

# BOX ELDER COUNTY PLANNING COMMISSION MINUTES JANUARY 20, 2011

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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	Chairman	<i>the following Staff was present:</i>	
Chad Munns	Vice Chairman		
Desiray Larsen	Member	Kevin Hamilton	Director
David Tea	Member	Elizabeth Ryan	Ex. Secretary
Ryan Tingey	Member	Scott Lyons	Planner
Jay Christensen	Member	Steve Hadfield	Co. Attorney
Laurie Munns	Member		

**Chairman Richard Day** called the Planning Commission meeting to order at 7:06 p.m. The Minutes of the November 18, 2010 meeting were made available to the Planning Commissioners prior to this meeting and upon review a correction was noted by **Commissioner Laurie Munns** after which time a Motion was made by **Commissioner David Tea** to accept the Minutes with the correction; seconded by **Commissioner Jay Christensen** and passed unanimously.

#### The following citizens were present:

Jay Dee Scott/Fielding	Cristy Petersen/Tremonton
Theron Eberhard/Bothwell	Charles E. "Chuck" Johnson/Salt Lake City
Bruce Beck/Salt Lake City	

## PUBLIC HEARINGS

**Chairman Richard Day** 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.

### VORTEX (CHARLES JOHNSON) SP10-011, STORAGE & ASSEMBLY OF CLASS "B" 1.3 G FIREWORKS, LOCATED ON A PART OF THE NORTHEAST QUARTER OF SECTION 28, T13N, R2W OF THE SLB&M IN THE FIELDING AREA OF BOX ELDER COUNTY.

**Scott Lyons, Planner**, reviewed this application with the Commissioners saying that this is a site plan or permitted use review, for a commercial business to place eight storage units on a ten acre parcel on property located in unincorporated Box Elder County. The Public Hearing was opened and **Mr. JD Scott** approached the Commissioners stating the following (paraphrased).

- ◆ he has been affiliated with Vortex in a bad way, did not feel that Vortex and Utah Pyrotechnics could be separated. Vortex does not currently have eight storage units.
- ◆ was of the understanding that this application also included the manufacturing of fireworks, not just storage; this is why the two could not be separated from one another.
- ◆ are currently housed on a piece of property owned by Mr. Scott and he is trying to get them removed from this property.
- ◆ said that they (Vortex) have refused to do proper soil testing on the site; refused to do an evaluation of environmental hazards; refused to provide MDS sheets; refused to shown inventory; and have refused to shown financial ties between Vortex and Utah Pyrotechnics.
- ◆ has asked for a Gramma request from ATF, a federal agency and is having a difficult time getting that request addressed.
- ◆ in order for Vortex to acquire their firearms permit they had to show that they had a lease on this property, but they do not have a lease on this place and Utah Pyrotechnics has been riding on the “coattails” of Vortex.
- ◆ in 2009 approval was given to Utah Pyrotechnics by the Planning Commission, and there was not a lease signed by the Scott’s at that time.
- ◆ according to ATF, Vortex is subleasing to Utah Pyrotechnics.
- ◆ is very irritated because of the samples showing lead at 744 parts per million in the soil; a test done by Utah Pyrotechnics and Mr. Scott. Another sample was done [by another lab] which showed high aluminum, high chlorine, high iron, high potassium; spilling is occurring at the site and there is not a fence around the site.
- ◆ should not be allowed to continue until “they clean up their act.”
- ◆ has talked with the Health Department [Mike Rhodes and Clay Shakespeare], requesting that they do a test at the site, but they have not accommodated the request.
- ◆ also has pictures documenting violating the fire code.
- ◆ has no documentation showing a valid lease from petitioner for this property.
- ◆ had requested the following from Charles Johnson:<sup>1</sup>
  - An ATF contact number so can verify what time they will be there.
  - An intermixed affidavit stating ties with Utah Pyrotechnics; financial and other
  - Obtain a signed lease
  - Proof of any insurance or bonds
  - His (JD Scott’s) insurance company is raising insurance on the Hess pasture and is requesting a Tier 3 evaluation be done.
  - Utah Pyrotechnics sent only 6 MSDS sheets and some were 20 years old and are not acceptable. Still do not have a list of chemicals stored in the containers.
- ◆ since taking position of this property in July 2010 has been able to monitor when they are accessing this property; are not meeting the AFT guidelines and can produce that document.
- ◆ Vortex/Utah Pyrotechnics had requested time to put up a fence, but it is still not done. Mr. Scott has to feed his cattle in this area during the winter months and is feeding a higher grade of mineral to his cattle because of these products and has had substantial loss. If it is affecting his cattle is probably also affecting the wildlife in the area.
- ◆ if the Planning Commission grants this new request should also require a sealant to protect the ground under these storage containers.

**Mr. JD Scott** then thanked the Commissioners for their time in listening to his comments and concerns on this matter. (See Attachments “A” pg 1-4)

**Commissioner Ryan Tingey** then asked **Mr. Scott** if this petitioner was currently on property that he owned and how long they had been there. **Mr. Scott’s** response was “*before ’03, and in ’03 I tried to get them removed off and I’ve been fighting since then, since I’ve had full ownership; it was immediate that they will bring some things into compliances. Vortex has [paid*

money] *Utah Pyrotechnics hasn't. Vortex's lease . . . they was send a notice to quit the other day and an increase in their rates because they haven't supplied us the information necessary and other things necessary.* **Mr. Scott** said that he did not have a documented lease from either Vortex or Utah Pyrotechnics; as far as he knew it had been a verbal type of lease as he has not been able to produce any written documentation. He didn't know if it was being withheld from him because of family troubles (with a brother) which he has no control over. According to information given by Mr. Scott he understood that these two businesses had an alternative site in Duchesne County that they could relocate to.

**Cristy Petersen** then approached the Commissioners with further concerns regarding this petition.

- ATF guidelines require that the containers are to be inspected [visually] every seven days because of the amount of chemicals that are being stored; they are not complying with that requirement. (Attachment "B")
- at the new location that is being proposed it will be even harder to do the 7 day inspections.
- petitioner has said that they are just storing and not manufacturing, but have equipment and chemicals that are used in manufacturing in these storage containers.
- has taken a picture of a press used in manufacturing and there are propane cylinders that are being stored and these are a clear violation of ATF guidelines. (Attachment "A" pg.5-8)
- have an e-mail from Bob Pierson which says that they have a location in Plymouth, Utah where they can manufacture but not test.<sup>ii</sup>
- has requested MSV sheets and a list of chemicals but has yet to receive a complete list; was given a web site to visit to see what "might" be used. Some of the dangers included
  - keep away from foodstuffs, beverages, and feed.
  - harmful if swallowed
  - do not allow to be released into environment without proper permits
  - toxic if inhaled or swallowed
  - if ingested seek immediate medical attention
- have not been forthcoming in what to do in case of emergency and spillage has occurred on the ground when they were drying some of the fireworks in the past, contaminating the soil.
- have been given different stories and lies and really need to look into the environmental issues in granting this permit and also the safety if they are in violation of the ATF guidelines.

**Ms. Petersen** then thanked the Commissioners for their attention and the public hearing was closed with a motion by **Commissioner David Tea** and seconded by **Commissioner Desiray Larsen**, passed unanimously.

**BOX ELDER COUNTY LAND USE MANAGEMENT & DEVELOPMENT CODE 3-2 MULTIPLE USE, AGRICULTURAL, AND RURAL RESIDENTIAL DISTRICT (TEXT AMENDMENTS).**

Staff explained that this amendment to the Land Use Code is twofold, 1) changing the wording from "mixed use" to "multiple use" in order to create consistency within Chapter 3.2 [Multiple Use]. 2) Currently in the multiple use zones a conditional use permit is required to build an accessory building, i.e. housing of animals such as a barn or stable, etc.; this change would allow for these structures in MU 160, 80 & 40; A-20; RR-5 & RR-5 Modified and RR-2 zones. This change would then allow accessory buildings as a permitted use in areas of two acres or more; less than two acres would still require a conditional use permit. No comments were given and the hearing was closed with a motion by **Commissioner Desiray Larsen**, seconded by **Commission David Tea** and passed unanimously.

## NEW BUSINESS

### CREATION OF INDUSTRIAL PROTECTION AREA (IPA) LOCATED ON PARCEL 04-054-0009 OF APPROXIMATELY 20 ACRES. (TREMONTON CITY WASTEWATER TREATMENT PLANT DISPOSAL OF BIO-SOLIDS THROUGH COMPOSTING.)

**Kevin Hamilton** informed the Commissioners that Tremonton City has requested an Industrial Protection Area for property that they have been using for several years as a composting facility on 6800 North and about one mile before the turnoff to the County Landfill. The area is currently un-zoned and law requires that the Planning Commission make a recommendation to the County Commission on this petition. The problem with this petition, according to **Mr. Hamilton**, is that the property is un-zoned and once the IPA is created the zoning in the area is frozen. Therefore, it was recommended that this Commission forward a recommendation to the County Commission to have Tremonton City apply to have the property zoned appropriately for the use with a site plan included showing that no environmental hazard is being created by this use. After some discussion on this matter the following motion was made.

**MOTION:** A Motion was made by **Commissioner Desiray Larsen** to forward a recommendation to the County Commission that the area not be granted an IPA until the property is zoned for the existing use and that Tremonton City make application to the Community Development office for that process and that a site plan also be submitted for approval to insure that this facility is in compliance with County, State and Federal laws. Motion was seconded by **Commissioner Jay Christensen** and passed unanimously.

### VORTEX (CHARLES JOHNSON) SP10-011, STORAGE & ASSEMBLY OF CLASS "B" 1.3 G FIREWORKS, LOCATED ON A PART OF THE NORTHEAST QUARTER OF SECTION 28, T13N, R2W OF THE SLB&M IN THE FIELDING AREA OF BOX ELDER COUNTY.

The **County Planner** told the Commissioners, that based on the current information received and having been reviewed by Staff and other departments, conceptual approval was being recommended at this time with the following conditions:

1. Compliance with Article 5 of the BECLUM&DC
2. Compliance with Article 2-2-100, Site Plan Review, of the BECLUM&DC
3. Compliance with requirements and recommendations of County Engineer, Building/Fire Official, Road Supervisor, and Health Department.
4. Compliance with all applicable county, state and federal laws regulating the proposed use, including all current licenses, permits, etc.

Some additional suggestions from the Building and Fire Inspector were:

1. A plot plan showing the exact placement of the containers, access routes and parking facilities, if necessary
2. An anticipated inventory of each container, indicating the classification of the contents and the quantities.
3. Detailed description of container's construction and the manufacturer.
4. A topographic map to determine the drainage on the site.
5. Detailed statement describing the operation, maintenance and inspection procedures as outlined in Chapter 33 of the International Fire Code.

6. A vegetation management plan to describe the actions that will be taken to prevent a fire from being carried toward or away from the site.

The County Road Department had more concerns than requirements regarding this site. 1) 18000 North is not snowplowed in the winter making access to the area limited, and 2) blast protection for motorists traveling along 18000 North with a barricade between the containers and the county road. 3) Also fire concerns due to the area being a Wildland Urban Interface Area and it may be necessary to have a burn free zone in place surrounding the storage containers.

**Chairman Richard Day** asked if state and/or federal regulations would cover having barricades required. [Planner] reported that from research on the Web, ATF does discuss barricades and berms being placed between roads and storage facilities and it would probably be up to the ATF inspector to determine if a barricade were necessary. The petitioner has a current ATF license, but a new ATF inspection could be required with moving to the new site. In regards to the Health Department doing an inspection on the current site, it was reported that they do not have jurisdiction over such activities/uses. County Planner had spoken with the UTAH DEQ and if there were complaints with the current area site, they would need to have a complaint filed by the landowner in order to perform an inspection and test of the soil, etc. The petitioner was then invited to approach the Commissioners to discuss this matter.

**Charles Johnson**, owner of Vortex Productions, told the Commissioners that an ATF inspector had been to the site and for a 300 foot distance they could have over 90,000 pounds, but not over 100,000 pounds. He said that this was much higher than would ever be stored at the site. There would probably only be (maybe) 12,000 to 20,000 pounds of explosive materials maximum. As far as the area around the containers, it (the vegetation) is mowed back. There have been soil samples taken at the current site from various locations and tested. The only chemicals that Vortex has in storage are those already in the fireworks; they are not mixing the chemicals themselves. **Commissioner Ryan Tingey** asked if there was a letter from ATF which addressed some of the issues being discussed and said that he would feel more comfortable with a [new] letter from the ATF stating that they had visited the site, completed an inspection and that Vortex is in compliance with all federal regulations. **Mr. Johnson** said that in November 2010 he had to renew his license with ATF and an inspection was done at the current site and a distant site inspection for the new site and has a copy of the new license; and that he had talked with the agent and would be able to get a letter for the Commission and that the agent would probably re-inspect the new site once the containers were there. **Commissioner Ryan Tingey** said that he would like to have the current letter from ATF and also have the opportunity to talk with the County Health Department regarding this issue before making any final recommendation on the petition. County Planner then reminded the Commissioners that this is for conceptual approval as there are still many concerns that need to be addressed and reviewed. **Commissioner Laurie Munns** asked about the fire agency that would be contacted in case of an emergency and if they were aware of these materials being stored in the area. Fielding Fire Department would be the ones to respond in case of a fire and the Commissioners requested that a letter be received from that fire department acknowledging this. Also a copy of the insurance policy that is being carried by Vortex was requested. **Commissioner Ryan Tingey** reminded the petitioner that the County has the right to do an inspection of the site and facilities at any time; the petitioner had no problem with that.

**Mr. JD Scott** told the Commissioners that in talking with Plymouth he was told that they did not know what was being stored in those containers. Further, they are not giving the landowners information about the activities either. **Cristy Petersen** wondered if these two companies,

Vortex and Utah Pyrotechnics were piggybacking off of each other. At this time, **Chairman Richard Day** said, it is only the current application that can be dealt with and action taken on. Another recommendation mentioned by the **County Planner** was for the petitioner to reclaim the land after removal of the containers at the proposed site; not the current site. It was also suggested that DEQ could be requested to visit the site and conduct a review and inspection.

**MOTION:** A Motion was made by **Commissioner David Tea** to grant Conceptual Approval for the Vortex (Charles Johnson) SP10-011, storage & assembly of class “B” 1.3 G fireworks, based on the Conditions that had been discussed. Motion seconded by **Commissioner Desiray Larsen** and passed unanimously. (Those Conditions and recommendation would need to be met and letters received in order for the petitioner to receive final approval for this site plan.)

**BOX ELDER COUNTY LAND USE MANAGEMENT & DEVELOPMENT CODE 3-2 MULTIPLE USE, AGRICULTURAL, AND RURAL RESIDENTIAL DISTRICT (TEXT AMENDMENTS).**

**County Planner** recommended that the Planning Commission forward their recommendation to the County Commission for approval and adoption of the amendment to Chapter 3-2 of the BECLUM&DC, changing “mixed use” to “multiple use” and allowing for an accessory building to be a permitted use in zone of two acres or more (no longer requiring a conditional use permit).

**MOTION:** A Motion was made by **Commissioner Desiray Larsen** to forward a recommendation to the County Commission to approve the Amendment to Chapter 3-2 of the BECLUM&DC; seconded by **Commissioner Laurie Munns** and passed unanimously.

**WORKING REPORTS**

**Director, Kevin Hamilton** informed the Commissioners that it would be necessary to call a special meeting on Monday, January 24, 2011 at 11:00 a.m. of the Planning Commission in order to discuss amendments to the County General Plan. A quorum would be necessary and the meeting would take place in the County Commission Chambers. The meeting was scheduled by **Chairman Richard Day**.

**PUBLIC COMMENTS – NONE**

A **Motion** was made to adjourn at 8:25 p.m., unanimous.

Passed and adopted in regular session this  17th  day of  March  2011  .

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Richard Day, Chairman  
Box Elder County  
Planning Commission

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<sup>i</sup> E-mail from Charles Johnson to Jay Dee Scott dated November 21, 2010

<sup>ii</sup> E-mail dated 7-27-2010 from Bob Pierson to Cristy Petersen