

BOX ELDER COUNTY PLANNING COMMISSION MINUTES July 21, 2011

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:

the following Staff was present:

Chad Munns	Vice Chairman/excused	Kevin Hamilton	Director
Desiray Larsen	Member	Elizabeth Ryan	Ex. Secretary
Kevin McGaha	Member	Scott Lyons	Planner
Ryan Tingey	Member	Steve Hadfield	Co. Attorney
Jay Christensen	Member		
Laurie Munns	Member		
Michael Udy	Member		

The following citizens were present:

Spencer Holmgren/Bear River City	Howard Thomas/Preston, ID
Scott Sandall/Tremonton	Mike & Cami Adams/Tremonton
Mike Christiansen/Brigham City	Curtis Marble/Corinne

With the absence of Vice-Chairman Chad Munns, a Motion was made by **Commissioner Jay Christensen** to appoint **Commissioner Desiray Larsen** as the Chairman Pro tempore; motion seconded by **Commissioner Laurie Munns** and passed unanimously. **Commissioner Desiray Larsen** then called the meeting to order at 7:14 p.m. and asked for a Motion on the Minutes of the June 16, 2011 meeting. A Motion was made by **Commissioner Laurie Munns** to accept the Minutes as written; seconded by **Commissioner Kevin McGaha** and passed unanimously.

PUBLIC HEARINGS

Acting Chairman Desiray Larsen 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 that the Commissioners would listen to the comments and concerns, but this was not a questions/answer time.

PROPOSED AMENDMENTS TO THE BOX ELDER COUNTY LAND USE MANAGEMENT & DEVELOPMENT CODE:

1. TEXT AMENDMENT TO 2-1-050; LAND USE AUTHORITY; ESTABLISHMENT OF THE PLANNING COMMISSION MEMBERS

Staff was requesting an ordinance text amendment to eliminate a County Commissioner from serving on the Planning Commission; thus opening the seventh appointment to another resident of the county. No comments were received and the hearing was closed with a Motion by **Commissioner Laurie Munns**; seconded by **Commissioner Jay Christensen**, unanimous.

2. **TEXT AMENDMENT TO 3-2-080-4.4; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE MULTIPLE USE, AGRICULTURAL, AND RURAL RESIDENTIAL DISTRICTS**

Staff was requesting an ordinance text amendment to eliminate the wording “*except as may be reduced by CUP*” from the accessory building setback requirements section. A change in the setback requirements would need to be granted by a variance. No comments were received and the hearing was closed with a Motion by Commissioner Laurie Munns; seconded by Commissioner Kevin McGaha, unanimous.

3. **TEXT AMENDMENT TO 3-4-080-2.1 & 2.2; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE COMMERCIAL AND MANUFACTURING DISTRICTS**

Staff was requesting an ordinance text amendment to eliminate the wording “*except as may be reduced by CUP*” from the accessory building setback requirements section. A change in the setback requirements would need to be granted by a variance. No comments were received and the hearing was closed with a Motion by Commissioner Jay Christensen; seconded by Commissioner Michael Udy, unanimous.

4. **TEXT AMENDMENT TO 3-7-080-5.2; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE RURAL RESIDENTIAL RR-20 AND RESIDENTIAL R-1-20 DISTRICTS**

Staff was requesting an ordinance text amendment to eliminate the wording “*except as may be reduced by CUP*” from the accessory building setback requirements section. A change in the setback requirements would need to be granted by a variance. No comments were received and the hearing was closed with a Motion by Commissioner Michael Udy; seconded by Commissioner Kevin McGaha, unanimous.

5. **TEXT AMENDMENT TO 6-1-240.C; GENERAL REUIREMENTS FOR ALL SUBDIVISIONS, STREETS AND RELATED IMPROVEMENTS**

Staff was requesting that the road standards chart in Section 6-1-240.C.6 be removed as it is out of date and the new County road standards have been adopted. It was also requested that the wording in that same Section be changed to state: “*Minimum right-of-way widths for public streets shall be determined by resolution of the County Commission for various categories of streets, but shall in no case be less than the currently adopted road standards as per Article 5 Exhibit A.*” No comments were received and the hearing was closed with a Motion by Commissioner Laurie Munns; seconded by Commissioner Kevin McGaha, unanimous.

6. **TEXT AMENDMENT TO 5-4-040; LARGE WIND ENERGY SYSTEMS**

Staff was requesting to add the following wording to Section 5-4-040.1.A: “*(Also see Conditional Use Permit section of this Code 2-2-100)*”. Staff also requested the wording be changed from “small” to “large” in sections 5-4-040.2.G, I, J, K and 5-4-040.3.D in order to create consistency within the chapter. No comments were received and the hearing was closed with a Motion by Commissioner Kevin McGaha; seconded by Commissioner Jay Christensen, unanimous.

ROAD VACATE; YOUNG RESOURCES LTD PARTNERSHIP. VAC11-001. A PORTION OF THE WEST PROMONTORY ROAD FROM T6N, R6W, SECTION 23 TO T7N, R6W, SECTION 14.

The Commissioners were informed that the petitioner had requested to have this item removed from the agenda at this time.

UNFINISHED BUSINESS

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

Kevin Hamilton, Director informed the Commissioners that several correspondences had been received since the last meeting regarding this petition. One in particular, was regarding a possible conflict of interest between **Mike and Cami Adams** (T&M) and one of the Planning Commissioners. Mr. Hamilton read from one letter the following paragraph:

“Additionally, I am requesting that you recognize a conflict of interest between the Adams and the Munns. The Munns have built a similar feed-lot operation on their property (absent any Site Plan compliance) and are competitors to the Adams. I understand that the Munns have contacted both you and the County Attorney regarding the Adams’ requested use of their property and have expressed strong opinions premature to the application being presented and reviewed. Such an early bias validates the conflict of interest being recognized and precludes the Munns from having any additional information and/or involvement from the Adams’ temporary request.”ⁱⁱ

Mr. Hamilton then suggested that this issue be addressed by the Commission and the petitioners and/or their legal counsel. **Mr. Michael Christiansen**, Attorney for T&M Custom Farming, said that his clients had had some conversation with **Commissioner Laurie Munns**, and as the Adams’ thought that this was a possible neighbor and in a similar business as T&M this caused a conflict, as there was some property that had been up for bid that would be used for production of feed for the animals.ⁱⁱ However, **Commissioner Laurie Munns** asked where they had gotten their facts, as she and her husband, Tim Munns, have lived in Hansel Valley for the past Thirty-five years and asked exactly which Munns they were referring to. It was then determined that it was Chub Munns, Slash M, in-laws to this commissioner, and **Commissioner Laurie Munns** said that she [and her husband] did not have anything to do with the Slash M operation (other than trading pasture for their cattle). **Commissioner Laurie Munns** said that she had been aware that this property was up for bid and that Slash M had not been awarded the bid, but had no idea who had been the recipient of the lease. At that point the petitioner, **Mike Adams** approached the Planning Commissioners and said that it was Chub Munns and that he (Chub) had been very vocal in hoping that this T&M operation did not move forward. **Commissioner Ryan Tingey** then said that regardless of whether or not there was a conflict of interest, if **Commissioner Laurie Munns** were to declare such, she could still be active listening to and making decisions on this petition; after which, **Commissioner Laurie Munns** said that she did not feel that this was a conflict of interest for her in acting upon this petition.

Mr. Hamilton then said that another matter that had been discussed with **Mr. Christiansen** was as to whether or not this petition actually required a site plan approval. Mr. Hamilton’s response to this was that (as an administrative decision), *“because our ordinance lists feed lots or feed yards as an agricultural industry, and our ordinance also requires industrial uses to receive site plan approval, therefore, it was my determination that this does require site plan approval. If Mr. Christiansen disagrees with that or the petitioners then there is a process that they can come before this board and you can make a determination as to whether or not you feel I got that administrative decision wrong. In the interest of saving time rather than filling out the applications, I’m more than happy to let you, if Mr. Christiansen doesn’t have an issue with that, make that determination as to whether or not I have accurately interpreted the ordinance in that regard. But that’s up to you as to whether or not you would want to make that or have them come back and go through that process . . . I think if that’s the case they would probably prefer to proceed.”*

The next item discussed was whether or not a site plan was actually required for this type of operation, and **Mr. Christiansen** felt that site plan seemed to be a far-reaching tool, and the definition of agriculture industry as defined in the Land Use Code leave room for interpretation; and there had been lengthy discussions as to what constitutes a feeding operation (such as T&M). These petitioners were requesting for 500 head of cattle with increases as allowed as the years progressed and their land was developed. **Mr. Christiansen** was asking that this petition be reviewed for a site plan and also for a temporary use permitⁱⁱⁱ to allow for the feeding of the cattle at this time. To this, *Mr. Hamilton* said that he only has authority to issue a temporary use permit for uses that are not allowed in a particular zone. As the location of the T&M operation is in an un-zoned area, it is a permitted use and he did not feel that he had the right to issue a temporary use permit. **Commissioner Kevin McGaha** then suggested that as the definition of temporary versus permanent could be crucial to this petitioner, it might be wise to have the county attorney give his interpretation on this matter.

County Attorney, Steve Hadfield said, “As I’ve looked at the issue, temporary use is defined in the Code, and temporary use is a use that is not otherwise permitted; which only makes sense. Where a use is permitted you can’t get a temporary use for it. It would be similar, and Mike and I have had this discussion, it would be similar to having a house partway built and saying I want to temporarily live there until I get it finished, even though there is no occupancy permit. That would circumvent the permitting process. That’s why a temporary use is only allowed where it is not otherwise permitted. If it’s permitted you still have to go through the process . . . so that is how I would interpret temporary use. Can’t issue a temporary use as it’s a permitted use.”

Acting Chairman Desiray Larsen then asked for clarification as to what exactly the Planning Commission was reviewing regarding this application at this time. *County Attorney Steve Hadfield* responded saying that it is actually two-fold. 1) Kevin has made a decision as to how this is to be interpreted; you would have the authority, if you disagree with him to say no, we don’t think he interpreted that correctly and we want to interpret it another way; 2) if you agree with him, then your decision would be what do we do with this application. Therefore, the question was whether or not the Planning Commissioners agreed with *Kevin Hamilton’s* interpretation. *Kevin Hamilton* then said there were two issues at hand, 1) he did not have the authority to issue a temporary use permit (being at his discretion); and 2) whether or not he was correct in interpreting that an agricultural industry is an industrial use that requires a site plan and approval. **Mr. Christiansen** then asked *Mr. Hamilton* for his definition of an agricultural use in regards to this operation as well as in other operations, such as a seasonal use. *Mr. Hamilton* said “our ordinance actually defines an agricultural industry; it also defines a feed lot. Where it defines a feed lot it defines it as an agricultural industry, and because this is a feed lot (or feed yard as defined in the Code), ***“an agricultural industry in which animals or fowl are kept and intensively fed in relatively restricted areas, as contrasted with open pasturage.”*** Therefore, it needs to receive site plan approval. *County Attorney, Steve Hadfield* mentioned that some research had been done and the last dairy feed operation in the county that had been approved had to submit an approved site plan with the application; therefore, this request was not new for the T&M application. **Mr. Christiansen** still felt that the definitions in the Code left room for other interpretations and consider the vagueness^{iv} of this definition as it did not really address seasonal use and asked that the Planning Commissioners first consider the submitted site plan application and then the request for a temporary use permit^v. At that time *Mr. Scott Lyons, County Planner*, outlined what was needed for a site plan and much was still missing. (Referring to Site Plan Review Ordinance 308^{vi}).

3. A site plan application shall include at least the following information:

- a. The name, address and telephone number of the applicant and the applicant's agent, if any;
- b. The uses for which site plan approval is requested;
- c. A set of development plans showing the information required in subsections (D) to (H) of this subsection. The information required by each subsection shall be shown on separate sheets. Plans shall be drawn at a scale no smaller than one (1) inch equals one hundred (100) feet on twenty-four (24) by thirty-six (36) inch sheets. Except for the landscaping plan, the plans shall be prepared, stamped and signed by a professional engineer licensed by the State of Utah. One (1) set of plans, reduced to fit on eleven (11) by seventeen (17) inch paper, shall be provided.

Mr. Lyons reviewed more of the requirements for an approved site plan after which time **Mr. Christiansen** asked **Mr. Howard Thomas** if any of the addressed items were included in his Nutrient Management Plan. At that point, **Mr. Howard Thomas** approached the Commissioners stating that he was with the Utah Farm Bureau and a certified Nutrient Management Planner for the State. **Mr. Thomas** then reviewed the plan that had been put together for this particular project and discussion occurred as to whether or not this was adequate for the purpose of a "site plan" as required by Box Elder County. Those involved in this petition, **Mike & Cami Adams, Michael Christiansen** (their attorney), **Howard Thomas**, and **Scott Sandall**, as well as *Kevin Hamilton, Scott Lyons, Steve Hadfield* and the six **Planning Commissioners** continued to discuss this application, what had been submitted and what still needed to be submitted. **Commissioner Kevin McGaha** said that he could understand the frustration that the petitioners were having over needing to follow the current ordinances and Code, but this meeting was not the place to try and change that as it was not within the powers of the Planning Commissioners nor the planning staff to make changes arbitrarily. *Mr. Kevin Hamilton* said that it is necessary for the County to have the approved site plan as outlined so that it can be presented to the County Engineer for review and even though the petitioners may have in mind just what it is that they are planning to do it needs to follow the Code. At the end of this lengthy discussion it was concluded that *Mr. Hamilton* had made a correct interpretation of the Code and that an approved site plan was needed; that the definition of agricultural industry applied to this application; and that a temporary use permit was not justified.

MOTION: A Motion was made by **Commissioner Kevin McGaha** to Table action on this petition as the interpretation of the *BECLUMDC* had been interpreted correctly by *Mr. Kevin Hamilton*, Administrator/Planner, that the definition of agricultural industry applies to this application and that an approved site plan needs to be worked through and submitted to the planning office [noting that the site plan that had been submitted was not adequate at this time]. (The Nutrient Management Plan [NMP], although approved by the State was still not, and did not address all of the requirements for a site plan, and *Mr. Kevin Hamilton* pointed out that the County does not require a NMP as part of its site plan.) Motion was seconded by **Commissioner Jay Christensen** and a roll call was taken from the remaining Commissioners; **Commissioners Ryan Tingey, Michael Udy, Desiray Larsen, YEA; Commissioner Laurie Munns** ABSTAINED. Motion passed.

With the Motion now made and passed, **Commissioner Ryan Tingey** said that the petitioners now knew what was needed and directed Staff to meet with T&M and their attorney to get the necessary site plan completed. It was noted that should the petitioners get the necessary paperwork and other necessary requirements completed before the next meeting (August 18, 2011) a special meeting could be called of the Planning Commission to review and act upon for approval.

Conditional of Approval:

Follow the guidelines of Site Plan Ordinance 308 and other recommendations as outlined by the County Planner, Scott Lyons.^{vii} (Also see endnote vi)

NEW BUSINESS

PROPOSED AMENDMENTS TO THE BOX ELDER COUNTY LAND USE MANAGEMENT & DEVELOPMENT CODE:

Motions were made to the following amendments with the recommendation of the Planning Commission to forward to the County Commission for public hearings and action to adopt changes.

1. TEXT AMENDMENT TO 2-1-050; LAND USE AUTHORITY; ESTABLISHMENT OF THE PLANNING COMMISSION MEMBERS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Laurie Munns; passed unanimously.

2. TEXT AMENDMENT TO 3-2-080-4.4; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE MULTIPLE USE, AGRICULTURAL, AND RURAL RESIDENTIAL DISTRICTS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Laurie Munns; passed unanimously.

3. TEXT AMENDMENT TO 3-4-080-2; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE COMMERCIAL AND MANUFACTURING DISTRICTS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Jay Christensen; passed unanimously.

4. TEXT AMENDMENT TO 3-7-080-5.2; REGULATIONS FOR USES, SETBACK REQUIREMENTS IN THE RURAL RESIDENTIAL RR-20 AND RESIDENTIAL R-1-20 DISTRICTS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Laurie Munns; passed unanimously.

5. TEXT AMENDMENT TO 6-1-240.C; GENERAL REUIREMENTS FOR ALL SUBDIVISIONS, STREETS AND RELATED IMPROVEMENTS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Michael Udy; passed unanimously.

6. TEXT AMENDMENT TO 5-4-040; LARGE WIND ENERGY SYSTEMS

MOTION: Made by Commissioner Kevin McGaha; seconded by Commissioner Michael Udy; passed unanimously.

WORKING REPORTS

Commissioner Ryan Tingey thanked the members of the Planning Commission for the service that they render to the County and directed Mr. Kevin Hamilton to look into what training was available for the new commissioners as well as those that had been serving. It was suggested that they do six month review training with a yearly workshop and training as laws/ordinances change with the State Legislature that could affect local planning commissions. **Commissioner Tingey** also said that although he would no longer be a member of the Planning Commission he would continue to attend the meetings as he is over planning and zoning for the County.

PUBLIC COMMENTS – NONE

A **Motion** was made to adjourn at 9:04 p.m., unanimous.

Minutes of the July 21, 2011 meeting Passed and Adopted in regular session this 18th day of August 2011 .

Chad Munns, Vice Chairman
Box Elder County
Planning Commission

ⁱ Exhibit 1; Letter from Mann Hadfield & Thorne, dated July 19, 2011

ⁱⁱ Exhibit 2; Letter from Autoliv, lease agreement dated April 1, 2011

ⁱⁱⁱ Exhibit 3, Letter from Mann Hadfield & Thorne, Request for the Temporary Use Permit, dated July 15, 2011

^{iv} Exhibit 6, Letter from Mann Hadfield & Thorne, Recommendation for the County Fence Ordinance dated July 13, 2011

^v Exhibit 4, Letter from Mann Hadfield & Thorne, Supplemental Exhibit for T&M , Request for the Temporary Use Permit, dated July 21, 2011

^{vi} Site Plan Review Ordinance 308

^{vii} Exhibit 5, Letter of Decision from County Planner, Scott Lyons, dated June 17, 2011