

BOX ELDER COUNTY PLANNING COMMISSION MINUTES SEPTEMBER 23, 2010

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 Day	Excused	<i>the following Staff was present:</i>	
Chad Munns	Vice Chairman		
Desiray Larsen	Member	Kevin Hamilton	Director/Planner
David Tea	Member	Elizabeth Ryan	Ex. Secretary
Jay Hardy	Excused	Andre Pommier	Fire Marshall
Jay Christensen	Excused	Steve Hadfield	Co. Attorney
Laurie Munns	Member		

Vice-Chairman Chad Munns called the Planning Commission meeting to order at 7:04 p.m. The Minutes of the August 19, 2010 meeting were given to the Planning Commissioners at the beginning of this meeting and as they had not had sufficient time to read and review them a Motion was made by **Commissioner David Tea** to Table action on these Minutes until the October 21, 2010 meeting; seconded by **Commissioner** and passed unanimously.

The following citizens were present:

Randy Moulding/Ogden	Rock Hill/Bear River City
Kevin Pebley/Perry	Jacob Kingston/Plymouth
Kimly Mangram/Salt Lake City	

PUBLIC HEARINGS

Vice-Chairman Chad Munns called for the public hearings on the agenda by informing those in attendance that each item would be handled separately, and that the time for the hearings was to allow the public the opportunity to voice any concerns and the Commissioners would listen to the comments and concerns, but this was not a questions/answer time.

SP10-004, T & M CUSTOM FARMING, LLC, PROGRESSIVE FEEDLOT TO BE LOCATED ON PARCEL 04-053-0004 IN THE TREMONTON AREA.

Kevin Hamilton explained that this petition is for a site plan of a proposed progressive [dairy] feed lot located at approximately 6800 North 7700 West for 6,000 head of cattle. The petitioners were not present at this meeting and no comments were received during the hearing and a Motion was made by **Commissioner Laurie Munns** to close the public hearing; seconded by **Commissioner David Tea**, passed unanimously.

SP10-005, BIODIESEL FACILITY, LOCATED AT APPROXIMATELY 7950 WEST 24000 NORTH IN THE PLYMOUTH AREA OF BOX ELDER COUNTY. (PARCEL 08-046-0002/8.3 ACRES)

Mr. Hamilton explained that this site plan is for the expansion of an existing biodiesel facility located at the old Washakie town site. In 2007, Jacob Kingston received approval for a smaller biodiesel facility and would now like to expand to a higher level of production. No comments were received during the hearing

and a Motion was made by **Commissioner David Tea** to close the public hearing; seconded by **Commissioner Desiray Larsen**, passed unanimously.

VAC10-003, RANDY MOULDING, TO VACATE COUNTY ROAD LOCATED IN T11N R6N, SECTIONS 9, 15, 21 AND 22.

Mr. Hamilton explained that a portion of this road was vacated last spring 2010 and this petitioner is now requesting that the remaining four miles of the Sand Hollow Road [Sections 11, 14, 15, 21, 22, and 28 in T11 N, R6W] be vacated as well. No comments were received during the hearing and a Motion was made by **Commissioner Desiray Larsen** to close the public hearing; seconded by **Commissioner David Tea**, passed unanimously.

UNFINISHED BUSINESS

ROCK HILL ONE-LOT SUBDIVISION, SS10-002, LOCATED AT APPROXIMATELY 13600 NORTH 4000 WEST IN THE COLLINSTON AREA; EXTENSION OF CONDITIONAL USE PERMIT. (ZONED RR-2)

Kevin Hamilton informed the Commissioners that Mr. Hill is requesting an extension of a Conditional Use Permit that was issued in December 2007 as Mr. Hill felt that he had not been adequately informed of the time limitation place on this CUP. In September 2007 a new Ordinance was adopted by the County Commissioners which changed some of the restrictions; however, Mr. Hill had made his petition prior to that time, first requesting a re-zone in 2006 and then a subdivision in early 2007. The approval of the subdivision was consequently changed to a CUP. At that time the BECLUM&DC read:

“Every Conditional Use Permit shall expire by limitation and become null and void if the work authorized by such permit has not commenced within 1 year, or is not completed within 2 years from date of issue; except that the Planning Commission may, if the permit holder presents satisfactory evidence that unusual difficulties have prevented work being started or completed within the specified time limits, grant a reasonable extension of time, up to 1 year, if written application is made before the expiration of the permit.”

The newer Ordinance that was in place when Mr. Hill was granted the CUP read:

“A Conditional Use Permit shall expire and have no further force or effect if the building, activity, construction or occupancy authorized by the permit is not commenced within one hundred eighty (180) days after approval, not substantially completed within two (2) years, or if abandoned.”

The newer Ordinance was adopted in September 2007, but Mr. Hill was allowed to fall under the 1992 Ordinance as it was more flexible and allowed Mr. Hill more opportunity to pursue his plans for this property. The Ordinance adopted in 2007 had some significant changes to the overall Land Use Code for the County. However in reviewing each of the Ordinances (1992 and 2007) the time limitation would have applied with either of the Ordinances and the CUP for Mr. Hill would have expired. At this time the petitioner was requesting to come before the Planning Commission as he felt that there had been some extenuating circumstances that had occurred which did not allow him to meet the time limit requirement of either of these Ordinances. Mr. Hill was then invited to come before the Commissioners to discuss this matter.

ROCK HILL: *“I don’t know what to say, other than just . . . I need some clarification. I talked with the Director and the Planner about a month and a half ago and came in and that was when I found out that this was a time sensitive permit. I didn’t know about that, in fact, I don’t even know for a fact, is*

there an actual document that is called a Conditional Use Permit, because I never received anything like that, . . . and the Minutes should show that in the progression of the time that I've been here that I never received, that I know of, a Conditional Use Permit. I fulfilled all of the requirements on the different letters that I received to get that and the last piece was having a Rural Road Agreement signed and stamped back in April of 2009, Commissioner VanDyke signed it and I signed it and I believe Attorney Hadfield was there and I believe Kevin Hamilton was there; but I don't recall getting an actual document showing that a conditional use . . . I thought I was done with the requirements, that's the way that I felt, but I don't remember getting a document saying a Conditional Use Permit, and so I just was assuming that I was good to go with preceding and I didn't know that there was a time sensitive 180 days . . . so I'm just going along thinking everything is good to go and then this spring I came in and talked with Tamara [Wright] and Kevin Hamilton about taking one of those two lots and splitting it and filing an application for a single lot subdivision. At that time I found out through talking with Tamara and Kevin that it was time sensitive and that it had expired, which was quite alarming. You know I would have been doing something more to make these things work to show some progression if I had known it was 180 days. Also during that time I was sent off in line of duty with the military, which impeded any progression during that time period. So I guess, I'm not really clear in my mind, was I granted a Conditional Use Permit, I don't ever remember getting it and there in nothing in any Minutes or any document that I've seen to date that shows that I had that although I had fulfilled all of the requirements to get it. So, I know that's not a real simple thing to give me an answer, but that's kind of where I am at this point. I don't understand . . . there's a lot that I don't understand about this.

Commissioner Chad Munns: *"Is there a written document, Kevin."*

Kevin Hamilton told the Commissioners that there was a Conditional Use Permit referred to in the Minutes and that as Mr. Hill had stated he had been working through the process and requirements of that CUP. Also, there were some mitigating circumstances during this time frame when he was out of the country serving in the military. Mr. Hill was then asked when and for what length of time he was away in service.

ROCK HILL: *"Approximately four months . . . it was the beginning of January '09 through April '09."*

Kevin Hamilton: *"And the County was also in the process of working with Mr. Hill for him to complete all of the requirements of his Conditional Use Permit; the conditions of the Conditional Use Permit. All of that together, the fact that it was approved under that other Ordinance, some of the confusion between the other two Ordinances, and I'll let the county attorney weigh in if he feels like it's inappropriate, I would not be opposed to the idea, again, because the original application came in under that other Ordinance, I believe there was some confusion for Mr. Hill working through that process, I think because they finished the Rural Road Agreement, was not finished until March of 2009 . . . does that sound right? . . . , again, I'm trying to give some benefit of the doubt . . . and the main thing to me would be the application was before that time, the County still worked with him after that time, March of 2009, which was a year and a half ago. If we look at the time period, in this case, because of the unique circumstances and the fact that it happened before that time, unless Mr. Hadfield feels that we are violating the law somehow, I would say that we can put Mr. Hill on notice now of the expiration requirements under the Ordinance that he was approved under; that would give him until March of 2011. If we take the date from the time the Rural Road Agreement was completed, the two years to complete the project, which would mean building whatever roads are necessary and getting the houses or getting the building permits for houses on the property would need to be completed by that March 2011 date."*

There was then some discussion regarding the various 'codes' that Mr. Hill would need to follow and adhere to in regards to this project. **Vice Chairman Chad Munns** emphasized the Planning Commission only has the authority to give approval for the subdivision/CUP, but the actual building application is handled through another department and the fire code is separate as is the road department requirements. Because it has been such a long process (approximately three years) to reach this point, when Mr. Hill applies for the other various permits required in conjunction with building a home, he will be held to the code restrictions that are currently required and not what may have been approved at the beginning of this process. Therefore, the letters that Mr. Hill received regarding fire protection and road requirements were valid at the time that the

Planning Commission granted its approval, but they may not still be valid as far as the code requirements are currently for fire protection and road width, etc. **Commissioner Chad Munns** then said, *“The ordinances for the Planning and Zoning are good, but the ordinances for the building will be effective when you apply, and it has to be within March 2011. You have to be complete isn’t that what you’re saying?”*

Kevin Hamilton responded with, *“If we use the code at the time it was approved and we are willing to say that the Conditional Use Permit wasn’t in force until after that Rural Road Agreement was signed, again I would say . . . and I think just because . . . and the only reason, if somebody was coming in and it had been the same code the whole time this would be just ‘no’ from my opinion, but there was that shuffle with the ordinances and the County did continue to work with him and so his confusion from that point makes some sense to me.”*

Commissioner Chad Munns: *“So your letters are good, Rock, ‘cause that’s for the planning and zoning. Now when you start to build, the building code is completely different; has nothing to do with planning and zoning. All right? And the fire code, the same issues. And so when you apply for those you’ll have to meet the code as of the day you apply.”*

ROCK HILL: *“I think I understand what you’re saying; I do have some letters here that state stuff like . . . I need this clarification . . . I’ve got a letter here from the County Fire Department; it says here that I don’t need to have any fire hydrants on my property, because there is a fire department that will respond. I’ve got a letter from the Fielding Fire Department saying that my road is good, that they can respond on this road and it was signed by the fire chief and are those still going to be good?”*

Commissioner Chad Munns: *“I don’t know if they’re going to be good, because it’s not the county engineer.”*

Kevin Hamilton: *“Let me tell you, they’re good from that perspective of the Conditional Use Permit, ‘cause that was a condition that you get those letters. Now, when you go down the hall to apply for a building permit, they’re probably not good enough. I’m not the building official, but there is a requirement that the fire code . . . and we’ve cleared it up, but in my opinion, and Andy will correct me if I’m wrong, it’s always been a thirty foot wide access, right-of-way, with a twenty foot travel surface. The travel surface is twenty feet wide and then there are some engineering standards that you will go through too and it won’t be just . . . and I’m just telling you this ‘cause, for us those letters are good, that’s part of that conditions of your Conditional Use Permit; but that doesn’t change once you go down the hall to get that building permit. Then it’s all about the building permit and meeting the fire code requirements. So in other words, you’re done with us, as long as you get those building permits and get those houses going between now and next March.”*

ROCK HILL: *“The concern I have is, to widen my road requires I get a wider easement through some of my neighbor’s property and he’s not willing to give that . . . and in these letters that I have, everything was good to go. This March the ordinance was changed and now we’re talking about a twenty foot wide road with . . .”*

Kevin Hamilton: *“and I don’t know what you’re talking about as far as the ordinance changing in March; what I’m trying to make clear to you is the Planning Commission can give you the extension on your Conditional Use Permit, and as far as we’re concerned, those letters work toward meeting those conditions. The Planning Commission . . . you can talk to us all day long about the difficulties of that, but those aren’t issues that we have any control over. That’s the building department with their fire code requirements for the building, so . . . even if we all were unanimous and I was here begging the Planning Commission, they can’t change that. They’re not the board that has the authority. What we’re doing tonight is possibly granting you an extension of time to do . . . on the Conditional Use Permit to get started.”*

ROCK HILL: *“So these letters are good until I apply for a building permit?”*

Kevin Hamilton: *“No they’re still good, because without them you wouldn’t have the Conditional Use Permit. And you couldn’t apply for the building permit without the Conditional Use Permit; but there are building codes that are separate from the land use codes.”*

ROCK HILL: *“Once I apply for my building permit then I have to widen my road and . . .”*

Kevin Hamilton: *“As I understand it; that will be between you and the building official.”*

ROCK HILL: *"I appreciate the extension of the Conditional Use Permit . . . I just don't understand why the different standards . . ."*

Commissioner David Tea: *"It's two different permits, Rock, is what it is. The permit you're getting from us has nothing to do with building a house, it just gives . . . simply allows you to build the house, but we don't control how the house is built; it's two different permits. You'll have to give them different money and everything. That's the difference. Now on this six month, Kevin, is that to begin work, not to have work completed? Is there a time frame to have work completed?"*

Kevin Hamilton: *"Well it think that's what we're saying, that essentially from the time . . . and from what I've discussed with the County Attorney, that was considered the final thing that needed to be done to get the Conditional Use Permit, the road access, the substandard road, or excuse me, the a . . . Rural Road Agreement in place and that was in place from that time period on that would then be . . . you would then have . . . technically it would have been one year to commence the work and it would have to have been completed within two years."*

Commissioner David Tea: *"So with this extension, when you talk about March of 2011, is that to begin the work or to have the work completed?"*

Kevin Hamilton: *"I'm going to leave some of that discretion to you . . . I guess, you know, to me it would be pretty clear that the Conditional Use Permit was in place in that March of '09 . . . but again I do this every day. So I think that's up to you. Let me just say, for the record, the other reason I'm fairly comfortable with that is even under the new ordinance we could have said that there would be an additional six months, so there's two years with either of those if you go from March of 2009. Now the new time limit actually says substantially completed, which to me would mean that there would be footings and foundations poured and building permits issued and all of that by March and if you want to go that route, I'm OK with that also."*

Commissioner Chad Munns: *"Substantial completion just means that there's a punch list to me."*

ROCK HILL: *"Can I ask a question? I going to have two lots here and I'm planning two building lots . . . I'm planning on not building two houses by myself . . . I'm going to be selling one these lots . . . if I can't sell that in that time, what happens to that lot?"*

There was some discussion regarding this second lot and if it would still be valid under the original Conditional Use Permit. **Mr. Hamilton** thought that it would not be and the owner of the lot would then need to apply for a CUP of their own in order to build on the parcel. There would still be two building parcels. To this, Mr. Hill said that all of the documents that he had in his possession talked about two building lots. **Steve Hadfield**, County Attorney, disagreed with Mr. Hamilton's interpretation saying that if the road was built to the specifications required, then that second lot would still be a viable building lot under the original CUP acquired by Mr. Hill. The access to the two lots would have been established under the CUP given to Mr. Hill. **Mr. Hamilton** then agreed with the County Attorney saying that if one home was started with a building permit, and was meeting all of the conditions, he would probably not care if the second house was even under construction. **Commissioner Chad Munns** then thanked the County Attorney for his interpretation regarding this matter.

MOTION: A Motion was made by **Commissioner David Tea** to extend the Conditional Use Permit for Rock Hill until March of 2011 with the conditions as outlined in the [issued] CUP and any other requirements by other county agencies, i.e. building department, road department, county engineer, etc. Also new letters verifying utilities to the parcel(s) may need to be secured by the Petitioner. Motion was seconded by **Commissioner Laurie Munns** and passed unanimously.

NEW BUSINESS

SP10-004, T & M CUSTOM FARMING, LLC, PROGRESSIVE FEEDLOT TO BE LOCATED ON PARCEL 04-053-0004 IN THE TREMONTON AREA.

As the petitioner was not present at this meeting, Staff recommended that this item be Tabled.

MOTION: A Motion was made by **Commissioner David Tea** to Table action on this petition; seconded by **Commissioner Desiray Larsen** and passed unanimously.

SP10-005, BIODIESEL FACILITY, LOCATED AT APPROXIMATELY 7950 WEST 24000 NORTH IN THE PLYMOUTH AREA OF BOX ELDER COUNTY. (PARCEL 08-046-0002/8.3 ACRES)

Kevin Hamilton informed the Commissioners that Jacob Kingston was making application for a site plan in order to expand an existing biodiesel facility. The time was then turned over to **Mr. Kingston** to discuss this plan with the Commissioners.

JACOB KINGSTON: *“So what we’re doing here is . . . I was here a couple of years ago when we first got our Conditional Use Permit for an agricultural facility . . . I explained what we did, what we were proposing to do and we have since operated that facility as an agricultural facility. We’ve used it for feed manufacturing, but we wanted now to take this commercial, and so I think we’ve resubmitted some of our permits for a Conditional Use Permit to go commercial and under that plot map that was submitted/ each building is drawn out and the uses are also included. Are there any questions that you have for me at this point?”*

Kevin Hamilton reviewed the submitted information with the Commissioners, along with the location and the current use and future proposed use. The area includes approximately 8.3 acres south of Portage and west of I15. **Mr. Kingston** then took over explaining the layout of the facility, the plastic tanks currently located on the premises and the location of a larger tank. They have currently been given permission by the U.P. to bring in a rail spur. In order for this to be a fuel terminal there has to be security and a 24 hour security fence will be placed around the facility with a guard shack. There is a temporary office on the site and **Mr. Kingston** said that he had spoken with Andrea Pommier concerning the lack of having permits for everything that is being done at this site. They have now hired several people to help make sure that they are following the necessary rules and guidelines (Kevin Peebley and Kim Mangram). Other future plans include an office building and truck shop. **Mr. Kingston** said that this year they have processed approximately 6,000,000 gallons of renewable fuel; not at this site but at other locations including New Jersey, Huston, India, and at Washakie. They hope to have the corporate office at this site and hope to break ground for that next spring (2011). They will produce high value fuel from low value feed stocks. The purpose for this Conditional Use Permit is to bring this lot to a commercial grade and then they will be working with Mr. Pommier and the building officials to bring each piece up to code, ready for commercial use.

Andy Pommier, building and fire inspector for the County said that the biggest hurdle that he sees with this is that of fire protection for this site. There has been nothing submitted from an engineer willing to take the responsibility of coming up with a design for a fire suppression system. Until that time **Mr. Pommier** said that he would have a hard time signing off on project as the information that has been submitted in the past does not show sufficient water for any fire protection. **Mr. Kingston** said that there is a report covering many of these concerns and they have spent \$125,000 on a fire sprinkler system that is in operation now. That information will be included in a report to be submitted. The high grade fuel that will be produced is not gasoline, but a fuel that would be no more flammable than vegetable oil. However many of the Commissioners felt that at a high enough temperature vegetable oil can cause damaging fires. To this, **Mr. Kingston** said that he agreed and that there are several monitoring agencies for an operation such as this including, the EPA, IRS, DOT, HASMAT, and fire marshals. There is a very strict safety program in place also for this facility and site, governed by HASMAT and that will also be submitted. For the past two years this plant and site have been somewhat idle as Mr. Kingston said he has been spending time out of the

country developing other locations but now wants to place priority on this site in Box Elder County. By expanding this location it will bring in about fifty more employees for the plant with an additional twenty to thirty for the truck shop and high value employees for the R & D lab. They will be bringing people in from China and Turkey just for researching in the lab. About 85% of the biodiesel plants in the country have currently gone out of business as there have not been any tax subsidies this past year.

Commissioner Laurie Munns asked about the conditions of the roads and if they would be able to handle the increased traffic associated with the expansion of this site facility. **Kevin Hamilton** then gave his recommendation which included waiting another month for further reports to be submitted including that of the road which is currently a county gravel road. In the meantime, a Conditional Use Permit cannot be given until the items discussed are resolved and reports received from the fire marshal, road department, county engineer and possibly the health department. **Mr. Pommier** also said that he was not sure that permits had been issued for all of the structures that were currently built on the premises and that would need looking into. The petitioner was then invited to meet with Mr. Hamilton and Mr. Pommier to review what needed to be done to move forward with this expansion for the biodiesel site at Washakie.

MOTION: A Motion was made by **Commissioner Laurie Munns** to Table action on this petition until the items that were discussed were taken care of and reports received from the various county agencies giving approval for the expansion of the facility. Motion was seconded by **Commissioner David Tea** and passed unanimously.

A short break was taken from 8:00 to 8:08 p.m.

VAC10-003, RANDY MOULDING, TO VACATE COUNTY ROAD LOCATED IN T11N R6N, SECTIONS 15, 21 AND 22.

Mr. Hamilton explained that as appropriate notice had been given regarding this road vacation, the Planning Commission would need to forward their recommendation to the County Commission to vacate the four miles of Sand Hollow Road (a county road) located in Sections 11, 14, 15, 21, 22, and 28 in T11N, R6W. In the findings for vacating a county road it was found that there are no public lands that can be accessed or utilized from this road; vacating this road does not substantially affect the county transportation plan; however the county right-of-way that has been utilized will now be a dead end. The property along this road is owned by the petitioner and other family members and any other property owners have been notified of this action and are in agreement to vacate the road. A smaller portion of road connecting to this road was vacated previously.

MOTION: A Motion was made by **Commissioner Laurie Munns** to forward a recommendation to the County Commission that this section of road, approximately four miles, be vacated. Motion was seconded by **Commissioner Desiray Larsen** and passed unanimously.

WORKING REPORTS

There was nothing to report regarding ordinances that are being updated as the county planner, Tamara Wright, recently left the County to return to USU for further schooling. **Mr. Hamilton** acknowledged the work that Ms. Wright had done for the County during her time here and said that the position for a new planner has been posted and advertised and hopefully will be filled within the next month or two. **Mr. Hamilton** discussed the possibility of having one of the Planning Commissioners serve on the committee to choose a new planner. No work sessions will be held until the position [for a new planner] is filled.

PUBLIC COMMENTS – NONE

A **Motion** was made to adjourn at 8:27 p.m., unanimous.

Passed and adopted in regular session this 21st day of October 2010.

Richard Day, Chairman
Box Elder County
Planning Commission