive. I just would like to make a quick comment to piggyback on Nate. I believe finance is in scope in addition to the ordinance that Nate listed. That says a CUP should provide services that are necessary and desirable to the county and cost, to me, is certainly an indicator if it's desirable and the general well being of my wallet could be affected. A couple of things that cannot be mitigated are costs and slope of the area. The original financial analysis that was done by Logan City and the site suitability analysis were done from the perspective of Logan City and what would be most profitable to them. Certainly Logan owning the landfill, the organization that owns the landfill makes the money and us as a county if we chose to pay some other entity that is not as financially desirable for Logan City. So there has not been any financial analysis regarding the well-being of county residents or any estimate of whether our monthly bill would go up or down; the only thing I've ever seen on their website is that they cannot promise that the rates will not go up.

Brett Mickelson I'm a consultant for Logan City and also a member of the Hazard and Solid Waste Control Board. Just to give you a little background, Jon White is 100% correct regarding Box Elder County. I was hired by them back in 1999 and have been their engineer for their landfill since then, so if you questions regarding that I would be happy to answer them. I was hired by NURLA which was a group that consisted of Wasatch Integrated, Weber County, the City of Logan, Cache County, and Box Elder County. So any questions on White Valley for instance or the efforts that went into permitting Box Elder County for accepting waste from Logan I would be happy to answer, but what you are hearing tonight is incorrect. Also I do permitting for a number of Class 1 Landfills and have been doing that for 25 years. So the reason I was appointed to the Hazard and Solid Waste Control Board was because I have 25 years of expertise on solid waste. Any questions you have I can answer or am willing to answer.

Mr. Hamud financial analysis is being repeated several times and while it is not your direct responsibility to look at that I thought I would mention that during the site suitability analysis, there was a financial analysis done and it is part of the site suitability analysis study. And we compared the options of the landfill in the county vs. out of the county. In addition to that the Board of Trustees for Service Area #1 are the Cache County Council and they the ones that approve our fees. Our financial records are part of Logan City and anybody who is interested to see that can request that. I think it is unfair to repeat things that are inflammatory. The data is available for review.

Larson I think perhaps a presentation or discussion on rate making would be of interest to the citizens, it would be to me, because what you end up with is a monopoly, and whenever you have a monopoly, those regulated by a government entity, you have to go through a rate making policy. In this context, in this valley, I think there is a legitimate concern that whoever would get this contract with the county, that once you are in there you could do whatever you wanted with the rates and that's a legitimate concern.

Staff and Commission discussed how rates are set. Logan City comes before the County Council once a year and provides all the information about raising or lowering rates and the County Council helps to set the rates. Citizens are welcome at that meeting and it is properly advertized.

Mr. Hamud I think it's really helpful that you understand that the rate making process is established by the county. We do have a Solid Waste Advisory Board that includes most of the mayors from the valley and a member of the County Council. They review the information and we submit to them to either agree or reject that proposed rate increase. The last rate increase was in 2006 and before that it was 1997. So it's not that we increase the rate every month or every year. It is a process that everybody needs to understand and it is run by committee.

Ellis is this something that the Planning Commission should delve into?

Mr. Hamud now with regards to the utility of solid waste, it is the same as water, sewer and any other business that the government enters into. You can identify as private or public but the county has decided to make this a public entity run program and it is what it is and it's not something that we can turn around and change it. The same is true with water and sewer.

Staff and Commission discussed if the Board is behind the proposal or not. Many members feel that the rezoning of the property was the proper time to decide if this particular site was a good place. Many members are in need of more information on whether the problems can be completely mitigated and staff is still researching the issues that the Commission consider highly relevant. Some of those issues include traffic and containment of trash on site and during transportation.

Sands motioned to extend the meeting 15 minutes; **Smith** seconded; **Passed 5, 0.**

Staff will continue researching the routes, including getting the bus routes from the school district, and timing of trucks, hours of operations, emergency waste procedures, wildlife studies, and the geotech review.

Sands motioned to change the July Planning Commission meeting date from July 11th to July 18th, *Smith* seconded; **Passed 5, 0.**

8:07:00

Adjourned