

MINUTES BOX ELDER COUNTY PLANNING COMMISSION OCTOBER 26, 2006



The Board of Planning Commissioners of Box Elder County, Utah met in the Box Elder County Commission 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
Elizabeth Ryan	Secretary
Amy Hugie	Co. Attorney

Chairman Richard Kimber called the session to order at 7:03 p.m.

The *Minutes* of the regular meeting held on September 19, 2006 were made available to the Planning Commissioners prior to their meeting (October 26, 2006). A motion was made by **Commissioner David Tea** to accept the Minutes. **Commissioner Jon Thompson** seconded the motion and it passed unanimously.

Citizen Present for the Planning Commission Meeting and Public Hearings

Bruce Carr/Mantua	Heidi Houghtalen/Mantua	Roland Bringhurst/Brigham City
Paul Pali/Elwood	Fred Manning/Tremonton	Glade Evans/Harper
Eli Anderson/Tremonton	Craig Garn/Fielding	Clive Garn/Fielding
Kristy Ballard/Collinston	Scott Hansen/Fielding	Susan Thackeray/Brigham City
Delores Stokes/Bothwell	Tom Davis/Brigham City	Dennis Poulsen/Snowville
Brian Hardy/Brigham City	Rich Van Dyke/Brigham City	Jeniel Hardy/Tremonton
Jay Hardy/Tremonton	Delwin Mills/Corinne	Robert John/Portage
Kevin Garn/Fielding	Lane Jensen/Tremonton	Alan Kunzler/Park Valley
Ben Adams/Promontory	Richard Holmgren/Bear River	Ronda Menlove/Garland
Ross Rudd/Garland	Lynn Yeates	Gordon Booth/Layton
Jerry Preston/Farmington	Curt Dera/Layton	

COMMON CONSENT

HOUGHTALEN TWO-LOT SUBDIVISION, APPLICATION SS06-001, LOCATED AT OR ABOUT 1700 SOUTH WILLARD PEAK ROAD IN THE MANTUA AREA.

JOHN W. LOOSLE TWO-LOT SUBDIVISION, APPLICATION SS06-012, LOCATED AT OR ABOUT 10994 NORTH 11600 WEST IN THE THATCHER AREA.

The above two items were presented to the Planning Commissioners under common consent to accept the petitions and set for a Public Hearing during the next meeting of the Commissioners on November 30, 2006.

MOTION: A Motion was made by **Commissioner Clark Davis** to set a Public Hearing for the Houghtalen Two-Lot Subdivision and the John W. Loosle Two-Lot Subdivision during the November 30, 2006 meeting of the Planning Commission. The Motion was seconded by **Commissioner David Tea** and passed unanimously.

PUBLIC HEARINGS

ROCK D. HILL REZONE (17.2 ACRES) , APPLICATION SS06-010, LOCATED AT OR ABOUT 13600 NORTH IN THE COLLINSTON AREA

This first item was a petition for a re-zone in the Collinston area of the County. Due to a conflict of interest in this petition, **Commissioner Chad Munns** asked to be excused from the discussion on this item, as he owns part of the property that is purposed to be included in this re-zone. The area (west of the railroad tracks) surrounding these 17 acres for rezone is currently zoned as A-20. East of the 17 acres the zoning is RR-2 (two acre lots). As staff accessed the application, it was recommended that the RR-2 boundaries be expanded to include a larger area and create boundaries that would be more manageable than in the original application. The boundaries would extend to property lines and the river, which would connect this petition with the existing RR-2, zoned area. By doing so, it would eliminate the spot zoning that this petition would create inside of an A-20 zone. Staff also summarized the issues: *1) does the application conform to guidelines contained in the General Plan; 2) is the zoning appropriate for the area; 3) does the zoning reflect the uses both now and in the future; and 4) how can the count best service the area?* Staff also outlined the findings for this petition in relation to the Land Use Element of the General Plan. *1) Maintaining the current quality of public services through balanced growth and development; 2) protecting rural, agricultural, mineral, wildlife and other traditional land uses; and 3) promoting development patterns consistent with, and sensitive to resident preferences.* During the Public Hearing on this item **Commissioner Chad Munns** stated that the reason that he would like to extend the boundaries for this re-zone further to the south (to 13000 North) than was presented by Staff, is that it would eliminate cutting his property in half. There is one other property owner that is also surrounded by Munns' property, as is the Rock Hill property. Staff explained that the Planning Commission has the ability to extend the area for the re-zone petition before it goes to the County Commission. There were no comments against this action during the hearing.

MOTION: A Motion was made by **Commissioner Clark David** to close the Public Hearing on the Rock Hill Re-Zone Petition. Motion seconded by **Commissioner Richard Day** and passed unanimously.

THE GIBBS FIVE-LOT SUBDIVISION, APPLICATION SS06-011, LOCATED AT OR ABOUT 3425 NORTH HWY 38 IN THE HARPER WARD AREA.

This five-lot subdivision has four lots that are each over six acres with Lot-5 zoned as 5-R, meaning that it is non-buildable and the access for the lot is through an easement between lots two and three. The Bear River Water Conservancy District is providing water. During the Public Hearing on this petition **Commissioner Jon Thompson** asked why Lot-5 is non-buildable. The land is wet for most of the year and is not suitable and also does not meet the regulation for a flag lot.

MOTION: A Motion was made by **Commissioner David Tea** to close the Public Hearing on the Gibbs Five-Lot Subdivision. Motion seconded by **Commissioner Jon Thompson** and passed unanimously.

BOX ELDER COUNTY FENCING ORDINANCE

Staff presented a PowerPoint presentation on the Fencing Ordinance before the opening of the Public Hearing on this issue. (A copy of the presentation is included with these Minutes.) At the end of the presentation, Staff stated that nothing has been decided by the Planning Commissioners regarding the options outlined in the presentation and there is not one particular option that was favored above another. Also, it was suggested by **Commissioner Chad Munns** that the existing fencing ordinance be reviewed by Staff to let those present know what it currently says. The current Ordinance 275 was formally adopted in July 2004 by the County Commission.

It is pursuant to Title 4, Section 25, Subsection 7 of the Utah State Code, which deals with fences exclusively. It repeals Ordinance 200, which was adopted in 1995. It defines a lawful fence; section four of this Ordinance, which is "fence out" standard. "The owners of real property located within the unincorporated area of Box Elder County shall have the duty to fence out domestic livestock with a lawful fence if they desire to keep such livestock from grazing, moving or being present upon their property. This Ordinance shall incorporate and be interpreted in accordance with all other applicable State law." A fence has to be 42 inches high and have boards/poles or slabs parallel between the fence posts not more than twelve feet apart and the same to be supported by good solid post not more than sixteen and a half feet apart. If the fence is made of wire, the fence shall consist of not less than three strands with the top wire not being more than 42 inches above the ground. The posts supporting the wires are to be good and solid; if the posts are placed more than eighteen feet apart but not more than twenty-seven feet, there must be at least one jumper evenly distributed between the posts.

The Public Hearing was opened at 7:37 p.m.; **Chairman Richard Kimber** stated that this is the second Public Hearing on the Fencing Ordinance and asked that if those present were at the first hearing in Tremonton in June 2006 that they limit any comments to new information and not repeat that from the Tremonton meeting. Staff read a comment phoned in by **Vonda Smith** (as she was unable to attend the meeting): *Has lived on her property for 27 years and has had no animals. Has a privacy fence that is repeatedly taken down by people who have animals and don't have a fence and no one helps to pay their part of fixing fence. Animal owners should be responsible for fencing their animals.*

Jay Hardy asked about areas in the County such as South Willard where there are many new homes

being built, could a homeowner ask an adjoining livestock owner to share in the cost of the fence around his home. ANSWER: The sharing of the cost is only for category three areas of the County and does not apply to residential areas.

It was also asked that Staff explain the State Ordinance before going further into the Public Hearing

4-25-7. *“County legislative body authorized to adopt fence ordinance in derogation of common law – Lawful fence to be specified by ordinance. The county legislative body of any county is authorized through ordinance to declare and enforce a general policy within the county for the fencing of farms, subdivision, or other private property, to allow domestic animals to graze without trespassing on farms, subdivision, or other private property. If such an ordinance is adopted, the county legislative body shall through ordinance declare and specify what constitutes a lawful fence.”* (Which basically states that if a county chooses to adopt a fencing ordinance they must also define a lawful fence.)

4-25-8 (1) *“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.*

(2) *A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within ten days after written notification is sent to its owner, a county representative may sell the animal to cover costs incurred.”*

The other issue is that of Dave Ure’s Bill, which establishes the framework for paying for and sharing a fence between two (land) owners. That Bill has nothing to do with whether is it “fence in” or “fence out”. That Bill would still be in effect regardless of the type of fence ordinance that may be adopted by the County and it still requires property owners on either side to share in the cost of building a fence.

Tim Munns wondered why the fencing ordinance that had stood for a hundred years had to be re-written in the first place. Most of western Box Elder County was fence out. Also felt that the current Ordinance 275 was vague and hard to understand in regards to what constitutes a legal fence. Was frustrated with the perception that livestock owners are out to steal feed from their neighbors by allowing their animals on field crops. Felt that with the over 300 livestock (cattle producers) owners in the County there are a handful of them causing the problem with the fence issue. Changing the whole law and ordinance to “fence in” or “fence-out” isn’t going to matter regarding the liability issue. Animals can still get out of the best-built fence. A lawful fence is different than an adequate fence. The majority of the cattle owners in the County are responsible. Would like to see “fence-out” stay and thought that the majority of the county would agree.

Delwin Mills was on a committee that reviewed the fencing ordinance at one time and there were a lot of complaints when each area had a different ordinance. Felt that each local area should decide what would be best for its area. Thought that most of the County would probably want “fence-out”.

Delores Stokes talked about the issue he had in White’s Valley with a sheep herd (see Minutes from June 22, 2006 meeting). Felt that everyone would benefit by doing the fencing based on districts.

Jay Hardy stated that this is the third time that this problem has been addressed in the past ten to twelve years.

Craig Garn, a farmer and small livestock owner in the northern part of the County, felt that this issue has caused a major stir in the County and he didn't feel that law really defines what needs to be done. Also did not feel that anyone had the right to let his or her livestock wander onto another's property. Thought that the only enforcement that could be used currently was either through the sheriff's office or with a lawsuit. Liability is an issue with this problem, but there is a liability issue with any business and being a livestock owner is a business and those people need to be willing to accept that liability issue. He would probably be in favor of the overlay fence zoning.

Brian Hardy has dairy heifers just west of the Corinne area and when one got out and was hit he agreed to cover the damages caused to the vehicle and later found that his insurance company was not to happy with that. Perhaps in areas where there is more livestock the "fence-in" ordinance would be appropriate.

Clive Garn of Fielding has had livestock on his fields and been told by the owners that if he wants to keeps them off then he needs to fence them out.

Dennis Poulsen felt that all landowners have the responsibility of taking care of their own property and that no matter how good a fence is, some animals will be able to get through the fence regardless [if it is fence-in or fence-out]. People just need to be good neighbors. Good fences make good neighbors but neither should be responsible for the entire cost of constructing the fence.

Lane Jensen is a sheep rancher and has been trying to follow the issue. Felt that there needs to be a mechanism for the habitual abuser to the fence issue and not the one-time occurrence. Also felt that it was his responsibility to fence his livestock in. Would like to see if the sheriff's department couldn't somehow start issuing citations for the offences.

Ross Rudd has seen both sides of the issue for sixty years. Thought that there was a need for a committee of unbiased persons that would be able to make fair decisions for both sides of the issue. Maybe need to reorganize the committee and work closely with the County elected officials. (Commissioners).

Ben Adams didn't think that it was a law problem, but a people problem. There will be problems regardless of what the final law is. Some people won't take it upon themselves to build a fence regardless, but it is the responsibility of landowners to be decent neighbors.

Tom Davis wondered about the property along county roads and who was responsible for building and maintaining those fences, but it was explained that the County government is excluded from the fence [building] law.

Lynn Yeates has been with the sheriff's office for the past thirty-one years and has reviewed many reports annually and there seems to be many repeat offenders. Said that as the law stands now there is really not much that the sheriff's office can do other than to look into the issue and write up a report. Wondered if there couldn't be some sort of ordinance/law that would allow for fines much the same as with under-age smoking and drinking.

Commissioner Scott Hansen said that he had cows on his property every day during the summer and discovered that if he were to put [those] cows onto a public road, even though they weren't his animals, he would be responsible if an accident were to happen.

Robert John was on the fencing committee that put together the current ordinance a few years back. Wondered if enforcement for the fencing could be tied to the nuisance law as it starts to interfere with the livelihood of an individual to provide for themselves and their family. Quoted the public nuisance law from the State Code 76-10-803.

Commissioner Clark Davis asked **Robert John** to explain the concept for an overlay zone regarding the fencing ordinance. It was explained that an overlay would allow for a particular area to [perhaps] have a different zoning, "fence-in" or "fence-out" than the rest of the area depending on the desires of the landowners of that area. It would be much like the present Agri-Protection that landowners can petition for to protect their property when subdivisions are built next to farm/orchards/livestock areas. As for the issue of who would pay for the cost of fences, Dave Ure's Bill takes care of that issue as it states that adjoining landowners share in the cost of the fence. With an overlay for the fencing issue, the ordinance could change as the land use changed. Examples of Grouse Creek and the Corinne area were given as illustrations. Both areas could be given the same protection with an overlay.

The Public Hearing was closed at 9:09 p.m. with a **Motion** by **Commissioner David Tea** and seconded by **Commissioner Chad Munns** and passed unanimously. A short recess was called before continuing with the meeting.

The Planning Commission meeting was reconvened at 9:23 p.m.

UNFINISHED BUSINESS

Staff asked if the Mike Udy Subdivision could be added to the agenda for discussion along with the other items on the unfinished business as it received preliminary approval at the September 21, 2006 meeting. No objections were voiced and the item was added to the agenda.

ROCK D. HILL REZONE (17.2 ACRES), APPLICATION SS06-010, LOCATED AT OR ABOUT 13600 NORTH IN THE COLLINSTON AREA

Commissioner Chad Munns excused himself from discussion on this petition. Staff stated that this petition and the expansion of the property included in this petition meets all the requirements and findings of the General Plan of the County to re-zone property, *1) maintaining the current quality of public services through balanced growth and development; 2) protecting rural, agricultural, mineral, wildlife and other traditional land uses; and 3) promoting development patterns consistent with, and sensitive to resident preferences.* **Commissioner Richard Kimber** asked about the property owners within the area to be expanded and if they had been notified of this re-zone petition. **Commissioner Chad Munns** stated that he is owner of approximately seventy-five percent of the property to be included in the expansion of the petition.

MOTION: A Motion was made by **Commissioner Jon Thompson** to recommend that the County Commission grant approval the re-zone petition as modified by the Planning Commission, including property south to approximately 12800 North (or Beeton Road). The Motion was seconded by **Commissioner Richard Day** and passed unanimously.

THE GIBBS FIVE-LOT SUBDIVISION, APPLICATION SS06-011, LOCATED AT OR ABOUT 3425 NORTH HWY 38 IN THE HARPER WARD AREA.

This subdivision is located in the Harper Ward area on Highway 38 and has five lots, four that are buildable at approximately six acres with lot -5 (17.33 acres) restricted to not allow any building. The Bear River Water Conservancy District will supply the water for the lots and the petitioner has established proof of all utilities. Staff recommended that preliminary and final approval be granted.

MOTION: A Motion was made by **Commissioner David Tea** to grant Preliminary and Final approval of the Gibbs Five-Lot and forward to the County Commission. The Motion was seconded by **Commissioner Jon Thompson** and passed unanimously.

THE MIKE UDY (M & M ESTATES) 15-LOT SUBDIVISION, APPICATION SS06-009, LOCATED AT OR ABOUT 4505 WEST 15600 NORTH IN THE GARLAND AREA.

This 15-lot subdivision received preliminary approval from the Planning Commission at their September 21, 2006 meeting and at that time was known as the *Riverside View Estates Subdivision*. There were two issues regarding the storm water and those have now been addressed with the permit from the State. Proof of all utilities is also in place. The subdivision was originally shown with thirteen lots and has now added an additional two. The name of the subdivision was also changed, but Michael Udy is still the landowner of record. The property is currently un-zoned with each lot meeting the 20,000 square foot requirement for a septic system and no curb and gutter will be required in this subdivision. The Riverside/North Garland Water Company is providing the water for the subdivision.

MOTION: A Motion was made by **Commissioner Chad Munns** to grand Final approval to the M & M Estates 15-Lot Subdivision and forward to the County Commission for their approval. The Motion was seconded by **Commissioner Richard Day** and passed unanimously.

WARD PROPERTY, CONCEPT PLAN, APPLICATION SS06-007, LOCATED AT OR ABOUT 8700 SOUTH HWY 89 IN THE SOUTH WILLARD AREA.

This petition contains 104 lots and is located in South Willard with zoning at R-1-20. There have been various concepts plans regarding this property with the most recent at the August 17, 2006 meeting with 145 lots and a community (central) septic system. The petitioners have now returned with this concept showing 104 lots with each lot meeting the minimum 20,000 square feet size with 100-foot frontage. The development will also require curb and gutter. The Water Conservancy District, Willard Flood Control or UDOT has not yet reviewed the project. Although the lots meet

the 20,000-foot requirement set by the County, the Bear River Health Department may require that each lot be ½ acre to conform to their standards for a septic system. The project is also located next to an Agri-Protection area that is no longer in production. (The petitioners, Gordon Booth, Jerry Preston, and Curt Dera were present at this meeting.) Staff recommended accepting the concept plan and set a Public Hearing for November 30, 2006.

MOTION: A Motion was made by **Commissioner Theron Eberhard** to accept the concept proposal for review and set a Public Hearing for November 30, 2006 at the next Planning Commission meeting; seconded by **Commissioner Jon Thompson**, passed unanimously.

WORKING REPORTS

A meeting was scheduled for Tuesday, November 21, 2006 to discuss the Box Elder County Fencing Ordinance in order to make a recommendation to the County Commission regarding the Fencing Ordinance. Two Public Hearings have been held to receive input on the existing ordinance and the Planning Commissioners received suggestions regarding this issue.

PUBLIC COMMENTS

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The Planning Commission meeting was adjourned at 10:06 with a Motion by **Commissioner Jon Thompson**.

Passed and adopted in regular session this 21st day of December 2006.

Richard Kimber, Chairman
Box Elder County
Planning Commission