



PLANNING COMMISSION MINUTES

04 DECEMBER 2014

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Present: Stephanie Nelson, Chris Harrild, Josh Runhaar, Rob Smith, Jason Watterson, Lane Parker, Brady Christensen, Leslie Larson, Jon White, Megan Izatt, Tony Baird

Start Time: 05:30:00

Smith welcomed and **Parker** gave opening remarks

05:31:00

Agenda

Approved with no changes.

Minutes

Approved with no changes.

05:33:000

Regular Action Items

#1 Elections for 2015

Rob Smith nominated Chris Sands to continue as chair; Christensen seconded; Passed 4, 0.

Watterson motioned to close the nomination for chair; Christensen seconded; Passed 4, 0.

Watterson nominated Rob Smith to continue as vice-chair; Parkinson seconded; Passed 3, 1 (Smith voted nay).

Christensen motioned to close the nomination for chair; Watterson seconded; Passed 4, 0.

05:34:00

Larson arrived.

05:36:00

#2 Public Hearing: 5:45 p.m. – Armor Storage Rezone (Merkley)

Harrild reviewed Mr. Erik Merkley's request for a rezone of 25 acres from the Agricultural (A10) Zone to the Commercial (C) Zone, located at approximately 4400 South Highway 165, Nibley. Since the existing storage units were built, the ordinance has been revised and storage units are no long allowed in the Agricultural (A10) Zone. There was a previous request for a rezone to the Industrial Manufacturing (IM) Zone and that request was denied. Since this is on the edge of Hyrum City and is considered urban development, this requires that the county contact Hyrum City and request their input. Hyrum has provided comment and stated opposition

to this rezone, requesting that the property owner(s) work instead toward annexation of the parcels into Hyrum City. Staff recommended that request be denied given the noted findings of fact.

Staff and Planning Commission discussed the state code requiring Hyrum City's input. Because this project would be more than \$750,000, state code requires that the County request input from Hyrum City regarding the application. If you look at the map Hyrum is growing north and Nibley is growing south; the possible annexation of this property is high.

05:46:00

Larson motioned to open the public hearing; *Watterson* seconded; **Passed 5, 0.**

Curtis Knight I'm the owner of these storage units. When we first applied for rezone to the Industrial Manufacturing (IM) Zone Hyrum City wrote a letter in opposition because they didn't want a sexually oriented business there and the Industrial Manufacturing (IM) Zone allows that type of business. If you look at Hyrum City's configuration the eastside is commercial until you get to the gravel pits and they recommended that we work on annexation. They felt like the Commercial (C) Zone is what would work here so we tried to get annexed into the city. But because it is an island they can't annex. We thought we maybe had the value to force annexation but the neighbors didn't like that. Hyrum did hold meetings and it was denied. The County's Commercial (C) Zone is more restrictive than what their commercial zone is. When we built these it was in the ordinance to build storage units in the Agricultural (A10) Zone. We put in the entire infrastructure and put in the office building so that we wouldn't have to do that later. To pay for the entire infrastructure, it was very expensive but we were fine with that. We are to the point that if we can put in more units we would be making a profit. That's not happening now; I have to subsidize these storage units at least 5 months of the year. I wasn't notified about the ordinance change regarding not allowing storage units in the Agricultural (A10) Zone. If you look at these units they are well kept and the landscaping is immaculate. This rezone would help us get back to where we were when we first put them in and would help us to make a profit. I have obeyed every ordinance/request that has been made and feel that we are a partner with the county and would hope the rezone would be approved.

Smith could you tell me more about the ordinance change?

Mr. Knight we own 25 acres here and when we first put the storage units in they were allowed in the Agricultural (A10) Zone. But a couple years after they were approved the ordinance was changed and storage units are no longer allowed in the Agricultural (A10) Zone. I would have come in and talked with staff and the commission to figure out how to accomplish what I needed with the ordinance change taken into account. There are 3 parcels that are zoned commercial on 1200 West and if I can put outside storage on those it would be profitable but I haven't done that.

Smith have you talked to any of your neighbors?

Mr. Knight the ones I have talked to have no problem with them. They think they look nice. I understand nobody wants buildings next to you but they haven't had a problem. I do have the acreage and now storage units are no long allowed. We've been down zoned essentially. I don't

know how it works but Cache Storage is in the County and they have outside storage and outside storage would allow me to bring my value back up to what I need it to be.

Eric Merkley just to clarify the changes on the land use ordinance, I think that was changed in February 2013. As you can see Mr. Knight wants to be able to maintain his property value. In all the research I have done, it looks like commercial zoning is what should be there based on examples that are nearby. The Commercial (C) Zone seems to fit this well and we are taxed on a commercial base. The rezone would let us keep the value and we would be profitable. It would not only benefit us but also the County because our tax value would increase. One thing about annexation into Hyrum City, it isn't a reality in the foreseeable future. We don't think annexation would happen anytime soon but if it happens we wouldn't be opposed. One thing to note is that our services are provided by Nibley and they are not opposed to us rezoning these parcels to the Commercial (C) Zone.

Smith what other services are provided?

Mr. Merkley fire protection is provided by the County and water is provided by Nibley. The Fire District came out and said our access was adequate and Nibley is providing water.

Runhaar just a note, the fire district does the fire inspection but Nibley provides fire protection.

Joe Chambers I live in Providence but have a storage unit at this business. It is a top class facility and I don't see that it is incompatible at all with what is currently there. I think this should be approved.

Duane Williams I have no business/personal interest in this business but it is a wonderful business and is kept in very good condition.

06:06:00

Larson motioned to close the public hearing; Watterson seconded; Passed 5, 0.

Staff and the Planning Commission discussed the ordinance change. Staff noted that they do not contact businesses/entities for ordinance amendments unless those entities file the paperwork to request notice. However, notice is posted and made available to the public in the newspaper and online. The ordinance change that removed storage units as a conditionally permitted use in the Agricultural (A10) Zone was part of a collective change to the entire ordinance.

Some commissioners felt that the initial storage units were permitted because they fit with the surroundings then and nothing has really changed in that area between now and then. They felt the rezone for this application should be approved because of that, and because it is not the county's intent to zone people out of business.

Staff provided additional background information in response to the applicant's and commissioner's comments. When the storage units were first approved the applicant stated that these were the only storage unit buildings that would be built in this area, and therefore it did not qualify as urban development threshold as per state code. The approval issued at the time was essentially required as the ordinance allowed self service storage units in the A10 zone if known impacts were mitigated.

Many commissioners did not agree that this was a compelling argument to deny the rezone. At the time of the initial application that was approved, commissioners did not feel storage units were appropriate in the A10 zone, but they met the ordinance requirements so the application was approved. After that, the ordinance was changed to take the use out of the A10 zone as the commission recognized that storage units were not an appropriate use for the agriculture zone. However, some commissioners felt that this is going to be annexed into Hyrum or Nibley and they don't feel like they can dictate what the front door of those cities are going to look like. Some commissioners felt that the commercial zone would fit well in this area.

Larson motioned to recommend approval to the County Council for the Armor Storage Rezone; Christensen seconded; Passed 5, 0.

06:17:00

#3 Wild Bunch Kennel CUP (Remanded from the Board of Adjustments to the Commission)

Baird reviewed the Board of Adjustments decision to remand the Wild Bunch Kennel CUP back to the Planning Commission for clarification of the written findings of fact.

Mr. Chambers is the applicant going to be allowed to speak?

Smith no, this is not public hearing and we are not reopening the discussion.

Mr. Chambers I understand that, but staff has had input on this and it would only be fair to allow the applicant input on these findings. I was there at the Board of Adjustments and the motion made was very awkward and indicated that it was remanded for reconsideration.

Smith this isn't a new application and I don't think we have the authority to reopen this and we are not in a position to take new evidence or a new hearing.

Runhaar let me also clarify that we are the commission's staff and when your decisions are appealed to the Board of Adjustments we are defending the commission's decision. When it comes back here we revised the commission's findings based on what the written record states.

Mr. Chambers my concern is that state law says that a CUP will be approved if reasonable conditions can be made to mitigate detrimental effects. I don't think this body has considered any mitigation for those detrimental effects in this situation.

Smith the proper procedure is to go up the appeal process from the Board of Adjustments.

Mr. Chambers I understand that and have no problem with that. I don't know if you have attended a Board of Adjustments meeting.

Smith I used to sit on the Board of Adjustments.

Mr. Chambers well I was surprised that they allowed additional evidence at that level. I don't understand why we can't talk about the findings at this level. For example the finding that Mr. Clements, the next door neighbor, isn't opposed to this as long as there is a privacy fence.

Smith I don't think we can redo the decision at this meeting and that that needs to be done at the Board of Adjustments.

Baird If they made their findings at the original meeting, you wouldn't contest those findings there would you? You wouldn't have disputed their findings there.

Mr. Chambers no I wouldn't.

Baird the proper procedure now is to go to the Board of Adjustments.

Mr. Chambers at that level we were able to convince the Board of Adjustments that you didn't make findings, you made conclusions. You said it was incompatible but made no underlying findings. I pointed out the Board of Adjustments that concluded that we were incompatible but you made no underlying findings. The fact that you concluded that we are incompatible is a conclusion of law. So it was remanded to make findings and we are asking that the findings are accurate that you make your decision on. When staff points out that the nearest home is 20 feet away yet Mr. Clements does not object to that that seems to me to be a misrepresentation of facts.

Smith the record is what it is and that is where we get our findings from. The things that you are saying are for the Board of Adjustments and I have to respectfully disagree that they are all conclusions. Maybe they weren't drafted as clear as you would like but I think that is an issue to take to the Board of Adjustments.

Mr. Chambers ok, for the record I would like to submit a packet of information to you and if you don't consider the information then it will be part of the appeals process that will tell you that I try to get it in. I'm trying to solve it from having to go to the court. I think that if you take a look you will see that the reasonable problems can be mitigated and I don't think you have considered all the mitigation factors.

Smith I just don't feel that we can reconsider it and reopen the decision without a new application.

Mr. Chambers are you going to accept it or not?

Smith I don't know if we can because we are not considering new information.

Runhaar are you trying to change their decision? They can't change their decision.

Mr. Chambers in all respect they can. I think if the findings are not adequate then I've got my remedy. I feel very strongly that where it has been remanded to the Planning Commission the applicant should be able to have input.

Smith the problem with that is that it was not part of the record and I think where we are not revisiting the decision and clarifying the findings we can't go beyond that scope.

Larson whatever is on the tape of our meeting is what we go off of.

Smith I think we would need a motion to adopt the clarification as written.

Parkinson motioned to adopt Staff's proposed clarifications;

Staff and Commission discussed if the clarifications staff has proposed were based off the recorded record. If there are things in the clarification that were put in after the initial discussion from August's meeting, they are new information and Mr. Chamber's argument that the applicant should have input holds weight. The only thing that staff changed was the exact distance from property lines instead of what the commenter stated in the recorded video. Staff and Commission rewrote those distances to be a more accurate statement and reflection of the record.

Parkinson withdrew his previous motion.

Parkinson motioned to approve the amended clarifications proposed by staff; Watterson seconded; Passed 5, 0.

06:37:00

#4 Fox Hollow Subdivision (Duane Williams)

Harrild reviewed Mr. Duane Williams request for a recommendation of approval to the County Council of a 4-lot subdivision with one agricultural remainder parcel on 49.6 acres of property in the Agricultural (A10) Zone located at approximately 320 North 6000 West, north of Mendon. There was a previous application that came before the commission for a rezone and it was denied. The applicant has come back to seek a subdivision under the current zone. Access is from a state highway and the applicant has met with UDOT regarding the road and will work with UDOT to meet those requirements. Typically the road standard would require that this road, once built, be taken over by the county. Staff recommends that a design exception be granted to allow this roadway to function as a private road as it is not contiguous to other county roadways. There are wetlands that have been identified within the subdivision boundary but do not appear to be located on the proposed development lots. There is also a fault line that crosses this property but the specific location is not known. A geotechnical report shall be required as specified by §17.18.060 to determine the location of the fault line. There is an existing drainage ditch, and flow, through the center of the property that must be maintained.

Mr. Williams that drainage ditch will run on the side of the road and the lots that are impacted by that will have to have a culvert but other than it will not affect those homes.

White was there a specification on the size of the culvert?

Runhaar it's a private road so we wouldn't have a specified culvert side.

Mr. Williams I will have an engineer look at it and recommend a culvert size.

Harrild the only thing we can require is that the flow of the ditch not be impacted.

Mr. Williams the houses are located high and won't be affected by the ditch but we will maintain it. It runs a little bit to the west there and last time we had a neighbor complain about the water flowing well there. Thanks to Josh's contacts, I saw a road grader from the state that was cleaning that out. So it is clean now and the flow is good.

White I'm just worried about the runoff from the homes but if you use the barrow pits as a buffer, so to speak, it should take care of it.

Staff and Commission discussed the geotechnical report condition. As long as there are no red flags, meaning the fault runs through the buildable area of the lots, there should be no problems. If there was an issue as to the location of the fault, the lots would have to be adjusted. Signage was also discussed. There will be a stop sign and a private road indicator on the road sign. The HOA will be required to place a stop sign and be responsible for the upkeep of the private road. At the developer requests, the county can install the sign at the cost of the developer.

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

06:50:00

#5 Pine Canyon Gravel Pit CUP (Brett Nielsen)

Harrild reviewed Mr. Brett Nielsen's request for approval of a conditional use permit (CUP) to allow a master plan for mineral extraction on 135.51 acres of property in the Mineral Extraction (ME) Zone at approximately 4997 West 4800 South, west of Wellsville. The parcel was rezoned to the Mineral Extraction (ME) Zone in March of 2012. The applicant has identified a two phase process that would happen. 10 acres will be developed at a time and once the initial 10 acres are exhausted, it will be reclaimed before the next 10 acres are developed for extraction. They would follow this process for the entire parcel. They anticipate 3 to 4 employees at a time at the site. They will operate a crusher and a screener onsite as well. The access road is substandard. The applicant has provided a letter stating their intent to make the necessary improvements to the substandard portions of the roadway and private drive to meet the minimum county standards. The applicant has also expressed a willingness to work with Wellsville City to address their concerns about safety due to the proximity of a school and as the access to the site is through Wellsville. Also, all engineering review costs will be borne by the proponent. No written comment has been received from adjacent property owners.

Brett Nielsen just a couple clarifications, item #5 and #6 are they the same item?

Harrild it is a distinction between design and construction.

Mr. Nielsen based on the measurements I took, the culvert is something we've always planned to improve, but our measurements are different than what you have in the report.

Harrild that is based off our road department's review and we can double check that and review it with you.

Mr. Nielsen in regards to the truck traffic with the school we understand the sensitivity of the school. The safety of the children is our utmost concern and we do take it very seriously. We were asked about if we have any other operations around school and we don't. But with the nature of our work we work around schools a lot and it is something that we are very familiar with. We made suggestions of speed limits and speed bumps. The speed limit needs to be maintained so that if somebody were to run out in front of them the drivers would be able to stop.

Christensen have you had any discussion regarding hours of operation?

Mr. Nielsen not in regards to limiting our hours but we have discussed the speed limit and speed bumps and signage to remind the drivers of the sensitivity of the area.

Staff and Commission discussed the road and maintenance. One of the things that are required is base preparation and construction which requires them to check the base of the road.

Christensen if there was a failure of the road because of the truck use, would you be amenable to helping fix it?

Mr. Nielsen we would definitely be willing to sit down with the county and discuss what would need to be done.

Sam Winward I own a building lot in the subdivision closest to this. I appreciate that Whitaker Construction did go to Wellsville and has expressed an interest to do this the right way. With that said we do have to take the conditions into consideration and protect the surrounding the community. It's much easier to work the expectations out before hand. I would like some clarification regarding the working the 10 acres at the time. We want to make sure this is done properly and at the rezone meeting I thought we were told that it would be 5 acres at the time.

Harrild state code has changed and allows 10 acres now.

Mr. Winward OK. A lot of the concerns from the surrounding community have to do with the changing of that school from a middle school to an elementary school. I would just ask that whatever conditions that are implement, and Whitaker has expressed willingness to help, are right for this area. The other concerns are noise, dust, and hours of operation. It sounds like a lot of that is codified. I understand that there might be projects that would require more hours and I would like them to approach neighbors on that so that we have a heads up. The other thing is the dust. We get some pretty good dust storms that blow a lot of dust out of the 60 acre pit and we don't want any more of that. This is going to be a big change for this area. We don't really see the big pit because of a rise of the land but this will be noticeable. I just want to make sure that everything is in writing so that all can be happy.

Runhaar they do have to obtain state and federal permits. One of those permits is in regards to dust and if you are getting big dust clouds, please let us know. We also have an hour of operations limitations in the code and we don't condition it because it is in the law. It states that hours of operation are from 6 am to 8 pm with the crushing limited to 7 am to 5 pm. This is all online under county code, 17.13 Mineral Extraction and Excavation (ME) Overlay Zone. We don't allow operations on holidays. There could be a variation on hours of operation if there is a need but to change the hours of operation, they have to come back to this body and have that approved.

Mr. Winward is there anything about Sunday hours of operation?

Runhaar There is not.

Mr. Nielson our plan is to do a typical work week and not work on Sundays. We aren't guaranteeing that is always possible. If we get a big enough project then that might need to change for a period of time but our intent is to not work those days.

Mr. Winward is there an option to put a requirement in there that if they have to run a Sunday operation by the neighborhood?

Smith no, I think that is out of the scope of this body.

Mr. Winward is there a body that can do that?

Smith no.

Runhaar only with a code amendment. However, if we were to codify that they would still be grandfathered under the old code, the only way to restrict the hours of operation as an identified need. If they start running on Sunday, because their application says Monday through Friday, then they would be called before this board. Our experiences with other gravel pits are that they run Monday through Friday with an occasional Saturday.

Mr. Winward if they wanted to go further west, would that require a new application?

Runhaar it would require an amendment.

Don Hartle I am the city manager of Wellsville. The potential of a gravel pit there has been discussed by the city and has been expected. We have always planned that they would exit on 500 North which is also 4600 South, in the county. Currently the gravel pits in operation in Wellsville use 300 and 200 South. As this was discussed by the Council last night, all the traffic from the existing gravel pits come down Center Street and that happens within a half block of the existing elementary school. My experience dealing with the gravel companies, they have been cooperative overall. We have only had one issue where Johnson brought over 2200 trucks down the streets in 6 weeks but I never have had one call and the gravel companies have been good neighbors.

Jim McCody I am the president of the Redslide HOA. The concerns I have heard from people is the noise level. We listen to one gravel pit currently and now we are going to have two all day long. Is the noise level measured on just one operation at a time or both operations?

Runhaar if we have noise complaints it would be looked at one pit at a time. But if one pit is loud and the second is fairly quiet, I can't go after that second pit for the first pits issues. If there are noise concerns we will work that out with the pit owners.

Mr. McCody the current operation is tolerable but with two it is going to be twice as loud and will possibly become intolerable.

Harrild it won't double the noise volume. The physics don't work that way.

Mr. McCody you have two operations running trucks and crushers and that second operation isn't going to add to the noise?

Harrild it may likely add to, but it won't double it.

Mr. McCody the other issue is dust. I know they try to control it out there but there is still dust cloud after dust cloud out there. It needs to be tied back to quantifiable conditions and be able to be managed. The next concern is ground water and if there is standing water in the pit, what it does to ground flow. We are wondering what the plan is for standing water and where it is going to go. We just want everything in writing now because after the fact doesn't do any good. If we can get it quantified now, then there won't be a need for a discussion later on.

Scott Wells I'm an adjacent land owner. I have some serious concerns because I have young children. Right now they walk up that road for two city blocks. I'm very concerned with the safety of the children and I think there needs to be a sidewalk put in. We play soccer at the school. When we play soccer at the school we park on both sides of the road and when that is done you can barely get a normal sized car up that road. They have put signs up and it doesn't work; people still park there. I think the hours are going to need to be looked at. The roadway is a big concern. I don't know the future plans for gravel pits. We have four entities that are within one mile and that's fine if you don't live within that mile. But two of them are not in operation now, does that mean they need to be reclaimed or are they grandfathered in to where they don't have to? What are the future plans for that area with the gravel pits? I don't know what the noise ordinance entails but I'm concerned about jake brakes. It's a little more of a hill then what Johnson deals with and so I want to make sure the noise ordinance includes jake brakes.

Runhaar The county does not currently have a noise ordinance.

Mr. Wells what would it take to get that included? This runs past quite a bit of residential.

Runhaar where are you talking about?

Mr. Wells as you access that road and come down towards the school you pass at least 5 houses.

Runhaar you can forward that on to the county council because that doesn't come to this body.

Smith this body is somewhat constrained on what our scope is. We can deal with what is okay in that zone; this area is zoned for that. I think a lot of the things that are concerns are things that will be in the improvement agreement later on and those details are not before this body.

Mr. Wells the reality of that road is it is gravel that has had tar over it. It may be fine impacted the way it is but down the road is it the county's responsibility to improve that road or the developer?

Runhaar it depends. If it's a weight problem from the trucks then the only alternative is to limit the weight on the road. It depends on the road.

Mr. Wells who polices the 10 acres?

Runhaar aerial photography would be the best option and we could check that every other year.

Staff and Commission discussed the issues raised by the public. County road ways are "no parking" areas even if it isn't signed. The county does not have standards for sidewalks and doesn't have the ability to put it in. There have been numerous issues in regards to school location and sidewalks and the school doesn't look at that when locating.

Mr. Wells isn't the south side across from the school county, or is that city?

Runhaar I would have to go back and look at the roadway.

Mr. Wells that's the place where the county, and it's a problem for the city too, but when people park there it is impossible to get big vehicles down the road.

Staff and Commission discussed legal restrictions on the locations of gravel pits. Staff is not aware of any restrictions about how many gravel pits can be located near each other. The state is the one who regulates the dust control, not the county. The county does handle the snow removal of the road that goes west, but the road that goes south to the gravel pit is a private drive and the gravel pit will have to handle maintenance for that section. Hours of operation were discussed. Also there are concerns regarding crosswalks. The other thing to note is that all children from 800 South in Wellsville walk to school. The controls open to regulation may include speed limit and speed bumps. The parking area noted is within the city limits.

Mr. Hartle these concerns that you have brought up have been discussed by the Wellsville City council as well. There are a lot of things being considered right now by the city to help relieve some of these problems.

Watterson are the parcels in and around 500 north in the proposed annexation area?

Mr. Hartle yes, including the parcels of the gravel pit.

Watterson motioned to approve the Pine Canyon Gravel Pit Conditional Use Permit with the associated conditions and findings of fact; **Christensen** seconded; **Passed 5, 0.**

07:39:00

#6 Red Spur Camp Conditional Use Permit (Aaron Bleak)

Harrild reviewed Mr. Aaron Bleak's request for an approval of a conditional use permit (CUP) to allow the expansion and operation of a recreational facility on 960 acres of property in the Forest Recreation (FR40) Zone located east of Hardware Ranch near Rich County. The applicant would like to add a 650 square foot shower facility; a new septic system is also proposed to be constructed with the shower facility to treat all waste water, and the addition of a 200 square foot enclosed space on an existing pavilion

Aaron Bleak there are two ways to access this property. One is from Randolph and it is 20 miles west of Randolph. The other way is to go north from the Monte Cristo guard station.

Smith do you have the water rights approved?

Mr. Bleak yes, everything is secure and functioning.

*Larson motioned to approve the Red Spur Camp Conditional Use Permit with the stated conditions and findings of fact; **Smith** seconded; **Passed 5, 0.***

#7 Title 17.07.030 – Kennels

Harrild reviewed the information regarding setbacks for kennels. Using setbacks to address the noise issue doesn't work. The best way to handle noise is to use a performance standard based on sound proofing and a study done by a sound engineer. That would mean any increase in noise levels created by a kennel above the ambient noise would need to be very minimal by the time you hit the property line. The commissioner's need to review the provided information in order to discuss the proposed amendments regarding kennels at the January meeting.

Staff and Commission members discussed animal confinement. Staff's concern is that animal confinement has only been vaguely defined.

07:53:00

Adjourned