

**MINUTES
BOX ELDER COUNTY
PLANNING COMMISSION
JUNE 22, 2006**



The Board of Planning Commissioners of Box Elder County, Utah met in the **Tremonton City Council Chambers at 7:00 p.m.** The following members were present constituting a quorum:

Richard Kimber	Chairman
Jon Thompson	Member
Richard Day	Member
David Tea	Member
Clark Davis	Member
Theron Eberhard	Member
Chad Munns	Member

The following Staff was present:

Garth Day	County Planner
Amy Hugie	County Attorney
Elizabeth Ryan	Secretary

Chairman Richard Kimber called the session to order at 7:04 p.m.

The **Minutes** of the regular meeting held on May 18, 2006 were made available to the Planning Commissioners prior to their meeting (June 22, 2006). Two items were pointed out by **Commissioner David Tea** for further clarification after which time a motion was made by **Commissioner Theron Eberhard** to accept the Minutes with corrections made. **Commissioner Richard Day** seconded the motion and it passed unanimously.

Citizen Present for the Planning Commission Meeting/Public Hearing

Fred Manning/Tremonton
Ralph Jones/Collinston
Shirlene S. Jones/Collinston
Paul E. Pali/Tremonton
Eli Anderson/Tremonton
Richard Del Holmgren/Bear River City
Rich Van Dyke/Brigham City
Tim T. Munns/Hansel Valley
Richard Nicholas/Tremonton
John Ferry/Corinne
Hunter Barrus/Deweyville
Alan Kunzler/Park Valley

Dave Archer/Tremonton
David D. Deakin/Tremonton
Kristie Lake/Garland
Richard Hupp/Garland
James Parkinson/Collinston
Roland Bringhurst/Grigham City
Arthur Douglas/Howell
Jay Hardy/Elwood
Denton C. John/Portage
Robert John/Portage
Kevin & Jeri Garn/Fielding
Eldon R. Johnson/Deweyville

PUBLIC HEARINGS

Circle C. Construction, Inc. (Gravel Pit) Conditional Use Permit; this application was withdrawn and the operation of the gravel pit shut down by the petitioner before the beginning of this Public Hearing, thus canceling the scheduled Public Hearing.¹

Box Elder County Fencing Ordinance review & update

Mr. Garth Day (Staff) started the discussion by reviewing a handout through the use of a PowerPoint presentation (attached to the official Minutes). The purpose of the meetings tonight was twofold; 1) present to the public some of the work that the Planning Commission has been involved with in the fencing ordinance review, and 2) to get public comment on the main features that have been discussed by the Planning Commissioners during their process. *“It is important to note that the County Commission has not withdrawn, repealed, or done anything to the existing ordinance as it stands today. The Ordinance 275 that was adopted is currently in existence and that is a County Ordinance. When it comes to ordinances, and primarily land use ordinances, fencing is considered a land use. We regulate land uses through our land use and development code. Fencing falls into that, and that’s why the County Commission asked the Planning Commission to review it. There have been lots of questions about why the Planning Commission is the body that reviews it. Well, the Planning Commission has expertise in land use issues. They have expertise in public policy; they know how the land use code works. Our land use codes have three fundamental components which make for good public policy, and that is public input through the public hearing process; the second is that they are amendable or changeable over time; and the third is that they are appealable . . . that is inherent and built into any land use and development code.”* (The handout that was made available for this meeting is also attached to the official Minutes of this meeting.) There were five different options that the Planning Commission had settled upon.

1. Tie the fence ordinance to the County zoning districts; make fencing a zoning issue. Currently there are several zones throughout the County and a good portion of the County is unzoned. There is a natural hierarchy in the zoning. The MU zones, MU160, MU80 and MU40. Those are multiple use, 160, 80 and 40 acres zones. That is most of the area west in the County, most of the hillsides along the Wasatch front, those are the zones where there is really no contemplated development. They would be difficult to develop and the County doesn’t want to develop because it would not be able to provide services to them. They are also the area west of the Great Salt Lake that are the big range lands; forest services, BLM, and State Trust Lands. A-20 is the next large zone and that is usually areas around the river and some of the agricultural land around West Corinne and Collinston and in South Willard west of the interstate. Probably in the MU zones it could be zoned as “fence-out”, as those are the big open range areas. A-20 areas are getting into more populated and are interfaced with more development. The smaller one-acre and half acre lots could be a “fence-in” option.

2. Overlay Zone concept, which would be similar to an Ag-Protection (Robert Johns option). The County would adopt, or not adopt, a policy countywide, then providing areas that are essentially exceptions, very much like the Ag-Protection. It would go on as an overlay zone and it wouldn’t really matter if it was “fence-in” or “fence-out” because either

would be an exception to the other. (For example if the entire county were “fence-out”, on a map an area would be provided that would show “fence-in”. It would also be amendable and changeable, in that the landowners could petition for a “fence-in” area or to adjust the boundaries of the fencing area. It would require public hearings; it requires an advisory committee review.)

3. Do nothing option – leave the ordinance as it is.
4. Change the ordinance to a “fence-in” and then redefine what a fence is.
5. Repeal all fence ordinances and revert to the Utah State Code provisions only. There are several counties that have taken that approach and it is an option for Box Elder County also.

These were the five options that the Planning Commission had narrowed down; these would be appropriate if the fencing ordinance were tied to the land use ordinance. Obviously the “do nothing option” and the “repeal and revert to the State Code” would not fall under the land use ordinance of the County. One of the good benefits of tying it to the land use code is that as the community changes and the landscape of the area changes, so does the zoning and so would some of the regulations.

Mr. Art Douglas asked for clarification regarding the areas where the one acre and half acre lots are within the County. Primarily were most of those zones within the incorporated areas (cities/towns) in the County? Staff explained that most of South Willard, east of I-15, is all zoned as half acre; all of the area from Bear River City south (considered as West Corinne) is zoned as half acre; in the Collinston area there are some half acre zones. In Park Valley there are one-acre residential lots and in Bothwell there are five-acre lots and some one-acre lots also.

Staff read from the State Code regarding its fencing ordinance. *4-25-8 “The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality which has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.”*

At the conclusion of the presentation by Staff, **Chairman Richard Kimber** opened the Public Hearing at 7:30 p.m., stating that the Planning Commissioners wanted to gather as much information from the citizens regarding this ordinance issue. This was not a debate and no decision would be made at this meeting.

Mr. Delores Stokes asked if the Planning Commission was at a point where they would be making a recommendation to the County Commission. The answer to this was “no.” Hence the reason for this Public Hearing.

Mr. Tim Munns didn’t feel like there was a problem in the area where he lives and has livestock. He felt that it is the responsibility of the owner to take care of his livestock and take care of fences that needed repairing. Wasn’t sure what defined a problem. If a cow is out once in twenty years or cattle out once in thirty years, does that constitute a problem? If you’ve got animals that are habitually out then there is a problem. There isn’t a fence made that can keep an animal in if it wants to get out. He was more concerned with the liability issue with this ordinance. If the ordinance is changed to a “fence-in” and an animal gets out, is the owner going to be liable for an isolated event. Felt that an adequate fence needed to be addressed to keep the animals in or out. If there is a problem then it needs to be documented and not just assumed that it belongs to your

neighbor. Neighbors need to be approached with an open mind and make an ordinance that will work. Didn't think that one ordinance can be made that will work for the entire county.

Mr. Delores Stokes said that he and Mr. Fred Manning have dealt with this problem of livestock on their property in White's Valley for the past six years and had pictures to verify the problem. When they have approached the owners of the livestock they have been told to put up a fence to keep them out. They have had 300-400 head of sheep on their fields of wheat and have had the sheriff's deputy out to file a report. They had tried to contact the livestock owner without much luck. Because of the way that the law reads now, the deputy can't do very much. Mr. Stokes felt that it will probably cost him \$10,000 to \$15,000 in damages; hopeful that something can be done that will be fair to everyone. He felt that there could be both "fence-in" and "fence-out"; areas where each would work. Areas that are a problem have as "fence-in" and areas where there isn't have as "fence-out."

Commissioner Jon Thompson asked Mr. Stokes which of the five options that had been presented in the PowerPoint he was in favor of. Mr. Stokes said that he felt that there were areas in the County that needed a "fence-in" and also areas that needed a "fence-out," and it could possibly be tied to the zoning of the area.

Mr. Art Douglas was a member of the first committee that was working on the fencing ordinance for the past three years. Many of those committee members were livestock owners, farmers and ranchers; a committee put together by the County Commissioners. Sympathized with Mr. Stokes and his problem with the livestock grazing on crops as that was not the intent of the ordinance to put the burden of a fence on the responsibility of the crop farmer to keep animals off the property. He did not feel that the members of the committee had this type of solution in mind with the ordinance. He felt that where there is common ownership between two landowners, the cost of the fence should be split between the two. Didn't think that it would be an issue with agriculture against agriculture. Has a problem with the ordinance being tied with the zoning of the County. *"Until you've eaten, lived and breathed sheep, cattle, hogs, or horses getting out . . . having a big fence and this and that, I'm not discrediting what you're doing on this committee, but until you know the issue and have eaten, lived and breathed it, it's darn hard to make intelligent decision about what's going on through the diversified parts of our county. With that, I would support leaving the fencing ordinance as it is, but yet adding to that of doing a better job of educating us, Delores, Fred, the rest of them that need some updating on to the State law. Does not the State ordinance supercede the county law?"* Mr. Garth Day stated that you (meaning the county ordinance) could never be more restrictive than the state code. The state code says here's the rule, but if the county adopts its own ordinance then it can be according to the county. In that way the state law does not trump the county law. We have to follow our ordinance and try to fit it into the state's issues. Mr. Douglas continued saying that *"the ordinance that we have in place today is more lenient, if you will, than the law we had in '95. One of the reasons that the Commissioners put the committee together was because of what was deemed a legal fence in the '95 law . . . there isn't a legal fence in this entire county unless it's Thiokol with their chain link fence around their whole place. That's the reason we changed it and made it a minimum of three wire, steel post every thirty something feet . . . that's why I say that the fencing ordinance back in '95 is the one we all should have been complaining about."*

Mr. Fred Manning of Bothwell felt that owners of animals should be responsible for the damages that they cause, and that should be the first line of any ordinance. The cattle owners with

animals in the Grouse Creek area don't have the time to ride their fences everyday and they need to get together, perhaps to have the public that come into the area (for recreation) to help in building the fences. There are sometimes problems where fences are being cut by public intruders before the livestock owners have even been able to get the animals there.

Mr. Richie Holmgren didn't think that anything that was presented in the PowerPoint was any different than what the committee he served on came up with. The same problems came up. Thought that it would be easy to split the County up into the zones, but then the problem comes up when someone comes in and buys some property, then another problem comes up in that area. *"Nobody has that right to come on your property and steal your property and take what they're trying to take. Nobody has the right to do that; and in this law that we've got now, from what the attorney told us . . . there is not one person that has the right to come on your property and take your things . . . and if you want to stop it, you can stop it and you can stop it today. The only reason why nothing's happened is there has never been a suit come up or there's never been anybody push the issue . . . and the exact words that was used to me from the attorney was any attorney that's got two peanuts left in his head would take the case."* People should not be able to take advantage of others. If you have animals you need to be responsible and take care of them. Would leave the ordinance as it is.

Mr. Kevin Garn felt like in the outlying area of the county law enforcement does not exist anymore. There are problems that are coming with the growth of the County, but in the vast areas of the County the landowners are on their own . . . have to take care of problem themselves and felt like the ordinance was designed to help them do just that. Would leave the ordinance as it is.

Mr. Richard Nichols felt that whether it is "fence-in" or "fence-out" it is intuitive that everyone takes care of their own property. Would like to have the Commission think very carefully about the issue. He rents some property here in Tremonton next to a new subdivision. In a case like this a "fence-in" would be appropriate. But a couple of miles out of town it would change dramatically. As an illustration, in an area where there are 640 acres with five landowners, but only one has livestock, is it his responsibility to build the fence for everyone else and bear the entire cost of the fence? Everyone that doesn't have animals is still a beneficiary of the fence. Also what type of fence should be built? If someone habitually abuses the issue then they should be held responsible and pay for the damage. Some parts of the County may be better served by having a "fence-in" such as in the urban areas. But in the bigger areas of the County a "fence-out" law is appropriate. However, if there is no way to deal with those that abuse the law then it is worthless. Most of the people in the County that have livestock take care of them, it is just those few that cause the problems, and the law needs to be able to deal with those problems.

Mr. Denton John (representing Northern Utah Farm Bureau). Farm Bureau's position regarding the fencing ordinance is that it should be left as it is. Felt that there are remedies in the law that had not been addressed at this meeting. Gave a couple of examples regarding those remedies. The fencing ordinance of this county was not meant to work (stand) on its own, but to work in conjunction with the state law. *"There are state codes already in place that discuss nuisance laws; trespass has been changed this past year from a Class C to a Class B misdemeanor. That goes from a \$50.00 find to a \$1,000.00 fine. No one has the right to go on land, whether it is fenced or not, without the owner's permission. That's trespass – a thousand dollar fine for trespassing. The fence law that exists has existed since 1903. . . in 1995 the County here changed that fence law and the fence definition to something and that made about 90% of the fences illegal in*

the County. About the only ones are the deer fences along the sides of the freeway that would meet the requirements that they have put up. They had a five-wire fence, a post every sixteen feet . . . those kinds of things, and that was one of the problems that they changed with just this last fencing committee and made this back to what it was originally. Now with the three wire fence and posts thirty-three feet apart, a lot of times that won't keep a cow or an animal out, but what it does is that's the biggest half of the fence and if a neighbor wants to keep his animals in or your animals out, that gives him a chance to put a couple of more wires up through there and very simple way for him to pound a post in-between those thirty-three foot posts. And so, it is really something that has been on the books and has worked for many years, but the problem is that we don't have any law enforcement to take care of the issue. They say they can't do anything. It's in the Utah code how they deal with nuisances, how they deal with trespass and how they deal with stray animals. There are some changes that should be made in the Utah code on the stray pen . . . fourteen days or ten days is too long to hold animals stray penned. Something in the order of three or four days would be more appropriate. I'm in favor of the "fence-out" as it exists at the present time because of the liability issues for the landowners and the livestock owners. If its "fence-in" you have the responsibility and it gives you a strict liability issue if those cows get, if those animals get out through that fence. I would like to see the fencing ordinance left the way it is. I would like to see law enforcement do their job. There are probably less than ten or twelve people in this county that are creating the problem."

Mr. David Deakin felt that the fencing law a hundred years ago was appropriate; it was probably appropriate fifty to twenty-five years ago, but things are now changing in the county and in the state. As a land use issue [fencing] it helps to protect one landowner from benefiting from the actions of another landowner and that is the reason for zoning. Has been able to work with his neighbors [on north side] in splitting the cost of the fence, but on the south side there are problems and to a lesser extent to the east. It all boils down to economics . . . the parties that benefit economically bears the cost. Even though he has been able to work with neighbors for 50/50 on cost of fence, the way the law is written today he would be responsible for 100% of the cost if there were a problem between he and neighbor.

Ms. Amy Hugie tried to clear up the 50/50 split on the cost of the fence by explaining Rep. Ury's law, explaining some of what is in the code. The law talks about what a qualifying landowner is, what an adjoining landowner is, what land in agricultural use means, all is defined in the code and is taken into consideration regarding who is to pay 50/50. In the County fence ordinance it refers to the state code and has to be adhered to. As far as the liability issue is concerned, the court is going to look at a number of factors in any given case.

Mr. Robert John (at the request of **Commissioner Clark Davis**) talked about the previous fencing committee and what they came to in regards to defining a legal fence. *"We had a real tough time coming up with a description of a legal fence, and the way I understood it, in a "fence-out" area it was up to the landowner first, if they wanted to be able to sue a livestock owner for damaging their property, but they had to have their fence, their property enclosed by a legal fence. So we had to come up with a definition of a legal fence. We didn't want to put a huge burden on the landowner that didn't have livestock, whereas in 1995 the five wire fence with 48-50 inch . . . the top wire had to be about to my chin is what it amounted to . . . none of the fences were legal, so therefore landowners . . . if my cows got on you and you only had a typical fence with the top wire around 42 inches, you couldn't sue me if my cows broke through that fence. I could graze you off all day long from a liability stand point . . . not from a criminal stand point because there's public nuisance issue*

that goes along with it and some other issues that go with it, but in trying to decide what would be an appropriate definition of a legal fence . . . we didn't want to overload the landowners so we scaled it back. It just so happened that the same fence in 1903, we agreed that was a pretty good fence. Was it going to stop all the animals? No; that wasn't really the intent. The intent was to try and share the burden between the landowners on one side that, say didn't have livestock and the landowner on the other side that did have livestock. Trying to make them somewhat equally responsible. So now if I built that three wire fence that is 42 inches high, posts every thirty-three feet apart, with two wire dancers in-between, and I don't have cows, my neighbor, his cows . . . overgrazing whatever, bad drought year, his cows get on me, I can sue him. Well how does he keep himself out of court? Put up another wire, a few more posts; he adds to the fence a little bit. Every time you think you've got a perfect cure, somebody says, yea, well what about this? We as a committee were concerned about the liability issues. We came up with a definition of a legal fence, as low of a standard as we possibly think of that could hold livestock without putting to much of a burden on the landowner that didn't own the livestock."

Mr. Allen Kunzler asked about who would bear the costs of a fence along county roads and Class B roads throughout the county, where a road would go through a persons property and cattle on that land.

The County would only have a right-of-way for the road and therefore the landowner would be responsible for the fence and the upkeep. With the State, however it would be different, because the State would have purchased that land for the road and the State would put the fence up on both sides of the road. The railroad has the responsibility of keeping the fences up on both sides of the railroad if necessary.

Several others talked about the same issues that had been raised already. Those comments were from **Mr. Ben Ferry, Mr. Paul Pali** and additional comments from **Mr. Allen Kunzler, Mr. Robert John, Mr. Delores Stokes** and **Mr. Denton John**. Ms. Amy Hugie also tried to further clarify the issue of liability in regards to "fence-in", "fence-out." Many of those that responded at this public hearing felt that the ordinance should be left as it currently stands.

There are many different scenarios that could be covered regarding this issue and **Commissioner Clark Davis** again told those present that nothing had been adopted as this time or recommended by this Planning Commission and passed on to the County Commission for its consideration. The ordinance is still being reviewed and there will be additional Public Hearings held in the near future.

MOTION: A Motion was made by **Commissioner Clark Davis** to close the Public Hearing of the Box Elder County Fencing Ordinance review. The Motion was seconded by **Commissioner David Tea** and passed unanimously.

UNFINISHED BUSINESS

NEW BUSINESS

PUBLIC COMMENTS

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The Planning Commission meeting was adjourned at 9:16 p.m.

Passed and adopted in regular session this 17th day of August 2006.

Richard Kimber, Chairman
Box Elder County
Planning Commission

ⁱ Letter from Ronald Taylor