MINUTES
BOX ELDER COUNTY
PLANNING COMMISSION
FEBRUARY 24, 2005

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

Jon Thompson	Vice-Chairman		
Richard Day	Member	*The following Staff was present:*	
Clark Davis	Member		
Ann Holmgren	Member	Garth Day	County Planner
David Tea	Member	Elizabeth Ryan-Jeppsen	Dept Secretary
Theron Eberhard	Member	Amy Hugie	County Attorney
Richard Kimber	Excused		

Vice-Chairman Jon Thompson called the session to order at 7:02 p.m.

The ***Minutes*** of the regular meeting held on January 20, 2005 were made available to the Planning Commissioners prior to their meeting (February 24, 2005) for review. Vice-Chairman Jon Thompson asked for a Motion as to whether or not the ***Minutes*** of January 20, 2005 should be accepted as written. A few word corrections were noted after which Commissioner Theron Eberhard made the motion to accept the Minutes as written (with noted corrections made) and submit to Chairman Richard Kimber for his signature. The motion was seconded by Commissioner David Tea and passed unanimously.

Citizen Present for the Planning Commission Meeting and Public Hearing

Dirk Frailey/Portland, Oregon
James Haugen/Dove Creek
Larry Hanks/Dove Creek
Steve Curtis/Dove Creek
Janice Miller/Dove Creek & Ogden
Kevin Cardwell/Dove Creek & Ogden
Mike Allred/Dove Creek & Ogden
Mike Wolf/Utah Power
David Simmons/Plymouth
Billy Chadwell/Park Valley-Dove Creek
Kathleen Hanks/Dove Creek & Ogden
Royce Thompson/Bear River City
Dixon Miller/Dove Creek & Ogden
Gayl Allred/ Dove Creek & Ogden
Steve Rush/Ogden (Utah Power)
Jeff White/Utah Power

PUBLIC HEARING

PACIFICORP CONDITIONAL USE APPLICATION, UTAH POWER & LIGHT SOUTH WHEELON SUBSTATION LOCATED IN THE BEAVER DAM AREA.

This petition is for a Conditional Use Permit for a Utah Power & Light Substation located in the Beaver Dam area. At the January 20, 2005 meeting it was determined that a Public Hearing would be held at this meeting. There are approximately 250 acres proposed in this site with current zoning as MU-40 and a power station is permitted within the MU-40 zone regulations. The area that will be used for the substation will cover approximately 24 of the total acres. Staff reviewed the concerns and/or questions that are often identified when a Conditional Use Permit such as this is purposed.

- Conditions relating to safety for persons and property
- Any environmental concerns
- Conditions relating to performance
- Hold a Public Hearing

There were three representatives of Utah Power at the Public Hearing to answer questions; *Steve Rush*, Regional Community Manager for Utah Power, office in Ogden; *Mike Wolf*, Property Group and *Jeff White*, Engineer and Project Manager for this particular project. Mr. Rush addressed the Planning Commissioners and explained the reasons and purposes in requesting this Conditional Use Permit. A broad overview was given wherein Mr. Rush stated that this area substation will be going from this location approximately seventeen miles over the valley to Green Canyon in North Logan. The planning for this project began in February 2004 and several meetings have been held in various areas. The line will be 138,000 volts (KB) and will provide capacity into the Cache Valley area. Green Canyon is a hub substation where multiple lines connect and from there several other substations are serviced throughout the valley. This will also serve Logan City, which will allow them to serve their substations. This outlined the short-term and intermediate use for this substation at this site. Initially it will be a switchyard for the power where transmission lines come in and then go out to service other sites. In the future, some ten to fifteen years hence, there will be a transformer located at the site of this substation; it will tap the highest voltage line, 345,000 volts (KB) and it will serve the 138,000 volt transmission line in the valley giving more capacity. Mr. Rush also addressed the issue of why there were 247/250 acres in this project. Basically the reason for the additional acreage is because it was purchased more at the request of the landowner selling the property. There will be twenty-four of the acres fenced off where the substation will be located. The property owner to the south, Mr. Randy Bowcutt had requested that the substation be set back further than the original one hundred feet. It will be three hundred feet from Mr. Bowcutt's property line and some trees will be planted by Utah Power on their property to provide some screening, which will be done (Mr. Bowcutt will take care of watering the trees and have access to do so). There are no property owners living on the area to the north of this substation. There are additional easements and right-of-ways that will be required from other property owners, but that will take place once the Conditional Use Permit has been granted. Mr. Rush talked about the electro magnetic fields (EMFs), which was one of the issues that were of a concern to the citizens in Cache County.

> Mr. Rush's comments included: *"Anything that's electrical has a magnetic field. We're subject to electro magnetic fields in this room right now. The number one misconception is that people think that it is a function of voltage. You're putting in a 138,000-volt line; therefore the EMF has to go up. Not true. It's a function of amperage current; that's what generates the field, and most of us are aware that the reason that you go to higher voltage is to lower current. That way you can use smaller wire, less heat, etc. First you start out with a misconception about higher voltage means higher current and that's just the opposite of what happens. Now we can end up with about the same current; on that particular line going through that*

area where it's fully loaded the current flow at the end of this, with the transmission line and the distribution line, is going to be at about the same level it currently is right now or lower. There is an existing line on there that is 12,000 already. Everyone thinks that EMF is this nebulas thing that you can't get your arms around. It's not true. You can measure voltage, you can measure current, you can measure magnetic field. The measure for it is called GAUSS or mille GAUSS for the numbers we're talking. You can measure it just like you can measure the light coming off a fixture or the current or the voltage. The line that is going to be tapped is three times the voltage, 345,000 volts, already there. We are just going to tap that line and go over the hill at a 90- degree angle. We are familiar with the effect of it and if there was any problem with it. With the correct placement of the lines the EMFs will be lower then before. If you look the information available through the National Institute of Health, and the Federal Government, and the American Cancer Society, all of them say there is no threshold level of EMFs that is harmful. One of the things which effects the EMFs is the distance; what a lot of people don't realize is that it is just like a point source of light. When you shine that, it spreads out and it dissipates with the square of the distance. So when you put something up thirty, forty, fifty, sixty feet away from you, that number is lower in measurement than what we are picking up under these lights in this room; and in what you would typically have in you house with your computer. EMF is not shielded by dirt, cement or anything else; it is shielded by distance. That is one of the common misconception."

After several minutes of discussing this project and a great deal of technical jargon; one comment was taken from the audience. Mr. Larry Hanks commented on the EMF's that Mr. Rush had talked about. At this time the Public Hearing was closed with a motion by Commissioner Clark Davis and seconded by Commissioner David Tea, passing unanimously.

Commissioner David Tea asked about security of the substation. Response: The area surrounding the substation will be well lit and secure in the event of a heightened level of security in the Country. Commissioner Theron Eberhard asked about the time frame of this Conditional Use Permit. Response by Staff: Conditional Use Permits have to be acted upon within a year's time period or a reapplications would have to be submitted; if the usage is continued as per the conditions then it is ongoing. It would not need to be reviewed unless there was something added that wasn't part of the original plan.

MOTION: A Motion was made by Commissioner David Tea for the Planning Commission to recommend approval of the South Wheelon Substation Site to the County Commission based on the proposed Site Plan [of 24 acres for the substation] as submitted. The motion was seconded by Commissioner Theron Eberhard and passed unanimously.

SUBDIVISIONS FOR APPROVAL

CONSENT AGENDA ITEMS -- NONE

NEW BUSINESS

THE FARMS PHASE IV, LOCATED AT OR ABOUT 7350 SOUTH HIGHWAY 89 IN THE SOUTH WILLARD AREA.

Staff explained that this Phase IV of the Farms development was received in time for this meeting but had been left off of the agenda. Staff reviewed the lots that made up Phase IV and felt that it could be approved for preliminary approval, however, Mr. Bruce Jones, the developer was not present at this meeting. The construction of the detention basin will be built during this phase of development. There are two lots that are not being developed and after some discussion between Staff and the Planning Commissioners it was determined that there were additional matters, including these two lots as improved lots that would need to be included in the development plat. (Because these two lots had not been included in the development of Phase IV, Staff reasoned that an illegal subdivision had been created and would need to be corrected before consideration for approval by the Planning Commission.)

MOTION: A Motion was made by Commissioner David Tea to grant preliminary approval of The Farms Phase IV development petition contingent upon the inclusion of the two lots in question being included in the development. The motion was seconded by Commissioner Clark Davis and passed unanimously. Staff will contact the developer to have the necessary changes made before approval will be considered.

DOVE CREEK AREA RE-ZONEPETITION FOR PROPERTY CURRENTLY ZONED MU-40 TO RR-10 IN DOVE CREEK LOCATED SOUTHWEST OF PARK VALLEY.

Staff explained that this subdivision in Dove Creek was approved several years ago as a PUD or Cluster Development. (The Planning Office had received this petition, but it was not a formal application for a re-zone at this time.) The zoning in the area is MU-40, but this area of Dove Creek was created with ten-acre estate lots. The roads in the development were to be private roads, the water and the entire infrastructure was to be private. Originally there was a homeowners association established and recently that association was dissolved. There are two county roads that run through the development and several lots have frontage on those roads, but all other roads in the development are private and are not dedicated County roads. It is the belief of the Planning Office that the development was approved as a PUD and the Homeowners Association was probably a condition of the approval. There are now many lots in the subdivision that do not have frontage on dedicated streets, or roads [to the County], thus not meeting the requirements of the Land Use Development Code. The County is not in a position to take over these roads; they have never been brought up to meet the County standards for dedicated roads, they have not been maintained, thus causing some safety issues for the people that live in Dove Creek. Staff stated that there are a couple of alternatives available:

1. The landowners are requesting that the property be rezoned to RR-10 designation. The County does not have an RR-10 zoning, but it would be very similar to the RR-5 zone, and would make the lots in Dove Creek conforming to a zone requirement. There would also have to be some action taken on the lots that do not have frontage on a dedicated County road, possibly re-subdivide.
2. The second alternative would be to make Dove Creek a P-Zone designation.

Staff further stated that when this was approved, this subdivision was considered as conditional use permits, and because one of those conditions in now gone, i.e. the Homeowners Association, the conditions are no longer currently being met. Commissioner Clark Davis asked why the Homeowners Association was dissolved Staff stated that a vote of the homeowners was taken and it was a majority vote to dissolve the Association, but they may not have understood the full implications involved in doing so. Staff further stated that the Planning Office would have no problem in sending the landowners a letter informing them of the violation and that the area is now in an illegal nonconforming status because of this issue. Another problem that Staff could see with this matter concerned the fact that some of the landowners may not have voted for the dissolution of the Association and now they have to suffer the overall consequences because of it. Some of the citizens from the Dove Creek area were at the meeting and came forward to discuss the matter with the Commissioners. Commissioner Theron Eberhard asked how the Association could be dissolved if it was a critical or necessary part of the approval of the subdivision; was it legal for them to dissolve? Could it be required to be reinstated? Staff's answer: The County doesn't have any say in a Homeowners Association other than to deal with the zoning of the land and the control of the land use. The County could deny any further building permits for any future lots, but a few people that are living there now it is not clear what could be done. Staff did not know of any leverage to require that the Association be put back into place. After some further discussion between Staff and the Commissioners, a spokesperson for the Dove Creek residents was invited to come forth and address the Commissioners.

> ***Kathleen Hanks***: "What happened as far as the Homeowners Association (HOA), was that under the influence of the developer, where three Trans-Western Corporate members sat on the Homeowners board, that is how the Homeowners Association was dissolved. They also removed the CC&R's. The previous administrations had been accruing monies to transfer from the electrical over to road maintenance and that was $54,910 and that has now dissipated to zero and we have no idea where that has gone. What happened is that the Homeowners Association sent out a ballot, and I thought it was kind of interesting what they said in the ballot to get people to vote for this; they said, 'The removal of the CC&Rs removed restrictions applied to our titles placed there by the developer Trans-Western Land Corporation and the County of Box Elder. This in turn allowed each member the opportunity to dissolve the association, and have a clear title on all properties that they hold title to. To remove restrictions that allow unwanted enforceable assessments that lead to controversy.' So that was their first statement. Their next one, 'The best endorsement for the dissolving of the Dove Creek Ranches Homeowners Association Inc. there will be no liens, foreclosures; unwanted assessments and every individual can determine what is in their best interest.' So this is how they encouraged people to get rid of the HOA and that is just because there had been a lot of controversy over the electrical assessments and what Trans-Western was doing."

Commissioner Jon Thompson asked how the money was generated.

> ***Larry Hanks:*** The HOA was organized with encouragement by Mr. Hanks and was met with some concern by the developer. Under the guidelines, the HOA was responsible for maintaining the roads and all other improvements. The electrical program began with that concept, but when you have a project that

involves over 120 landowners, it is difficult to get any kind of majority approval to start an assessment is really a challenge. A petition was circulated to the landowners to get electricity so that improvement could be started. At that time, those who had title to their lands made their payments directly to the HOA; those who were under contract with the developer their electrical assessment was included in the payment to the developer and the developer, was to send it over to the HOA or hold in trust. Electrical service was started in 1983-84 and the last line was installed last year (2004). With that payment there was knowledge that the developer had no obligation to make one payment into the electrical program. A lot of the electrical lines had to pass over the developer's unsold lots and that created a problem as far as pro ratta; more than pro ratta would have to be paid by the landowners for the electrical work. The excess payments, that belonged to the landowners was to be converted over to a road maintenance fund based upon the vote of the landowners. Everything was OK until the developer got involved.

Commissioner Theron Eberhard asked how many of the lots were owned by private individuals and how many by developers. Ninety-six lots are still under the title of the developer according to a count reported by Kathleen Hanks. Because the vote (starting in the year 2000) was determined by a one vote per one lot of ownership, the developer was able to "run the election" to dissolve the HOA. The landowners have asked for an accounting of the $54,000 that was in the fund, but the developer has not come forth as of yet. The citizens that have property in the Dove Creek area are concerned that the area is starting to look like a "shanty town" as there are lots where trash is being left, i.e. old cars, trucks, campers, and trailers, etc. The citizens were in favor of dissolving the HOA because of it was not working as was originally hoped, and for them to organize a HOA again would put them in a position for another "takeover" as they have already lost $54,000 with no account; thus they are looking for some type of help from the County at this time. It seemed that the developer had encouraged an abandonment of the development laws and regulations pertaining to construction and development of the lots, and when the HOA was in place, and there was a protection committee in place, nothing was enforced according to Ms. Hanks; so to go back to a HOA would only result in the same things happening again. In conclusion, Ms. Hanks said that they were hoping that the County could establish some sort of enforceable County ordinance, and require every lot owner to build to County standards with acceptable roads. They would be appreciative of the County helping to keep their little community from becoming a shantytown and a dump yard. Most of all the citizens and landowners in Dove Creek wanted to be helpful to Box Elder County.

Mike Allred: As an owner of two lots, one on a county road and another on a private road; he didn't feel that there was much hope for the private road situation. There is a substantive strength that comes from proper zoning and proper ordinances or building covenances within a given area. When he purchased his lots he did not do so with the intent of being overrun by people who have no conscience or want be "kings of the hill and they own no more of the hill than I do." As County taxpayers and as ownership in the land those regulations that the County has will foster the proper kind of growth. He thought it important that the landowner's rights were respected also. He also felt that it was important to stand for something and to have the help of the County in dealing with this problem that has occurred in Dove Creek.

Staff reported that building permits are required for the area and there are building inspections, etc. Out in the rural area there is a mobile home ordinance that allows that type of dwelling for a

temporary use, i.e. convalescent relative. Unfortunately the County does not have the ability for zoning since the area was approved as a special development. The forty acre zone is no longer good in the area because the lots are ten acres and they no longer meet the minimum required forty acres, which is what the surrounding area is currently zoned. Therefore, the issue gets down to the zoning and the proper development of the area. The County now needs to go back and rethink some things and undo some things and force a redo. Unfortunately those people that do not live on a county road will have to be responsible for building those roads to county standards. The area was originally approved as a private development, thus making all of the property owners responsible for the private roads. It is not right for the rest of the County taxpayers to bail this development out.

> ***David Simmons:*** Owns a lot half a mile from a county road and has been putting gravel on the dirt road to his property. Wants to be able to build a house on his ten acres, but if changes are made in the zoning, he wouldn't be able to build. Currently has a trailer on the property. Has also put in several thousand dollars worth of irrigation pipe to the property and now feels stuck.

Commissioner Clark Davis suggested that the Staff return to the March meeting with any suggestions and/or recommendations regarding this matter. Commissioner Jon Thompson further stated that the Planning Commission is sensitive and sympathetic to the problems that the property owners are facing. Commissioner Clark Davis stated that since only one side of the issue had been heard at this meeting, the Planning Commission did not want to find themselves in the middle of any litigation between the developer and the property owners. He further questioned whether the dissolution of the HOA was legal since it was part of the original approval, whether it was functional or not. Staff had suggested the possibility of a P-zone or RR-10, but the Commissioner felt that additional research needed to be made before such action was taken toward that end.

> ***Bill Chadwell:*** Has a home on a county road and asked about the possibility of a Special Improvement District to improve the roads and then the property owners of the area would be taxed themselves and not all of the residents of Box Elder County. Also serves on the Dove Creek Community Fire Counsel and has met with the BLM and the State regarding the set up of a committee in order to acquire a grant to try and reduce fire hazards around the community property and also on BLM property. One of the issues that the State and BLM raised was that of the roads within the community. If a fire truck comes in and gets stuck on one of the private roads it would be the responsibility of the property owners to pay for any damages to that truck. Therefore, would appreciate any assistance that the County could render in this matter.

As this was not a formal petition there was no Motion necessary at this time regarding the Dove Creek issue. Staff continued to discuss the problem with the Planning Commissioners, but no solution was reached at this meeting. Staff stated that he would look into when this subdivision was originally approved and bring a possible solution or recommendation to the March meeting.

PUBLIC COMMENTS -- NONE

STAFF REPORTS

Commissioners Clark Davis and Richard Day, along with Staff were meeting at the conclusion of this meeting to finalize the South Willard Citizen's Advisory Committee. There were approximately 120 citizens that attended the Town Meeting held on February 10th and from the forty that signed the list indicating interest in serving on the committee, about fifteen had sent in formal requests (or applications). The first meeting for the Advisory Committee is tentatively set for March 10th.

The Planning Commission meeting was adjourned at 9:08 p.m.

Passed and adopted in regular session this 21st day of April 2005.

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Richard Kimber, Chairman
Box Elder County
Planning Commission