



PLANNING COMMISSION MINUTES

18 JULY 2013

Item Page

Consent Agenda

- 1. Cache Humane Society CUP 2
- 2. Legacy Ranch at Monte Cristo Subdivision Amendment 2

Regular Action Items

- 3. Public Hearing – 5:40 p.m.: Marlin J. Grant Rezone 2
- 4. Michael Allen Subdivision 6
- 5. Brooksby Subdivision..... 6
- 6. North Valley Landfill CUP..... 8

Present: Chris Harrild, Josh Runhaar, Rob Smith, Leslie Larson, Chris Sands, Clair Ellis, Chris Allen, Jon White, Denise Ciebien, Megan Izatt

Start Time: 5:31:00

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

5:36:00

Agenda

Passed

Minutes from June 6, 2013

Passed.

05:37:00

Consent Agenda

#1 Cache Humane Society Conditional Use Permit Expansion (Roland Bringhurst)

Harrild reviewed Mr. Roland Bringhurst's request for approval of the expansion of a conditional use permit (CUP) to allow an additional storage shed on 1.42 acres of property located in the Commercial (C) Zone at approximately 2370 West 200 North, west of Logan.

#2 Legacy Ranch at Monte Cristo Subdivision Amendment (Kirk Laughter)

Harrild reviewed Mr. Kirk Laughter's request for a recommendation of approval to the County Council for an amendment to lot #48 of the existing subdivision on 94.60 acres of property in the Forest Recreation (FR40) Zone in the Monte Cristo area on Ant Flat Road.

*Ellis motioned to accept the items on the consent agenda with the stated conditions and findings of fact; **Smith** seconded; **Passed 5, 0.***

05:39:00

Regular Action Items

#3 Public Hearing – 5:40:00 p.m.: Marlin J. Grant Mini Subdivision Rezone (Marlin Grant)

Harrild reviewed Mr. Marlin Grant's request for a recommendation of approval to the County Council for a rezone of 8.60 acres of property from the Agricultural (A10) Zone to the Rural 2 (RU2) Zone located at approximately 3500 South 3100 west, north of Wellsville. The access road for this subdivision Highway 89/3900 south is initially adequate but as it turns north the

road narrows to an inadequate width. Those portions must be brought up to the county standard of 24 feet. A subdivision would not be allowed on this road and individual, legal parcels may or may not be issued a building permit. However, that is being researched by legal staff. Public comment has been received and all comments have been in support of staff's determination to recommend denial for the rezone. Also the proposed rezone density is not compatible with the general character of the area which is comprised of larger parcels.

Ciebien recused herself and legal questions need to be directed to James Swink or Don Linton.

Staff and commission discussed parcel legality and 1970 parcel status as regards the ordinance at a given time. This parcel is not a pre-1970 parcel because it has had acreage added to it.

05:50:00

Sands motioned to open the public hearing; Ellis seconded; Passed 5, 0.

Mr. Marlin Grant The reason we purchased this property was for a subdivision and I made it part of the contract that the parcel must be sub-dividable or I would not purchase it. This parcel fit under many of the subdivision rules. If you look at the parcel, this parcel is a 6 acre piece and it had its own identity number. That parcel has never been subdivided and is under the 1970 rule, so I could get three 2-acre lots on the 6 acre parcel alone. What I've been told is that when Mr. Evan's added acreage to this parcel, it made it a non-1970 parcel. In 2007 the ordinance it stated that if there is a recorded agreement between adjoining property owners of adjoining property if no new lot is created and does not violate any applicable zoning ordinances. The 2.9 acres piece has been there since 1970 and was part of a different parcel. Later on in the ordinance there is language that states the adjoining of the 2.9 to 6 did not create a subdivision, and that the 6 acres is still subdivided under the 1970 rule. Today the rules for a subdivision are a subdivision does not include a recorded boundary line adjustment between adjoining owners or the addition of acreage to another property that has not been subdivided. Subsection E of that section makes it explicitly clear that the joining of the 2.9 to the 6 acres does not constitute a subdivision. I've been going back and forth with Chris saying this 6-acre piece is not subdivided and has never been. You can't argue that the adding of that 2.9 acres is subdividing and the boundary line adjustment doesn't do that either. So I was told the best way to do this was to do a rezone. I'm only going to get 3 lots but I can still get 3 lots on the 6 acres. What I am asking the Planning Commission is to find that I don't need a variance at all and that this is a 1970 un-subdivided piece and that I fall under those rules. Now staff is saying the roads are unsafe. There are 6 homes directly in the vicinity of where I am at. They all get down there and adding three more homes isn't going to add that much traffic. And the code actually says that when you have county roads that are subpar, that don't meet their own requirements, the developer is only required to widen the road where the owner's property exists and dedicate it to the county. I don't have to widen the entire way down to my property. This is subdividable and the roadway is not a problem. Ruling otherwise could constitute a regulatory taking of my property, particularly where I've invested so much into this. I've purchased underground well water for these lots, Bear River Health Department has approved this, the utilities are there, and the water has been transferred and everything is ready to go. The variance statute...

Larson excuse me, but the board of adjustment is who rules on a variance.

Mr. Grant I am suggesting that the rezone doesn't even have to take place because I do qualify under the 1970 rules and I would request that a finding be done on that by the county attorney if necessary, but that code that I talked about states that so I'll open it up for questions.

Larson is this an either/or request?

Runhaar the application is for the rezone. If you would like a determination on the 1970 he can request that, and I issue that as the zoning administrator and if he doesn't like that response he can go before the Board of Adjustments. I don't want to get into the 1970 issue here; we are going to need our attorneys involved if that is the issue. This is for a rezone.

Staff and commission discussed the 1970 questions. The planning commission does not address that issue, the Board of Adjustments does. The issue before the commission is for the rezone.

Mr. Grant the problem with the County Code says that you can't join parcels and that is contrary to state code which says you can.

Harrild that is in regard to subdivisions and this isn't a subdivision.

Mr. Grant well I'm calling it a mini-subdivision.

Runhaar we're mixing terms here.

Larson it's a multiple step process. So a rezone is a separate process from a subdivision and because the issues have been presented together it's a little bit jumbled together. A rezone determination would not necessarily be a stopping point for you if it was a denial because there is another matter underlying this.

Mr. Grant I guess that is where I'm confused also because I was told specifically that you must ask for a rezone and the RU2 is basically the current statutes that says you can do two 2-acre lots.

Smith under RU2 how many lots could you get?

Mr. Grant I could still get 3.

Runhaar here you could get 4 lots on this.

Mr. Grant yeah, that's correct. So what is the criteria to get a rezone and will it show there are valid reasons to do that?

Larson and that is when it goes back to the issues of the road, the surrounding areas, and if this becomes an issue of spot zoning and access is a problem here. Those are the criteria when you look at for a rezone and I'm not sure I would have advised to come at it that way. So we will be looking at a pretty narrow set of circumstances for the rezone and if that determination is not in your favor it's not necessarily the end of the line. There are two different approaches to this and the rezone is what we need to look at tonight.

Ellis if there is a decision made on the application or the ordinance it may be something that we want to re-address in the future, I think the intent of the new language was to prevent people from getting more lots through boundary line adjustments. It might be that the language that was adopted would prevent this regardless and if the clear language says that then the intent doesn't matter.

Larson I think we we're trying to avoid form over substance.

Mr. Grant if I could just add one more thing, there is language in the state code that states "where land abutting a substandard street or road the developer shall dedicate any necessary rights of way or improvements to bring the road to standard." I think that is a non-issue. I haven't seen any accidents on this road since I've been there that I can think of, except one where the gentlemen was going too fast for the road conditions. I think that's a red herring but anyways that is where I am at.

Ellis as I understand it the ordinance would not require the applicant to widen the road but the ordinance states that you cannot do a subdivision if the road isn't adequate.

Runhaar we can't require the applicant to go back and widen the entire road, but while we can't require that, we also can't approve development down there because of access. So either the applicant improves the road or will have to wait until it is done by the county. At this time this road is not slated for improvement.

Mr. Grant I'm not sure I totally understand what the rezone requirements you want to hear are.

Larson it would primarily have to do with the roads and this, because of where it is located, becomes a spot rezone which isn't unlawful but from a policy perspective we try to avoid it. So there needs to be a really good reason to change the zone in a middle of an area that is otherwise zoned differently.

Mr. Grant I thought that was what the variance request was.

Larson it might be but that comes after all the other steps have been taken.

Ellis there are several conditions in the staff report that need to be looked at.

Steven Hall I live on 3100 west and own several acres in this area. The road there, when you get to my driveway, there is a canal and that hasn't been addressed. If he was to widen that road to meet county standards that ditch would need to be piped or be relocated. He still will not pipe the ditch and we can't afford to move it and that is one thing that hasn't been addressed. And another thing on this, Mr. Grant has stated that there are services down there but there is no natural gas down there. We are all on propane. I applied and received the Century Farm this year and my family has been there for over 100 years. We have no intention to develop our land down there and if we did we would look like the areas between Wellsville and Logan. When baby animal days goes on down there you can't get down that road, especially with farm equipment. I support the board in denying this request.

Michael Scott Spindler I've lived there for 24 years. This is an agricultural area, we all farm and a subdivision does not fit there. The road is overwhelmed now because of the American West Heritage Center. Now the road is full of sightseers. A subdivision does not fit out here, this does not fit in our neighborhood; this is just for profit. The road has had accidents; the corners are very tight and are blind. The road narrows and has steep drop offs and a subdivision does not fit in our neighborhood.

06:16:00

Sands motioned to close the public hearing; Allen seconded; Passed 5, 0.

Staff and commission discussed the application. In the past the commission has been pretty consistent in approving/denying these types of applications. If there have been access issues or other major issues the commission had denied them.

Sands motioned to recommend denial to the County Council of the Marlin Grant Rezone due to inadequate access and the context of the area being that of large lot, agricultural character; Ellis seconded; Passed 5, 0.

6:21:00

#4 Michael Allen Subdivision (Michael and Kaylene Allen)

Allen excused himself for this item due to a family relationship.

Harrild reviewed Mr. Michael and Ms. Kaylene Allen's request for a recommendation of approval to the County Council for a 4-lot subdivision on 31.28 acres of property located in the Rural 5 (RU5) Zone at approximately 12851 North High Creek Road, Cove. A design exception has been recommended to allow the 21' wide paved surface of High creek Road for access to the subdivision.

Staff and commission discussed the road issues. This application differs from the previous application for roads because the previous application would require 6'8" more of road where the current application is 21' wide with a 1 foot shoulder on each side and that is only a foot to 1'6" difference. Also to add the 1'6" would require the entire road to be redone.

Smith motioned to recommend approval to the County Council of the Michael Allen Subdivision with the noted conditions and findings of fact; Ellis seconded; Passed 4, 0.

06:30:00

#5 Brooksby Subdivision (David Brooksby)

Harrild reviewed Mr. David Brooksby's request for a recommendation of approval to the County Council for a 4-lot subdivision and 1 agricultural remainder on 17.05 acres of property located in the Agricultural (A10) Zone at approximately 2200 East 11000 North, east of

Richmond. 2000 East meets the minimum county standards but due to a lack of sight distance around the curve of 2000 East that occurs along northern portion of the subdivision, access to the individual lots from 2000 East shall be restricted to locations to be identified by the County Engineer. The allowed access points shall also be identified on the final subdivision plot. There is also a mailbox currently located within the county right-of-way and impeding access along 2000 East that must be moved. No access to the subdivision from 11000 North is permitted as that roadway is inadequate at this time. 11000 North is being improved by the developer of the Cherry Peak Ski Area.

Staff and commission discussed the Brooksby Subdivision. After this subdivision, the parcels to the East will not be pre-1970 because of the boundary line adjustment and the applicant is aware and fine with that. Agricultural remainders were discussed. The commission has a pretty consistent history regarding agricultural remainders. Agricultural remainders are not developable; it only comes into play if it is labeled a lot otherwise it is open ground and cannot be developed. The mailbox was discussed; if the mailbox was moved back 10 to 15 feet it would be fine.

Mark Russell are the positions of the driveways recommendations or requirements?

Harrild it's a requirement.

Mr. Russell so whoever builds on those lots are going to have to put their driveways in the spots marked?

Harrild where ever the engineer identifies it is safe and effective.

Mr. Russell my concerns are it extremely limits the developability of the lots. If you look at lot 4, that spot on the map is a ditch. That is a creek bed that runs through right there.

Harrild that would have to be addressed by the engineer. I'm just saying that it's wise not to put the point of access on a corner.

Mr. Russell and I agree with that, but if it's limited to what is listed here, if this gets approved as is he restricted to that spot? Or is he eligible to work with the engineer?

Harrild let me read the condition to you: "Due to a lack of sight distance around a curve of 2000 East that occurs along northern portion of the subdivision, access to the individual lots from 2000 East shall be restricted to locations to be identified by the County engineer. The allowed access points shall also be identified on the final subdivision plat."

Mr. Russell so they are not identified yet?

Runhaar they are not, but will be by the time it comes to County Council.

Allen motioned to recommend approval to the County Council for the Brooksby Subdivision with the stated conditions and findings of fact; **Smith** seconded; **Passed 5, 0.**

06:45:00

#6 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 to allow the placement of a solid waste landfill 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's brief review of the geotechnical report review submitted as public comment does not raise any concerns at this time. Finding of fact #1 was discussed and will be re-worded to include, "within the jurisdiction of the land use authority and the county code". The applicant has provided a full landscape plan and identified hours of operations. Also, hours of operations were identified and addressed in conditions of approval #2.

Staff and commission discussed the application. No site development activities may occur before recordation of the County permit. Condition #2 the language "local area" will be taken out. Condition #9 was discussed. If it is submitted in writing it is clear and concrete, there is no ambiguity about it and it is easier to enforce.

Mr. Issa Hamud some holidays are different than others, and going back to the questions of if we can live with condition #2, because we can push residential back one day that works for that. But because we also serve commercial entities we cannot defer those services to the next day. So we are asking that you say something about that collection service for commercial entities on holidays.

Runhaar is that collection going to happen before 8 am?

Mr. Hamud no.

Runhaar then there should not be a problem as long as that collection isn't before 8 am. If the applicant wants to increase the number of runs, as long as it is a minor amendment, such as changing from 10 to 11 runs, there wouldn't be a problem. If they were to increase to 15 loads a day it would come back before the planning commission. A condition will be added that states the applicant will be limited to the average of truck loads per day discussed in the application. Condition #3 was discussed.

Staff and Commission discussed the route the trucks use and the creation of new roads and impacts to existing roads. A side note can be added to the record for the Commission to express their opinions to the County Council in regards to the road. Condition #4 was discussed and no changes were needed. Condition #5 was discussed. The Commission had questions regarding oversight of the maintenance and management of the roads. Snow removal on the scale the landfill will need is not going to be provided, also road way maintenance will not be kept up to meet the needs and the applicant will have to help in those areas. Usually inter-local agreements are drafted and put in place to help with that. Condition #6 was discussed and some commissioners would like to see the weed control plan. Many commissioners would also like to see the weed control plan apply to the entire parcel and not the incremental 10 acres that are being used. Failure to provide appropriate weed control will result in the county spraying and billing the applicant. Also a condition for a request for annual report from the applicant on

compliance, which weed control would be included, can be added. Wording for condition #6 will include a “weed control plan for the entire site will be required”. Condition #7 was discussed. The evidence of rights-of-way will need to be submitted to the county attorneys and not the development services department. Condition #8 was discussed and “for the roadway” will be taken out. A copy of any and all permits must be submitted to the Development Services Department. Condition #9 was discussed and no other changes but what was previously discussed was needed. Condition #10 was discussed. The word “permit” was added into the first sentence after “site”. Any change to the state permit would require an amendment to the CUP and a review of the appropriate land use authority. Condition #11 was added and will read, “An annual report shall be filed with the Development Services Department detailing the operations, compliance with State and County Permitting, and any outstanding permit or operational issues”.

Condition #12 was added and will read, “All solid waste transported by the transfer semis and local collector trucks must be covered and secured. The proponent shall provide a fugitive waste plan to address any waste that escapes during transport”.

That report will be brought before the Planning Commission and the County Council once a year. Condition #7 was discussed again and will read, “Evidence of the required right-of-way, a minimum of 66’, for the proposed roadway solution shall be submitted to Cache County, including a full dedication of all right-of-way along the frontage of the development”. Concerns regarding stray litter on the road were discussed and will be addressed with the applicant.

Mr. Hamud in regards to the number of trucks, I want to address growth. There is reasonable growth expected every year and that growth might increase the number of trucks by 1 or so every few years but that growth can’t be determined right at this moment. The second thing is the land fill being closed and what a trip is. Going and coming back is two trips and we have indicated that the trucks that will haul all the garbage directly to the site when they are in that area can be up to 17 trucks and that is what is specified in our application.

Larson are all the trucks kept at the transfer station?

Mr. Hamud yes, except for the semi trucks that will haul. Except that one day we will haul everything to the landfill there can be up to 70 trucks.

Ellis would that be 140 trips?

Mr. Hamud no, about 85.

Harrild where is that at?

Mr. Hamud that is talked about in the first page second paragraph of the road study.

Ellis my intention there was to tie the number from the application into the conditions.

Mr. Hamud with the issue of weed control, I completely agree with you. I am sorry we have not met your standard on that and make sure that things are included into the current landfill as well. We will be willing to submit the quarterly and annual report that we submit to the state to development services.

Runhaar how big is that report?

Mr. Hamud quite large so you probably want to do your own questionnaire that you would like us to fill out. Also, you may also send out someone to be present for the annual state inspections as well. The other issue was about permits, there are two separate permits here that we deal with. The construction permit is for during the construction, and with storm water we will be fine with those. But operational permits also exist and if you would like both you can do that but I think it would be better to include in your conditions that you require us to have a copy of that on site and you can come out and see them. Also the state requires that we keep a copy on site.

Runhaar we will take a digital copy and keep it on file. We'll take a digital copy of the construction and the operational permit.

Allen motioned to extend the meeting up to 8:15 and continue the item until the August 1, 2013 meeting; Ellis seconded; Passed 5, 0.

Mr. Hamud there was a discussion about litter on the road to the landfill. I think a line be included that there be a minimum of litter and you may also require that the trucks be covered. The trucks are covered now but that is a requirement that you can have. I do have a question for you, can I have the application submitted to the County Council? It looks like you are going to have at least one more month of discussion and we are already late for our timeline and that costs a lot of money. I want to make sure it is okay with you that I submit this to the County Council for the next meeting.

Runhaar as long as a decision is made at the August meeting it won't change the time of when this application goes to County Council.

Larson you do need our recommendation of approval or denial before you can submit it.

Mr. Hamud so I can request this be on the Council agenda?

Ruhaar not before this decision is made.

08:11:00

Adjourned