

MINUTES BOX ELDER COUNTY PLANNING COMMISSION MAY 19, 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:

Richard Kimber	Chairman	<i>The following Staff was present:</i>	
Jon Thompson	Member		
Richard Day	Member	Garth Day	County Planner
David Tea	Member	Elizabeth Ryan-Jepps	Dept Secretary
Theron Eberhard	Member	Donnie Tarver	County Inspector
Clark Davis	Member	Pat Comarell	Consultant
(arrived 7:50 p.m.)		Amy Hugie	County Attorney

Chairman Richard Kimber called the session to order at 7:08 p.m.

The *Minutes* of the regular meeting held on April 21, 2005 were made available to the Planning Commissioners prior to their meeting (May 19, 2005) for review. A motion was made by **Commissioner Jon Thompson** to accept the *Minutes* as written; the motion was seconded by **Commissioner David Tea** and passed unanimously.

Citizen Present for the Planning Commission Meeting and Public Hearing

Shayne & Becky Roberts HCR 63; Box 5, Snowville, UT	Dale Barnett 7955 South 925 West, South Willard, UT
Jerry R. Capener 1940 South 100 West, Perry, UT	Mellone Wilding 7364 South 625 West, South Willard, UT
Terri Howard 15515 North 400 West, Beaver Dam, UT	Jan Nielsen 7980 South HWY 89, South Willard, UT
Charlette E. Nelson 16085 North Beaver Dam Rd, Beaver Dam, UT	Dale Zito 8960 south HWY 89, South Willard, UT
J. Alton Veibell 14015 North 400 West, Beaver Dam, UT	Matt Hansen 7510 South HWY 89, Willard, UT
Dave Hawkes 7920 South HWY 89, Willard, UT	Kent Davis 8775 South HWY 89, Willard, UT
Kirt & Tracie Bailey 795 West 2820 South, Perry, UT	Georgia Sullivan 1881 East 3780 South, Salt Lake City, UT
Johnny Hulse 560 West 7615 South, Willard, UT	Ben Crook 8665 South HWY 89, Willard, UT
Lynn Rindlisbacher	Judy Loveland Willard City Council
Debie Wong 7440 S 425 W, South Willard, UT	Scott Archibald Sunrise Engineering

PUBLIC HEARING/BEAVER DAM AREA RE-ZONE 400 WEST STREET

Staff addressed the Planning Commissioners regarding the area in Beaver Dam considered for re-zone. (A copy of the map showing the proposed area accompanies these Minutes.)

- * The area is south and west of 400 West Street. The north boundary is bound by the Dairy Valley Road, over to the half section line; going south to the section line, and following along the County boundary line on the east side.
- * Approximately 146 acres included in area.
- * Several property owners are listed in the area.
- * There are a couple of non-conforming uses, as the current zone for the area is MU-40.
- * An area in the southeast portion of the (proposed) re-zone area was at one time zoned as P-1; associated with a proposed development. That has since been revoked and has converted back to the MU-40 zone.
- * At this point it is appropriate to re-zone this area because of several non-conforming uses in the area, as well as consistency with the other zoning in the area.
- * The other area along 400 West Street and the road extending further northwest in the Beaver Dam is already zoned at RR-2; Rural Residential two acre lot (minimum).

Commissioner David Tea asked if the other areas along 400 West and the road extending northwest were also being re-zoned. Staff answered that those two areas along the roads are already zoned as the RR-2 classification. Staff further explained the boundaries for the proposed re-zone.

- ✘ When re-zone is administered it can sometimes be difficult when property is cut in half with different zone designations.
- ✘ Using the road on the north establishes a natural boundary (Dairy Valley Road). The half section line is a property line with two different owners on each side, as is the south section line.
- ✘ The County boundary line (with Cache County) also establishes a clean boundary line.
- ✘ It is a large enough area, with some of the non-conforming uses; it does not create any spot zoning within the area.
- ✘ This re-zone is being initiated by the County (Box Elder) without an outside (or property owner) petition. There was a re-zone petition some time ago, but it was never acted upon and this process should also take care of that action.

At this time **Chairman Richard Kimber** open the Public Hearing (at 7:12 p.m.)

Charlette Nelson: Family owns a majority of the property within the area being considered for this re-zone. Other family members are out of town and unable to attend Planning Commission meeting. Ms. Nelson's brother (Leo D. Ericksen) prepared a letter to be read at the Planning Commission meeting. (A copy accompanies these Minutes.) After reading the letter Ms. Nelson continued stating that at the time of the general zoning in 1996,

the majority of the landowners did not want high density housing in this area, thus resulting in the MU-40 zone and the MU-160 designation. Ms. Nelson also mentioned the P-1 designation covering a small area. At the time it wasn't considered "spot zoning" for that; the number of acres being considered now wouldn't be considered as "spot zoning" either, but it is their belief (meaning her family) that it is not entirely appropriate for the area and for the number of acres being considered. Felt that the area was a watershed; difficult to access in the winter months; also consider it to be a sensitive area due to the presence of earthquake faults. A study that was partially paid for by Box Elder County confirmed that fact. There is a Willow Creek fault line through the area. There is also a Hansen Fault line identified in that study. This study also pointed out the West Cache Fault line along the Mendon area and the Wasatch Fault line in Collinston were opposing, causing movement and was one of the reasons for the number of fault lines between them. The water company is also concerned about the integrity of the springs that serve the community lower down in the watershed. Additionally felt that it was an area where there should be very few homes.

Chairman Richard Kimber asked about the amount of property within the proposed re-zone area that was owned by the Ericksen/Nelson family. **Ms. Nelson** replied that the County line bisects the corner field (with Cache County) leaving over one hundred acres on the Box Elder County side.

Alton Viebell: Has spent a great deal of money showing that this area is not a watershed, but only gets the spring runoff from Willow Creek Canyon and would supply proof of that to the Commission. Suggested that the Ericksen family take their property out of the re-zone, that he has completed a road in Willow Creek and that road could be used as the boundary for this re-zone. Also, the faults that were mentioned are very small and would not cause many problems. This RR-2 re-zone would help the RHN Corporation in obtaining a building permit for their property. Would have liked, in June 1988, for the lot to have been made legal in order for them (RHN) to build on it. In 1988 **Commissioner Jon Thompson** and **Chairman Richard Kimber** were on the Commission at that time and approval was given for the building permit, but the party/individual interested in obtaining the building permit was unable to get the funds to obtain the permit at that time. Didn't know why this issue could not have been "grand fathered in", thus alleviating this problem that the County is now faced with (i.e. law suit). (A Copy of the Minutes from June 1988 is attached to these Minutes).

Chairman Richard Kimber asked about the road that Mr. Viebell spoke of. This entire road is located within Box Elder County according to Mr. Viebell. Staff pointed out that this road is NOT an approved County road; has not been built to County standards and has never been dedicated to the County, but is only a private road built within Box Elder County; not considered a road by the County.

Terry Howard: A co-owner of the RHN property; in agreement with Mr. Viebell regarding the matter from 1988 and has numerous Minutes indicating such, including a letter from County Surveyor Denton Beecher stating that if there were a private road (as there are many throughout the County) that it (the building lot) would be considered legal. Also thought that the County was going to allow Mr. Viebell to sell an additional lot. Worked with Mr. Jim Marvedel, County Planner before Garth Day. There was a disagreement between Mr. Marvedel and Mr. Beecher regarding this lot (according to Ms. Howard). County Attorney Jon Bunderson met with Mr. Viebell and his attorney; Denton Beecher

stated in a letter that under County ordinance, then and now, the lot should have been legal. At a meeting with Mr. Beecher it was stated that this lot existed, nonconforming, but legal, because it existed before the zoning; but Mr. Marvedel disagreed as the lot had been subdivided illegally. In referring to a letter written by Ms. Nelson, it was suggested that instead of the re-zone, if a re-zone could be done in the manner suggested by Mr. Marvedel, then the re-zone could be completed in one meeting for RHN and the overlay for Mr. Viebell and no harm would have been done. (No copy of letter that Ms. Howard referred to was furnished to the Commission at this meeting.) Another option that was presented [by Ms. Nelson] dealt with the three parcels in Box Elder County; two could probably be built on without meeting subdivision rules, but the third lot could not. Perhaps only a development right needed to be recognized. (Again no backup material regarding this proposed solution was furnished at this meeting with the Commissioners.) Ms. Howard stated that her family had a similar situation (stating that she felt precedence was set by it) where the County allowed them to break a parcel for three lots, approved by the County (not told that they also needed to go through the subdivision process at the time) but only two could be built on. A building permit was issued and two of the lots made legal. Said that it was stated in Minutes (no date given); also in law suits; just wanted to have a decision on this matter and have been frustrated, feeling that the lot should have been legal from the beginning. Also felt that under ordinances, then and now, that with three parcels maybe one of the lots was not suitable for building, but the other two were; also willing to forego all County services and realize that the road would not be maintained by the County and would be the responsibility of the landowners. Also felt that their lot was recorded first; told that they could not be placed back on the agenda by Mr. Marvedel, until the Beaver Dam water plan was complete, but they were already existing and thought that problem was between them and Beaver Dam. Thought that perhaps a solution would be to allow one of those lots to be legal since it was created under [then] existing ordinances.

Chairman Richard Kimber asked if there were any other comments on this matter.

Alton Viebell: Referred to the comment made by Staff regarding the road that he built. Stated that Denton Beecher had told him how to build the road and felt that it had been built to County standards. (Took eight inches of top soil off and put eight inches of gravel on; made the road with sixty-six foot width right-of-way, which Mr. Beecher stated was necessary.)

Chairman Richard Kimber stated that to his knowledge it (the road) had never been recorded as a County road. Mr. Viebell stated that it is only a private road. Staff stated that it has never been accepted as an approved private road either. Staff further stated that the ordinance does allow for development on private roads, but it needs to be an approved private road by UDOT and it has not been approved.

Charlette Nelson: Again stated, in agreement with Mr. Viebell that the Planning Commission approved it as a private road. (Minutes attached)

With no other comments, **Chairman Richard Kimber** declared the Public Hearing closed at 7:30 p.m. and Staff reviewed the option before the Planning Commission. After the Planning Commission holds its Public Hearing they make their recommendation to the County Commission and they (the Planning Commission) have two options:

1. Act on with a favorable or unfavorable recommendation.
2. Could modify the re-zone. (*"You heard from a substantial landowner who said not to re-zone. . . is important input. Part of our problem again, we've look at this . . . in trying to go down the zoning route to make the lot conforming, the lots that are in there, we try to draw reasonable boundaries. We go down property lines and section lines and roads and ditches and geographic things that are going to be there forever, essentially. So trying to carve out little pieces, and you can't take a little piece out of the middle of everything else, that is 'spot zoning', so it has to make good planning sense. It has to be based on our scheme up here, so this was our attempt to meet all that criteria. However, again, your job is to make a recommendation to the County Commission."* Staff stated.)

Commissioner David Tea asked about the different tax bases between RR-2 and MU-40. Staff stated that the tax base has nothing to do with the zoning but has to do with the current use of the property. If something is zoned as RR-2, two acres is always a minimum. There is no reason that there couldn't be a hundred acres or a five hundred acre parcel, it just could not be smaller than the two acres. Also noted that there are no developments proposed with this re-zone; this re-zone is not coming to the Planning Commission with the anticipation of a development to follow. In regards to the private road Staff stated that the location of the road had actually changed over the years Mr. Viebell concurred with that statement. Thus the problem with the private road is that the County builds roads to engineering standards, regarding compaction tests and other standards required.

Chairman Richard Kimber stated that it is the landowners in the area that control the development in the area stating that the Erickson/Nelson family would have adequate control with their amount of property and any development that might occur on their property in the future. The **Chairman** also felt that further research was needed before the Planning Commissioners took action on this re-zone; also work with the legal council of the County regarding this matter. Should probably Table this matter at this time.

MOTION: A Motion was made by **Commissioner Jon Thompson** to *Table* this issue to be considered for further review. Matter *Tabled* until the Planning Commission on June 23, 2005 at 7:00 p.m. The motion was seconded by **Commissioner David Tea** and passed unanimously.

SUBDIVISIONS FOR APPROVAL

CONSENT AGENDA ITEMS

THE SHAYNE ROBERTS ONE-LOT SUBDIVISION, LOCATED AT OR ABOUT 36555 WEST HIGHWAY 30 WEST OF SNOWVILLE.

This one-lot subdivision is located in an area of the County that is currently un-zoned and has four total acres. The petitioner has established proof of all utilities with water service being provided by

a private well to be located on the property. As the petition appeared to be in accordance with the existing Zoning and Subdivision requirements, Staff recommended granting preliminary and final approval at this time.

MOTION: A Motion was made by **Commissioner Theron Eberhard** to grant *preliminary and final* approval to the Shayne Roberts Subdivision. The motion was seconded by **Commissioner Richard Day** and passed unanimously.

JERRY CAPENER, ROAD VACATION IN THE RIVERSIDE AREA, LOCATED AT 5400 WEST 15600 NORTH IN BLOCK #3.

This item was removed from the Consent Agenda as **Commissioner Theron Eberhard** asked if there were other properties in the area that had roads and alleys similar to the road being vacated at this time. This area of Riverside was cut up into blocks with the roads and alleys dedicated. Other roads in this area have been vacated in the past and most of them are not developed at all, but just platted out. The property owners (Russell C. Capener and Ned H. Sylverster) on this particular block have requested that this road be vacated. The area is currently un-zoned and vacating this road would not have a substantial effect on the County's General Plan and would not cause any financial harm to any of the adjacent landowners as the landowners are the petitioners.

MOTION: A Motion was made by **Commissioner Theron Eberhard** to recommend to the County Commission to vacate the road/alley identified on the petition between 15500 North and 15600 North and approximately 5400 West (State Highway 13). The motion was seconded by **Commissioner Jon Thompson** and passed unanimously.

NEW BUSINESS

COUNTRY CLASSICS, PHASE II AND III, (20 LOT SUBDIVISION), LOCATED AT OR ABOUT 10880 WEST 12800 NORTH IN THE BOTHWELL POCKET AREA.

This 20-lot subdivision is located in an area of the County that was recently re-zoned to RR-5. Each lot in this proposed subdivision is plus or minus one acre. The petitioner has received verification from the Bear River Water Conservancy District to provide water to the subdivision, however Phase I of this subdivision has not been completed and recorded at this time. Three of the four lots in Phase I are required to be sold in order to meet the seventy percent completion for the on-site improvements. However, as per Section 3.6.12.2 of the Land Use and Development Code, the petitioner has not completed the required one hundred percent of the off-site improvements for Phase I subsequent to submitting the petitions for Phase II and Phase III.

3.6.12.2 *When the off-site improvements have been 100 percent completed within the boundaries of the approved Final Plan of any phase and reviewed by the County, and on-site improvements are 70 percent completed, the developer may submit the next phase of the proposed development in accordance with the rules and regulations of this Code. On-site improvements shall be construed to mean the construction or placement of the dwelling or other main building and its appurtenant improvements on each lot.*

Other findings regarding this petition are: 1) the proposal does not meet the minimum lot size as per the RR-5 Zoning requirements; 2) it does not meet the criteria outlined in the County's Land Use and Development Code.

The petitioner was present at this meeting and made the following comment:

Lynn Rindlisbacher: The plans for Phase I have been approved by Chris White at Hansen & Associates and BRWCD and should be ready to be recorded within the next week or so.

MOTION: A Motion was made by **Commissioner Jon Thompson** to recommend to the County Commission that the petition for Phase II and Phase III of the Scenic Development Subdivision (County Classics) be denied. The motion was seconded by **Commissioner David Tea** and passed unanimously.

THE FARMS, PHASE IV (NINE-LOT SUBDIVISION), LOCATED AT OR ABOUT 7300 SOUTH HIGHWAY 89 IN THE SOUTH WILLARD AREA.

Preliminary approval for this phase was given with the condition that two of the lots in this phase be completed and the road stubbed to the property line to connect to the subdivision to the north (Pettingill) when it is submitted. The property is currently zoned R-1-20 and all of the lots meet the minimum requirements. The petitioner has established proof of all utilities with water being provided by the South Willard Water Company. There is one more Phase left in this subdivision, Phase V. All of the lots in Phase III have been sold, thus meeting the requirements set forth in **Section 3.6.12.2** (quoted above). This final plat will have a signature line for the Willard Flood Control and the South Willard Water District to sign off on this phase before it is recorded.

MOTION: A Motion was made by **Commissioner Theron Eberhard** to recommend to the County Commission that Final approval be granted to The Farms Subdivision, Phase IV. The Motion was seconded by **Commissioner Richard Day** and passed unanimously.

DEER RUN 23-LOT SUBDIVISION, LOCATED AT OR ABOUT 7950 SOUTH IN THE SOUTH WILLARD AREA

This twenty-three-lot subdivision is located between the South Cherrywood and the Twin Falls Subdivisions and access to Deer Run will be through these other two subdivisions. Each of the lots meets the minimum square footage in the R-1-20 zone and will be developed as one phase. The property is currently zone R-1-20 and has received approval from the Bear River Health Department and have received letters verifying the utilities. Verification has yet to be received from the South Willard Water Company and the South Willard Flood Control and based on those findings, Staff recommended granting preliminary approval subject to receiving letters from South Willard Water Company and South Willard Flood Control.

MOTION: A Motion was made by **Commissioner Jon Thompson** to grant preliminary approval of the Deer Run Subdivision with the condition that the letters from the South Willard

Flood Control and the South Willard Water Company be received before granting final approval. The motion was seconded by **Commissioner Richard Day** and passed unanimously.

**THE SOUTH CHERRYWOOD ESTATES SUBDIVISION, PHASE II (NINE-LOTS)
LOCATED AT OR ABOUT 8100 SOUTH 950 WEST IN THE SOUTH WILLARD AREA.**

This subdivision is located in South Willard with the current zoning as R-1-20. All of the improvements have been installed and the small lot that was in question [at last month's meeting] will now be fully developed and stubbed as a road to the south (the petitioner has purchased this property in order to develop this road). The petitioner has established proof of all utilities, except for a letter from the South Willard Water Company verifying water service. A letter also needs to be received from the South Willard Flood Control District regarding the detention basin for the subdivision. Staff also thought that there was an Ag-protection area to the south of this subdivision, but **Commissioner Richard Day** stated that he asked the property owner and it was not in Ag-protection, thus that language will be removed from the final plat.

MOTION: A Motion was made by **Commissioner David Tea** to grant *preliminary* and *final* approval to the South Cherrywood Estates Subdivision, Phase II with the condition that the letters be received from the Flood Control District and the Willard Water Company; also an updated plat showing the road to be developed and stubbed needs to be submitted to the Planning Office. **Commissioner Richard Day** suggested checking again on the Ag-protection area in question to remove that language from the plat if necessary. The motion was seconded by **Commissioner Clark Davis** and passed unanimously.

WORKING REPORTS

Some of the members of the South Willard Advisory Committee addressed the Planning Commissioners regarding the sewer issue in the South Willard area. A representative from Sunrise Engineering, Scott Archibald, was also present and reviewed the feasibility study currently in progress for Willard City. The study being done by Sunrise Engineering is looking into the possibility of connecting with the Brigham City sewer area. The Planning Office did the feasibility study approximately two/three years ago, while Wasatch Engineering focused on connecting with the Central Weber Sewer District to the south. The members of the Advisory Committee introduced themselves those present included: Kent Davis, Georgia Sullivan, Mellone Wilding, Dale Zito, Jan Nielsen, Matt Hansen, Debbie Wong, Dale Barnett, and Ben Crook. Judy Loveland from the Willard City Council was also present at this meeting.

Co-Chair, Kent Davis addressed the Planning Commissioners asking that they make a recommendation to the County Commission to join this feasibility study being conducted by Sunrise Engineering for Willard City. It was his belief that there are some funds available for such a project and Scott Archibald would later expand on that possibility. The cost would be approximately \$20,000. The three options that are being considered by Sunrise Engineering, per Scott Archibald, and discussed with Willard City include [for the collection system] 1) to join in with Brigham City's facility; 2) go south to the Weber Central Sewer District and join in there; or 3) construct own facility. As this meeting was to request permission from the Planning Commission for the members

of the South Willard Advisory Committee to ask that the County Commission join with Willard City in the sewer feasibility study and look into the possible funding in the amount of \$20,000 from the Division of Water Quality, the following motion was made. (A copy of the meeting notes from the May 5, 2005 meeting of the South Willard Community Planning Advisory Committee and a copy of the South Willard Sewer Study Update accompany these Minutes.)

MOTION: A Motion was made by **Commissioner Richard Day** to recommend to the County Commission to join with Willard City in going forward with the sewer feasibility study. The Motion was seconded by **Commissioner David Tea** and passed unanimously.

Commissioner Clark Davis reported that the vacant position on the Planning Commission has not yet been filled.

PUBLIC COMMENTS -- NONE

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The Planning Commission meeting was adjourned at 9:24 p.m.

Passed and adopted in regular session this 23rd day of June 2005.

Richard Kimber, Chairman
Box Elder County
Planning Commission