



PLANNING COMMISSION MINUTES

02 OCTOBER 2014

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| 4. Discussion: 17.13 Mineral Extraction and Excavation (removed from agenda) | |

Present: Chris Harrild, Josh Runhaar, Jason Watterson, Phillip Olsen, Rob Smith, Chris Sands, Lane Parker, Brady Christensen, Leslie Larson, Tony Baird, Megan Izatt, Stephanie Nelson
Start Time: 05:33:00

Sands welcomed and **Larson** gave opening remarks

05:36:00

Agenda

With the removal of item #4, the agenda was approved.

Minutes

There were a few misspellings; with those changes the minutes were approved.

05:36:000

Public Hearings:

#1 Public Hearing – 5:40 – Fox Hollow Rezone (Duane Williams)

Harrild reviewed Mr. Duane Williams' request for a rezone from the Agricultural (A10) Zone to the Rural (RU5) Zone on 49.6 acres of property located at approximately 300 North Highway 23, north of Mendon. Within a one-mile radius the average parcel size of parcels with dwellings is 7.6 acres and an average size of 20.75 acres of parcels without dwellings. This does not include the areas located within Mendon City. Staff has concerns with the creation of the need for additional county services in an area currently not served by the county. The development of potentially nine additional lots would result in a new roadway that would require county maintenance. The existing access is from Highway 23 and is adequate. UDOT has identified that only one access to the property would be permitted. Public comment has been received concerning the availability of water and the effect of additional lots in that area on the existing wells located there.

5:43:00

Larson** motioned to open the public hearing; **Smith** seconded; **Passed 7, 0.

Duane Williams I am the agent and will be purchasing the property tomorrow. I have talked to Will Atkin, the state water engineer for this area. He did express similar concerns as the neighbors. The water is deep there and some of the wells in the area are 250 deep and at least one is 400 feet. I've been told that at about 60 feet you can get good irrigation water but it is not good drinking water. The well would have to provide for irrigation and the homes.

Sands is it irrigated farm land now?

Mr. Williams it is dry farm. There are two water shares for the lots I am buying from the Wellsville/Mendon. It's a share but it's more like a right that transfers with the ground. The thought was to do a short road in and put four lots and then do a turn around. Then farm the ground to the east. That is the plan at this point.

Sands the zoning allows for four lots right now and you want to change the zoning?

Mr. Williams right, I would like to do 8. Four on the paved road and then two to the north and two to the south.

Smith are you the owner?

Mr. Williams I am the agent and I am buying it tomorrow. The owner just said we could put his name on the request so we could start it a month early.

Smith on the water, do you have a water right for the irrigation?

Mr. Williams I have some water in Cornish and would be moving that down to do the irrigation.

Smith so you would file a change application?

Mr. Williams yes.

Larson have you discussed with the water engineer about sharing wells, is that even permitted?

Mr. Williams I have and it is. At a certain number you have to do some regulation on it. At 5 homes it becomes public domain. But fewer homes than that would work sort of like an HOA. They would share the cost of the electricity and he (Will Atkin) actually recommended that because of the cost of the well.

Christensen if you do the four lots, would you come in the middle with two on the north and two on the south? Then you would go 250 feet and do a hammer head or a cul-de-sac? So what would your future road be for the other 5 lots that you are allotting?

Mr. Williams the frontage would be one lot, and then it would go so far in and be a cul-de-sac. That cul-de-sac would access four lots. Then there would be a road between lots two and one that would access the rest of the lots. Does that make sense at all?

Sands would those be private roads?

Mr. Williams two would be private gravel roads and the others would not be.

Christensen even though they are private roads they would still need to meet the county standards, right?

Runhaar yes. It is also important to note that we are not looking at the subdivision plat at this time, the layout could change tomorrow.

Christensen part of my reason for asking is what is to say the board approves it and then they split it up so there are three accesses off the highway instead of one?

Runhaar UDOT won't allow them to do that.

Mr. Williams I have talked to UDOT and they won't allow more than one access.

The board discussed what elements are needed to rezone the property today. A final plat is not needed at this point and whatever the applicant talks about today is not what will necessarily happen on that property. They could change their mind about how to split this or how to lay out the roads.

Watterson have you approached Mendon about annexation?

Mr. Williams I haven't because it doesn't touch Mendon.

Mike Bennet I own the property to the north of the proposal. How many acres do you have to have in the county to build on?

Harrild staff can answer that and you should direct your questions to the Commission.

Mr. Bennett what is the reason for the rezone?

Runhaar for more lots. So right now you can have one dwelling per 10 acres.

Mr. Bennett I'm not necessarily opposed to this but I think the information on the well isn't adequate. Our well is 600 feet deep and we can water a tree but not much else and our pump sits at 450 feet. I don't know what the water people are thinking saying you could get water for 9 homes there and that is going to be expensive. I am against 9 wells because I think it will have an effect on my wells. If your well makes my well go dry, you have to stop pumping because my well was there first and that could cause a problem. There is also a flood issue there with that property. The runoff goes off from the east and the drainage ditch on the west side of Highway 23 is plugged up with silt and that causes the runoff to come over the road and on to this piece of property and heads straight towards my house. We've had to channel that away from our house and that is an issue that is going to have to be addressed. If the ditch was cleaned out on the west side, the runoff will actually go south and under Highway 23 and into a drainage ditch on this property. If it continues to get filled up with silt it's going to flood that property.

Runhaar just to let you know that is a state controlled road and if you do work there and the state finds out there will be ramifications. I have the contacts at the state and we will make some calls to try and get that silt and ditch cleaned up. The reason it hasn't been done is because Highway 23 is on a do not service list.

Patricia Bennett on the water shares, how does that work to split it between the homes?

Mr. Williams the water person will have to decide whether they will allow the transfer of water and if they determine there is water they will transfer. You can oppose the transfer if you want to. It's transferred to a well and it is designated for a specific purpose. I have shares out of the Bear River and that is further north. This will be a transfer of water. If I can purchase Wellsville/Mendon water it will be better.

Larson just a note on the water, that will not come before this board. That goes before the state water board and all we check is that they have water there.

6:06:00

Larson motioned to close the public hearing; Watterson seconded; Passed 7, 0.

The Planning Commission discussed the issues with the road. The county can't absorb and maintain these new roads and private roads are terrible for planning because people don't realize what the private designation really means. Many of the commissioners expressed concern for prospective buyers regarding the road and water issues. There has been some rezones done in the Petersboro area but all the services were already in place. The county does not do maintenance/snow removal on Highway 23 because it is a state road. A denial does not make the property unusable; it does mean there is no expansion of the current use of the property.

Larson motioned to recommend denial for the Fox Hollow Rezone to the County Council with the following findings of fact:

- 1. The proposed density is not consistent with the existing density of the surrounding area.*
- 2. The county is unable to bear the short and long term cost to serve and maintain access to residential areas in the unincorporated county. The property is also not contiguous to other existing developed areas requiring service.*

Smith seconded; Passed 7, 0.

6:19:00

#2 Public Hearing – 6:00 – Title 17.06 – Uses

Larson motioned to open the public hearing for Title 17.06 – Uses; Watterson seconded; Passed 7, 0.

6:23:00

Watterson motioned to close the public hearing; Smith seconded; Passed 7, 0.

6:24:00

#3 Public Hearing – 6:15 – Title 17.07.030 – Kennels

Harrild reviewed the kennels ordinance and the changes that have been discussed at previous meetings. As recognized by the Commission and staff, the Commission's previous decisions reflect that if an application requests more than a certain number of dogs a denial is generally

issued; the exception being a kennel for 15 dogs. As directed by the Commission, the new language for the kennel ordinance would now allow up to four (4) adult dogs may be allowed per acre but a home based kennel shall consist of no more than 12 adult dogs. This count does not include puppies younger than 6 months old. The intent is to distinguish between home based kennels and commercial or professional kennels. Home based kennels tend to be small and have less of an impact but would still require a conditional use permit (CUP). That would allow for mitigation possible impacts and/or nuisances to be addressed. A professional kennel is identified more as a commercial entity. This means the primary use is not the dwelling, but the kennel. Also, on the use chart an animal shelter would now be considered a professional kennel. Staff still needs some direction for what zones kennels will be allowed in. One argument for separating kennels out of the agricultural zone is because dogs, as defined by the state and county ordinance, are not an agricultural use. However, cows, mink, farming, etc., are all agricultural uses. The other issue is whether the kennel facility needs to be expanded to deal with cats also. Past discussions have included the possibility of writing a condition in the CUP limiting the breed but a state law will go into effect January 2015 prohibiting that action.

Commissioners expressed concerns on limiting the number of dogs in the ordinance when large amounts of dogs can possibly be mitigated. Some commissioners expressed concern with using a number. Numbers are very arbitrary. Maybe the county needs to move towards a performance based ordinance. If the kennel isn't performing in the way it's supposed to then it can be dealt with through criminal/nuisance laws. There is no process/regulation in place currently to deal with nuisances right now. It would require that a nuisance ordinance be drafted and approved. Currently to claim a nuisance there must be minimum of 3 property owners that lodge a formal complaint. The majority of the counties referenced have an ordinance with a specific nuisance component. Cache County does not. Staff can look into building that component but that does not reflect the county's approach to compliance. The county currently has two shelters/kennels in the unincorporated area, the Humane Society and Four Paws Rescue. The county has never received a complaint regarding the Humane Society but has received several complaints for Four Paws. The nuisance ordinance does become part of the criminal code and can be used that way if one is written.

The Commission also noted that the reason to specify a maximum number of dogs is to differentiate between a commercial kennel and a home based kennel. The other thing to note is that the average dog owner today is different than 20 years ago. Many see dogs as their children and take care of them as such.

6:57:00

Larson motioned to open the public hearing for Title 17.07.030 – Kennels; **Parker** seconded; **Passed 7, 0.**

Roland Bringham I am the director of the Cache Humane Society. I dislike being lumped in with the new definition of professional kennel. That doesn't seem to fit what the humane society and other groups taking in stray animals and re-homing them do. I can see how we would fit but I don't feel that is what we are about. I would like to see the definition of animal shelter stay in there and the table. As to the numbers, I have never been a proponent of an artificial number specifying the number of animals allowed. I agree that it should be more of a performance based

standard. If someone can have six animals in their house and take care of them and not bother the neighbor then they should have that many, but the artificial number of animals a person can have is not something I've ever agreed with.

Larson what kind of nuisance regulations would you propose that would help guard against the issues that people are worried about?

Mr. Bringhurst enforcement is very difficult. I never got a nuisance violation through the courts when I worked that side of enforcement. When you need to have 2 or 3 neighbors that need to testify you are never going to get that. Nuisance is very hard to prove and very hard to go after. Smell and sound are the biggest complaints with dogs and cats. Doing a performance based system is very hard to do and right now the county animal control officers are stretched very thin.

Sands the existing ordinance is up to 3 dogs?

Harrild up to three dogs per property. After three dogs it falls into the category of a kennel.

Carry Burton I have lived in Cache County for 14 years and am a dog breeder for 7 of those years. As far as regulations, the USDA is going to absolutely inspect us. They are extremely picky, you have to have a certain amount of space inside and outside per dog. The local vet will be required to inspect your facility two times per year. The animal control officer I've talked to say if you get three complaints then you are in trouble. As far as conditional use, a conditional use permit has conditions. I have 40 to 55 dogs and they don't run through my house, I have one dog that is in my house. I have a room for my mom dogs and for my puppies and they have access to outside to go to the bathroom. No my dogs are not running around my house. I consider myself a home based business. When you say professional kennel for lack of a better term, I guess that is what I am. But I don't believe that animal shelters should be lumped in with the kennel definition, we are not the same. I have clientele all over the world. We do guarantee our puppies and if they can't keep them they come back to me. Most of our dogs are sold as pets; the others go to breeders that I know will take care of them. As far as the home based thing, I am a small home based business. My dogs are little and my place is fenced. Dogs don't usually bark if they can't see other people or things and they can be trained not to bark. Our dogs are like our children and I can give you specifics regarding each dog. We retire our dogs at a young age and find good homes for them when they are retired. As for regulations I don't see why you can't come up with a conditional thing and do away with the number. I have never had complaint in all the years that I have done this. I don't understand why you can't look at a conditional thing and as long as it goes along with AKC regulations and the new USDA regulations, then why can't you go ahead and approve that? If you get complaints then shut it down. We have to be really strict with our dogs for AKC registration and to meet the new USDA regulations. As far as I'm concern this ordinance takes away my rights. Dr. Watkins is one of my main vets, and he has seen my place and I don't feel like he would agree with this either. I don't know how you can differentiate between professional and home based kennels.

Larson you mentioned that the veterinarians come out twice a year to inspect you?

Ms. Burton the USDA requires that a local veterinarian come out and inspects your place with no prior notification and then they submit a letter to the USDA.

Christensen who pays for that?

Ms. Burton it's going to cost me about \$1,000 a year for my license.

Smith is that just to be AKC registered?

Ms. Burton no, that is for any dogs. Anybody who sells dogs is subject to this law. This is to do away with bad breeders and puppy mills. Whenever I send a puppy international I have to go down to the USDA office in Salt Lake to get their approval. When you say dogs aren't agricultural I don't know how you say that when the USDA regulates that.

Sands you sound like an excellent example, and probably the lion share of breeders are like you or they wouldn't be in business, right?

Ms. Burton and this law is made to cut out the bad breeders. A lot of breeders have 60 to 100 dogs and are fine. But there are a lot of breeders selling out because of this new law because they can't meet the new regulations.

Sands there are a lot of different government agencies that regulate businesses in the county, but we're only talking about what we can regulate. We've talked a little bit about how we don't have the resources to enforce our ordinances. I'm not sure the federal agencies are going to regulate nuisance complaints. They aren't there to care about the welfare of the neighbors, but the animals. And it sounds like we don't have the tools to regulate what you are suggesting that is what we are trying to look at. We have a series of past decisions that we made that we are trying to reflect in our current code.

Ms. Burton you do have some with the animal control officers. If they get a complaint they go out.

Sands it would be interesting to hear what tools they feel they have to enforce a nuisance law.

Ms. Burton all I ask as a breeder from a breeder's point of view is that you know how we operate. That is the whole point of my letter. I think it's great to come up with a kennel ordinance but it has to be fair and I feel like this ordinance takes away my rights. I don't want my rights taken away.

Christensen how close is your closest neighbor?

Ms. Burton we just moved from Paradise and I think the closest house to our new place is 300 yards.

Christensen that is the house or property boundary?

Ms. Burton the house. We have 10 acres and we have neighbors on both sides and we haven't had a complaint. Dogs can be trained not to bark and it's not the same thing as a kennel. You can't put us in a commercial place. Dogs bark when they hear noise and people.

Sands most veterinary clinics are in a commercial zone and they board dogs and are kennel type operation.

Ms. Burton but they aren't a breeder. I am a home based business. They feel safe because they are in a home environment.

Sands but the law says if you have more than 3 dogs you have to have a permit. You have to request those privileges, you aren't granted rights automatically.

Ms. Burton I just want this to be fair. This is my way of making an income.

Caryn Mullin I have a home based kennel in Casper, Wyoming and we are trying to relocate to Cache County. The dogs, pugs, they don't bark unless they see someone or a stranger. They don't bark all night, they are small. They are like our kids and our nearest neighbor is 150 yards away and she wrote a letter for me stating that unless the dogs are outside she doesn't hear them. I'm sure you could get a good reliable breeder to help animal control with inspections. We know what to look for; they have to have a clean friendly environment. I would volunteer and I'm sure Carry would and there are two respectable witnesses. As far as a conditional use permit, why couldn't that be regulated? Why can't we surrender the permit when we move, why should the new owner get it?

Sands that is a manner of state law.

Ms. Mullin that can be changed can't it?

Harrild It can but not by the county.

Ms. Mullin a conditional use means a conditional use and if you're not following the laws then it can be taken away.

Sands yes, it can be revoked. But it runs with the property so if you get a kennel for pugs and then you sell that property the next owner can still operate under that CUP and raise different dogs.

Ms. Mullin why can that not be surrendered when the property is sold?

Runhaar I can't require that by state law and it is completely unenforceable by us.

Ms. Mullin why can't the person who has the CUP sign something that when they move they surrender the CUP?

Runhaar I can't require that. I can't accept you surrendering the CUP. State law won't let me accept that.

Larson it's just the way the law works. The problem is resolved if someone else moves in and they don't meet the conditions. Then you send out law enforcement and revoke the permit. But if they continue to operate the same way you do, then they get to keep the permit and run their kennel.

Sands if the use ceased to exist for a period of time it goes away?

Runhaar Yes, after 12 months.

Larson if you expand the use or cease to operate for a year then you have to get a new permit.

Ms. Mullin I don't understand why it is a CUP if it's not conditional.

Runhaar we operate within the confines that the state allows.

Kelly Wright I am new to Cache County but a few things to point out is that there are a lot of animals here. I live in a residential area and to one side of me there is a lot of dogs and the other side has a lot of chickens. Those chickens by far are so much louder than the dogs could ever be at 4 or 5 o'clock in the morning. We have a dairy farm behind us and the stink from those cows is more than the dogs. I hate to see the breeders get punished for that type of a thing. It doesn't make sense or logical to me and it doesn't seem lawful or right. Breeders love their dogs and I come from a city where free enterprise is wildly embraced. Home based businesses are big. The problem with that is that the products put out for consumers are often not reputable or good and you end up with a lot of dissatisfaction. I think I would rather see a dog breeder business rather than a lot of the other businesses I have been around. Dog breeders tend to be more responsible, honest, and are upstanding citizens. They have some roots that are set out in their community. They are licensed and can be regulated where you can't do that with other home businesses. I think the dog breeder business is a boost. I think that the type of business dog breeders bring is a very particular type of business. The buyer seeks out the breeder, whatever the type of dog. The buyer seeks out the breeder so the tendency to have more satisfaction in that realm goes way up. That buyer didn't just happen to buy something from someone and have buyers remorse and they are going to take revenge, no they are satisfied. Breeders love their dogs and buyers love the dogs they buy from breeders. They've been waiting for the dog for a long time. One other point is that my sister in Las Vegas about the mini schnauzer business and she was really impressed that Cache Valley had this type of offering.

7:26:00

Larson motioned to close the public hearing; **Watterson** seconded; **Passed 7, 0.**

Staff and the Commission noted that staff is not looking for a decision on this issue tonight. Many commissioners discussed trying to make the ordinance more performance based than number based and look at nuisance laws to see what would be enforceable. Cache County has good animal control officers and they work hard for the county and it would be a good idea to reach out to them and see what they think about a performance based standard. Some commissioners felt that there needs to be a differentiation between a commercial enterprise and

someone who has a few dogs they work with. There are only a handful of breeders in the county, not one in every neighborhood. The reason for this coming before the commission is because there have been problems with professional kennels in the Ag Zone, and if the commission wants to deal with them on a case by case basis then the ordinance is not needed. Rural counties don't care about things like kennels because there is enough land in between but that isn't the case in Cache Valley. Cache Valley has several homes dotted around the unincorporated area and when you bring this type of use in contact with people that is when the problems happen. The county currently has no tools for enforcing nuisance violations. If a nuisance law is what the commission wants to do then it has to have the teeth to be enforceable. Staff will look at performance based standards, enforcement/nuisance laws, and also look at other options available for this type of ordinance.

7:45:00

#2

Harrild reviewed the criteria considerations for conditional use permits (CUP). There are six considerations: health, safety, and welfare, compliance with law, compliance with intent of General Plan and Zone, Adequate service provision, impacts and mitigation, compatibility with character of the vicinity. The consideration that is the most problematic regards compatibility with the character of the vicinity. Staff would like to see consideration 6 taken out for consideration of CUPs as it is too subjective.

Commission and staff discussed that it may be best to revise Item 3 to deal with compatibility rather than keeping item 6. Item 3 will be reworded to include "and/or compatible with existing uses in the immediate vicinity."

8:00:00

Watterson** motioned to extend the meeting 4 minutes; **Smith** seconded; **Passed 5, 2 (Olsen and Larson voted nay).

Watterson asked about considering traffic in the criteria but traffic itself cannot be regulated. You can help regulate the problem with conditioning the number of employees or the route they are allowed to take.

Staff Updates

DD Auto has been given an extra two years to come into compliance. Storm Water will be on the Council's agenda on Oct. 14 and the Commission will be kept in the loop for storm water. Storm water will not be an action item for the Commission but informational only. Autonomous Solutions is still trying to work out the issues there.

8:03:00

Adjourned