

# BOX ELDER COUNTY PLANNING COMMISSION MINUTES November 20, 2014

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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:

Chad Munns	Chairman	<i>the following Staff was present:</i>	
Desiray Larsen	Vice-Chair	Steve Hadfield	Co Attorney
Kevin McGaha	Member	Marcus Wager	Planner
Michael Udy	Member/Excused	Scott Lyons	Planner
Bonnie Robinson	Member	Commissioner Jeff Scott	
Jay Christensen	Member	Elizabeth Ryan	Exec. Sec.
Laurie Munns	Member		

### The following citizens were present:

Brent Potter/Tremonton	Larry Ellis/Bothwell
Jeff Ivers/Bothwell	Cody L Ellis/Bothwell
Jerry L Day/Bothwell	Russ Wallis/
Heidi Mitchell/Tremonton	Tammy Alexander
Micky Williams/Bothwell	Buster Marble/Bothwell
John D Sagers/Bothwell	Gregory Marble/Bothwell
Dee M Marble/Bothwell	Ronald Houd/Bothwell
Bonnie Auger/Bothwell	Lynn Knell/Tremonton
Kevin Grave/Bothwell	Arlene Oyler/Tremonton
Krys Oyler/Bothwell	Joseph Summers/Bothwell
Katherine Summers/Bothwell	Lee Summers/Bothwell
William Meighan/Bothwell	Lisa Riemer/Bothwell
Amy Meighan/Bothwell	Douglas Newman/Bothwell
Diana Sorensen/Bothwell	Fred Sorensen/Bothwell
Douglas Call/Bothwell	James Bingham/Bothwell
Kurt Parke/Bothwell	Linda Parke/Bothwell
Brad Parke/Bothwell	LaWana Robert/Bothwell
Carl Roberts/Bothwell	Marilyn Feldman/Bothwell
Gary Feldman/Bothwell	Bettie Marble/Bothwell
Gregory Marble/Bothwell	Victoria Tennis/Bothwell
Mike Tennis/Bothwell	Bob & Roz Lord/Bothwell
John McGuire/Bothwell	Calvin & Avon Bingham/Bothwell

The Minutes of the October 23, 2014 were made available to the Planning Commissioners prior to this meeting and upon review a **Motion** was made by **Commissioner Desiray Larsen** to accept the Minutes as written; seconded by **Commissioner Bonnie Robinson** and passed unanimously.

## **PUBLIC HEARINGS**

**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 that the Commissioners would listen to the comments and concerns, but this was not a time for questions/answers.

### **RE-ZONE, Z14-007, LEGRAND JOHNSON CONSTRUCTION CO.; TO RE-ZONE PARCEL 06-175-0011 OF APPROXIMATELY 30.13 ACRES FROM THE CURRENT UN-ZONE TO MG-EX FOR FUTURE MINING AND GRAVEL EXCAVATION. (FILED 10-1-2014)**

This petition was to re-zone property for future mining and gravel excavation. This property has been used in the past for such purposes, but the time lapse has been more than one year and needs to be re-zoned for that use. The county has an existing gravel pit located in this same location and is used for maintaining and construction of roads within Box Elder County. No comments were received and the hearing was closed with a Motion by **Commissioner Bonnie Robinson**, seconded by **Commissioner Kevin McGaha** and was unanimous.

### **CANCELLED -- RE-ZONE, Z14-008, WILLARD CITY CORP.**

### **TEMPORARY USE PERMIT, TUP14-001; DESERT TECH TRAINING FACILITY, LOCATED IN THE BROAD CANYON OF PLYMOUTH FOR A FIREARMS TRAINING FACILITY. (FILED 10-21-2014)**

This petitioner was requesting a temporary use permit for a firearms training facility at this site. They currently have a TUP which will expire in February 2015. Because Desert Tech is currently in litigation regarding access to this site, the County cannot issue a permanent permit until that issue is resolved. This is located in an un-zoned area of the county where Desert Tech conducts training, host training, and events and to use as a controlled firearms training facility. No comments were received and the hearing was closed with a Motion by **Commissioner Desiray Larsen**, seconded by **Commissioner Kevin McGaha** and was unanimous.

### **ORDINANCE TEXT AMENDMENT; SECTION 4-5 SEXUALLY ORIENTED BUSINESS, MODIFICATIONS TO ORDINANCE 224.**

The Box Elder County Planning Commission has requested that this Ordinance 224 be updated with possible sites where such businesses might be located within the county. Planner, Marcus Wager reviewed the proposed changes in the ordinance in order that it may be forwarded to the County Commission for their approval. The main change to the ordinance would be in adding a zone where this type of business could be located. That zone would be an industrial zone, but would also require an overlay zone for the business. The industrial zone where P & G is located is the only zone largest enough to allow this business/overlay. Many in the audience asked why such an ordinance was even necessary. Staff and the County Attorney, Steve Hadfield explained that state law/code requires that each county/municipality have in its code where these

businesses may be located. Without such restrictions or requirements they would be able to locate pretty much anywhere. Most municipalities restrict them to industrial areas with other restrictions, such as the distance from a residential area or school, etc. Other than a few questions regarding what exactly this type of business is, there were no comments received. A Motion was made by **Commissioner Laurie Munns** to close the public hearing, seconded by **Commissioner Jay Christensen** and passed unanimously.

**ORDINANCE TEXT AMENDMENT; BECLUM&DC ARTICLE 1; 1-3-040, DEFINITIONS FOR HOUSEHOLD PETS AND REGULATIONS REGARDING THE NUMBER OF ANIMALS ALLOWED.**

Staff explained that the Box Elder County Planning Commission has requested that a text amendment be made in order to update the BECLUM&DC in regards to the definition of the number and types of animals that may be kept on smaller parcel within the county. The current language in the Code is quite confusing and it was decided that a table would be easier to use and refer to. This is in reference to *“animals and fowl for recreation and family food production,”* not animals that would be considered as an agricultural use. *Victoria Tennis* asked if there was a copy that could be circulated as the PowerPoint was difficult to read. **County Planner, Scott Lyons** again stated that this is in relation to animals and fowl for family recreation and food production and does not fall under the definition of agriculture. This is more to address issues on smaller parcel, i.e. one half to one acre parcels. **County Planner, Marcus Wager** then reviewed the proposed changes stating again that this was for *“the keeping of animals on a lot or parcel for exclusive personal, non-commercial, use by persons residing thereon.”* The table outlines those types of animals and the numbers proposed.

<b>TYPE</b>	<b>MAXIMUM PER ½ ACRE – ANY COMBINATION</b>
Cows, Horses, Donkeys, and other large animals	2
Goats, Sheep, Llamas, Alpacas and other small animals	2
Pigs, Hogs	2
Chickens, Ducks, Pigeons	10
Rabbits, Hares	20
Apiaries, Aviaries	5 Hives

For Household pets:

- **Household Pets:** Animals or fowl ordinarily permitted in the house and kept for company or pleasure, which includes but is not limited to dogs, cats, rabbits, fowl and any other living animal considered to be a household pet; not to exceed a total of four (4) dogs or cats, four (4) rabbits, and six (6) fowl; the total number of pets shall not exceed ten (10). Household pets do not include any animals which are likely to inflict harm or endanger the health, safety, or welfare of any person or property. This definition shall not include a sufficient number of dogs or cats as to constitute a kennel as defined in this Code.
- **Kennel:** An establishment having five (5) or more dogs or cats for the purpose of boarding, keeping, breeding, buying, grooming, letting for hire, training for profit, or selling.

*Victoria Tennis* than asked if this was for a half acre would you just multiply these numbers out for larger acreage. **Chairman Chad Munns** again stated that this is more for the smaller lots (i.e. South Willard) in order to cut down on the number of animals that may become a nuisance in such areas. *Ms. Tennis* then said that she lives on a five acre lot and raises lambs and can have more than the allowed number according to this chart. Again, Staff explained that this is for referencing household pets and/or non-production purposes...**"for exclusive personal, non-commercial use by persons residing thereon."** If the lambs are being raised/produced and then taken to auction to be sold they would fall under agricultural definitions.

*John McQuire*, also a resident of Bothwell living on 5 acres raises goats and said that according to this definition he would be non compliant. He normally has 15 to 20 that are for his family which they are milking and does sell for profit. He could easily keep 20 goats in a 20X20 pen. For a large animal such as a cow this would be appropriate. He felt that the number for goats/sheep was not appropriate. He recommended that the size of the parcel be set at 2 acres and any parcel larger than 2 acres would be exempt. *Kevin Grove* also from the Bothwell area agreed with *Mr. McQuire's* statement, as did *Mike Tennis*.

*William Meighan* asked a question regarding the second portion of the animal ordinance concerning household pets, especially in the number of cats and dogs as there are often strays that are dropped off in the area of Bothwell. Would those animals be considered as the household pets? He that the wording was not easy to understand as it is currently; any dog or cat could possibly be in the house at any given time.

*Victoria Tennis* suggested that the wording regarding the size of the lots be clearer to understand. Those with more than two acres, such as in Bothwell should not be limited to the number of animals they are allowed to keep. Limiting the number of animals in subdivisions like in South Willard would make sense, but not for those with five acre lots in the Bothwell area.

With no other comments being received, a Motion was made by **Commissioner Laurie Munns** to close the public hearing Article 1, 1-3-040 regarding the number/types of animals and household pets allowed; motion seconded by **Commissioner Bonnie Robinson** and passed unanimously.

## **ZONING MAP AND TEXT AMENDMENT REGARDING RR-5 AND RR-5\* (MODIFIED) ZONES IN THE BOTHWELL AREA OF BOX ELDER COUNTY.**

**Chairman Chad Munns** opened the public hearing and asked for background information from **County Planner, Scott Lyons**. **Mr. Lyons** explained that this is a zoning map and a text amendment; there are currently two residential five acre zones in the county and this was proposed to consolidate those two zones and simplify the code, not only for the planning commissioners and staff, but also for those residing in these five acre zones. Bothwell is the only area in the entire county that has the **RR-5 Modified** zone in the lower part of the Bothwell area. The upper portion is zoned as RR-5. There are a few differences between the two zones and he has had several calls regarding what those differences are. The RR-5 zone in the upper part of Bothwell was adopted in 2004/05. There are a few other areas in the county that are also zoned as RR-5 (outside of Mantua, Harper Ward, and north of the Deweyville area.). The differences in the two zones was then reviewed noting that the change to the RR-5 zone would

require a Conditional Use Permit for some uses that are currently permitted (without a CUP) in the **RR-5 Modified** zone. A CUP is required because the proposed use may have an impact on the community and by applying for a CUP the planning commission can review the application and place any restriction on it if necessary. Staff then read through the current two zones and what is allowed or not allowed in each.

- ◆ *“Temporary buildings for uses incidental to construction work, including living quarters for guard or night watchman, which buildings must be removed upon completion or abandonment of the construction work. Mobile homes for temporary living quarters and such other temporary uses found appropriate to the Planning Commission and approved by the County Commission.”* These uses are currently permitted (or allowed) under the **RR-5 Modified** zone and with the change would require a CUP. This allows the county to have some authority in making sure that these temporary buildings/structures or mobile homes would be removed from the site at the conclusion of the work.
- ◆ *“Farms devoted to raising and marketing chickens, turkeys, or other fowl or poultry, fish or frogs, mink, rabbits, including wholesale and retail sale.”* With the proposed change this would also need a CUP. Staff further explained that this restriction would be more toward larger scale wholesale or retail operations. Commercial operations would need not only CUP approval but also approval for a site plan for any large scale production businesses. Staff also said that agricultural industry is also a use in this zone and would change to a CUP also; however, what most of the residents of Bothwell are doing with any livestock is considered agricultural, but again this use is more for the large scale operations, i.e. feed lots where there is a larger number of animals, such as 1000+ head of cattle, a dairy farm, a use like the pig operation that had been looking at locating in the Tremonton area in the recent past, or a large chicken processing plant. These would be considered an agricultural industry and are currently permitted (or allowed) and in the new zone classification would need a CUP. A CUP would help to mitigate any adverse affects on the community if such a use were to locate in the lower Bothwell area. If a CUP is required a public hearing would be held and the residents could attend and voice any concerns that they may have regarding these larger scale uses.

A question had been raised by someone in the audience regarding the fact that the residences of Bothwell can now have animals that are considered as an agricultural use and not have to come before the planning commission for a site plan review. Staff said that was correct and under the new zone a site plan review would be necessary, but that is more for knowing where the operation would be and to help with any storm-water runoff that may occur, or any other concerns; however, the planning commission would not be able to deny the use if those conditions were not necessarily met. The conditional use permit can act as a protection for the community against some uses.

- ◆ *“Forestry except forest industry”* is currently not allowed (in the **RR-5 Modified**), i.e. a lumber yard.

- ◆ **“Two-Family Dwelling”** is currently not allowed in the **RR-5 Modified** zone but would be a permitted use in the RR-5 zone. This is basically a duplex type dwelling.

A question was then asked regarding the two-family dwelling and if it would be up to the planning commission to allow such a use. The answer was that if a use is permitted it would be allowed without having to come before the planning commission; however a conditional use permit would need to come before the planning commission and a public hearing would be held. Another question was brought up regarding the language of “permitted”, “allowed”, and “not allowed”. There was some confusion regarding these three terms and clarification was asked for. [The person asking the question felt that if a use was “permitted” that meant it needed a permit, and staff explained that “permitted” meant that the use was allowed without having to obtain a permit from the planning commission/planning office. A permit would only be needed if it were a commercial use.] Further, staff explained that if it were a commercial use a site plan would be needed for the planning commission to review, if not a commercial use no site plan was required. **Commissioner Laurie Munns** then mentioned that definitions are included in the Code that would help to explain these questions regarding permitted, allowed and not allowed. However, this person said that he had tried looking up the code earlier in the day and it was not available for viewing. **County Planner, Marcus Wager** (had spoken with this individual earlier in the day on the phone) said that he had talked with the I.T. department and there was no apparent reason why the code should not have been available for anyone to view.

- ◆ **“Private park or recreational grounds or private recreational camp or resort, including accessory or supporting dwelling complexes and commercial service uses which are owned or managed by the recreational facility to which it is accessory.”** Staff said that this would be something like an R.V. park or scout camp, or girl’s camp. These are currently not allowed and under the new zone would require a CUP.

Before moving on to the next item of uses someone asked for more explanation regarding two-family dwellings. Staff gave the example that if a person had five acres and there was no home/dwelling on it currently, the owner would only need to come in and apply for a building permit to build a duplex. In the **RR-5 Modified** zone this use is currently not allowed, but under the new zone it would be. **Chairman Chad Munns** reminded the audience that this was a public hearing and the comments that were voiced during that time would be taken into consideration when the planning commissioners discussed the item later in the meeting.

- ◆ **“Public stable, riding academy or riding ring, horse show barn or other equestrian facilities under single management.”** Currently not allowed in the **RR-5 Modified** zone but would be allowed with CUP in the RR-5 zone.
- ◆ **“Correctional institutions, public or quasi-public facilities, essential service facilities, airports, private schools (with a curriculum corresponding to public schools), churches, dams and reservoirs, radio and television transmitting stations or towers (including repeating towers), cemeteries, roads (public and**

private), recreation trails, railroad and utility lines rights-of-way, and substations, etc. approved by the County Commission.” Commissioner Jay Christensen then suggested that the reason behind this change being proposed started with an application for a cell tower in the area and the use was not allowed under the current **RR-5 Modified** zone rules. Staff explained that in July an application was received for locating a cell tower in the west hillside of Bothwell and as it was not an allowed use the applicant suggested that a change be made to the text of the Code that would allow cell towers, radio and television transmitting stations and that change was approved by the Planning Commission and forwarded on to the County Commission. (Another option for this applicant was for a change in the zone of their property from the **RR-5 Modified** to the RR-5 where cell towers would be allowed, but changing the text was preferred). This was the precursor to starting this change.

*Roselin Gould* (? Did not sign-in on attendance sheet) asked about the cell tower and where it was being located and if it had already been approved and in place? The location was close to the Dave Hill property, according to Commissioner Jay Christensen where service is often lost by cell users. Chairman Chad Munns asked if Staff was finished with the background information and if so the public hearing would be opened for comments.

*Kris Oyler* asked for clarification as to the location of the **RR-5 Modified** and RR-5 zones.

*Tamera Newman* told the commissioners that she was on the committee back in 2004/5 when the upper portion of Bothwell was zoned and never once heard the classification of **RR-5 Modified**. At that time thought that both of the areas were having the same zones. She asked why the vocabulary had been changed and said that this would have been taken care of if they had been aware of the differences. Furthermore, there was nothing separated in the meetings that she attended during that time. When Bothwell was considered that committee thought it was for the entire area.

Chairman Chad Munns then asked for some of the background history research that had been done by the planning staff regarding the two zones and when they were adopted. In 1978 the Bothwell pocket was zoned as the **RR-5 Modified** and then in 2004/5 a committee was formed to zone the remaining Bothwell area. This is what had been discovered by Planner, Marcus Wager during his research.

*John Sager* said that 36 years ago the community of Bothwell went through kind of travail of trying to decide if they wanted five acres. There were hurt feelings, finally it was decided by the residents that they would live with the five acre zone. At that time, there was nothing regarding having to apply for a conditional use permit and one was not needed for the past 36 years. He felt that this was an extreme intrusion on the people of Bothwell. He also mentioned that the notice he received in the mail said this was a “minor” change in the area, but felt that this was not minor, but a major change and was not needed. There is no need to combine the two zones together. Could not see why Bothwell would need this after 36 years.

*Jeff Ivers*, a resident of Bothwell, asked for a “Reader’s Digest” version of the two zones; RR-5 and **RR-5 Modified**. He had also noticed that on the agenda for the July (2014) that it was Dakota Hawks that had petitioned for the cell tower and if he was at this meeting perhaps he would be able to address this group. However, Mr. Hawks was not in attendance.

*Fred Sorensen* said that when the notice was sent out it said that it was a minor change, but these were major changes. He thought that perhaps something was trying to be “slipped under the rug” in trying to get this passed and not having anyone at the meeting. He went around Bothwell to see if anyone knew what these changes were, but no one really knew for sure. Some thought that it had to do with a tower being built, but that wasn’t the change...the change is for everything. If they were changing it should be from the RR-5 to the **RR-5 Modified** for the entire area; that would be a minor change. This would have less people being upset at the issue. Or if someone wanted to put houses in, did that mean that two families could build on five acres or would it be ten acres? If you are going to have one family it has to be on five acres, but now they were being told that two families can now build on five acres. That would mean two and a half acres per house.

*Kim Detwiler* said that basically what this was was because someone wanted a road and because they didn’t want to spend a little more time on the code then let’s just go in and change everything. Isn’t there anyway that they could be allowed to have a road and then be done with the issue and not adjust anything else. **Chairman Chad Munns** said that according to the current code a road could not be put in this area of Bothwell (**RR-5 Modified**) and could not for the past 36 years.

*Amy Meighan* asked about who was putting in the cell tower and what the money behind it was. How much was being offered to be able to do this, to change this permit...just to keep it all above board.

*Buster Marble* wanted to make sure that people understood that cell service was not lost at the Chanshare site and they were not involved with this proposed change. There are a few areas where service is lost, but not at Chanshare Farms.

*James Bingham* has been the president of the Bothwell Water and Cemetery Board for about the past 14-15 years and said that in the past the planning commission had consulted with them regarding any changes that came before them. He mentioned the small yellow area in the Bothwell RR-5 zone on the map that was not included in this change. He was a member of the Bothwell community when the lower portion was zoned and at that time there was no hope for utility or other services in the upper part of the area. He was also a member of the committee that decided on the RR-5 designation in the upper part. It was true that there were two processes involved, but essentially they came to the same conclusion, that the community wanted to remain basically a rural community. A landowner would be able to shatter the nature on the area by utilizing their property in a way that had not previously existed. There were two things that he had noticed during the public hearing at this meeting. First, there was an exemption granted for one landowner, for whom the community had no knowledge; they were never informed. As a community, they had no knowledge that a petition had been made and a request granted to give someone an exemption from the **RR-5 Modified** zone. He felt that this was wrong, because

other landowners are constrained by the zone, but someone got something done without the knowledge or consent of the other residents of Bothwell. The other point was regarding the request for the cell phone tower and under the **RR-5 Modified** zone it was not a permitted use, but it was granted, and why. He wondered if he was misunderstanding something. At this point **Commissioner Laurie Munns** said that the commissioners could not really answer any questions, but were more to listen to the concerns of the citizens and take comments into consideration during the new business portion of the meeting. **Mr. Bingham** then asked if the cell tower was granted in the **RR-5 Modified** zone. **County Planner, Scott Lyons** stated that it was in the **RR-5 Modified** zone but it was not granted illegally as the text of the code was changed to allow it as a conditional use with a permit. Then **Mr. Bingham** said that the text was changed without the knowledge of the residents of Bothwell. **Chairman Chad Munns** then said that the public was informed and it is the right of the government to hold meetings with public hearings and that they are published in two different newspapers in the county ten days prior to the meeting/hearing. **Chairman Chad Munns** further said that those in the audience sat through four separate public hearings before this one dealing with the Bothwell re-zone, and they would not have known about any of them if they were not at this meeting. The other four issues being considered at this meeting were talked about in earlier meetings with notice of public hearings and there was no one at those meetings voicing any opposition to the SOB ordinance, the Animal ordinance, etc. To that **Mr. Bingham** agreed. It was because of these other issues and the cell tower application that this re-zone in Bothwell was being looked at. **Mr. Bingham** then said that it suggested to him that there was no opposition to the cell tower and the commissioners agreed. He also said, again, that under the **RR-5 Modified** zone the cell tower was not allowed, but somehow the committee found a way to let it happen. Again, **Chairman Chad Munns** said that a petition was presented for a cell tower and the meeting and public hearing was noticed and there was no opposition to the request so it was granted with a change to the text, allowing the use with a conditional use permit and not by a change to the zone as **Mr. Bingham** had suggested. **Mr. Bingham** then said that he did not think that there was any opposition to the first two usages (and changes) that had been discussed, but did wonder if the State Code was also being followed in regards to the raising of turkeys, chickens, etc. **Planner, Scott Lyons** said that any time a conditional use permit is requested, both the county code and the state code are followed as part of the CUP review and the applicant would be required to adhere to those requirements/conditions. **Mr. Bingham** said that he thought he had the permission of the Bothwell Water Board and the Cemetery Board to speak about the opposition to the two-family dwellings in the area. He said that he was against having to apply for a CUP when a landowner wanted to use their property in a way that is now allowed, but with the new RR-5 zone would require a conditional use permit. He did not feel that the other residents of Bothwell would want to continually address conditional use permits by landowners for various uses. "If a zone is not fairly universal, a zone is no good at all," because there are so many caveats that it become inoperative. He was concerned that the proposed change was giving too much latitude to the county authorities because in the past there have been some changes and the county may suggest that they were advertised, but they were not advertised in a way that made the community aware of upcoming changes.

**Arlene Oylar** said that when the notice came out about the sexually oriented business in the Leader she did go in and object to it and was told she was the only one that did so. She was still

objecting saying that there is enough on television/movies and it is not needed in the neighborhood also.

*Douglas Call* suggested that rather than change the **RR-5 Modified** to the RR-5, that the RR-5 zone be changed to the **RR-5 Modified**. This is the way it should be and when the RR-5 zoning was put in place they all thought they were getting the **RR-5 Modified** zone that was in the lower Bothwell and wondered how it ended up this way.

*Gary Feldman* said that he wanted clarification on the authority of the commission to change things as he reads the paper fairly closely and could not recall seeing anything regarding the notice about the text amendment for the cell tower (or having to issue a conditional use permit) and if anyone in Bothwell would have seen it they would have spread the word rather quickly. Questioned how anything could be changed without a big public hearing.

*Brad Park* has property in the modified zone and would like to see it stay as is.

*Dee Marble* wanted to thank the commissioners for the work that they do, appreciating it and had a different opinion. He liked the revision as there could be a benefit with having a conditional use permit that would allow the public to have input on some of the different uses. The change would give the landowner some latitude in purposing a use that not everyone else would want it to be and the community would be able to have some input on the use. He thanked the commissioners again for their work.

*Calvin Bingham* asked for clarification on the temporary buildings that are currently allowed in the **RR-5 Modified** zone and currently the planning commission has no authority to come in and require the landowner to remove that building once the use is no longer needed. He did like the **RR-5 Modified** but felt that a use such as this would be good as it would give the county some authority in requiring that it be removed. **Planner, Scott Lyons** said that he would probably have to look through the Code to see if there is another area that may cover this issue, but from just going off the language in the current **RR-5 Modified** zone a landowner could bring in a mobile home and place it on the property while building a house and other than having the building official say that they would not issue a certificate of occupancy for the new home, there was not much that could be done to require removal of the mobile home. Under a conditional use permit that could be a requirement/condition. *Calvin Bingham* said that he could see the benefit of both zones, but was against the two-family dwellings; there is a benefit to the conditional use permit.

*John Sager* said that this appeared to be an all or nothing change, but was told that it is not. **Chairman Chad Munns** said that the **RR-5 Modified** could become entirely different than it currently is, but as it is currently proposed it is all or nothing; however when the planning commission discusses the issue during the business portion of the meeting all will be taken into consideration. Parts of the RR-5 and the **RR-5 Modified** and be “tweaked” separately or together. *Mr. Sager* also said that he had received the letter stating it was a “minor” change and talked with a county commissioner as did another resident of the area and felt that some of the responses they received were not very professional and were just being glossed over. He admitted that he doesn’t read the paper and the little notices and if he hadn’t received this notice

he would not have know about this proposed change. He also said that it was important enough for letters to be sent out regarding this change, but the cell tower and the Point Lookout change were not important enough for the community to be notified. If the residents don't read the newspaper then the commission can do about anything that they want. **County Attorney Steve Hadfield** stated that there are different requirements that are required by the state and those guidelines are followed. In this case, because it (the change) would affect everyone in the area to be zoned, notices are sent out to the residents. **Planner Scott Lyons** said that if a landowner is changing the zoning on his property then he is the only one affected; when the zone is changing in a community or larger area like this, then all the landowners are affected and are notified. If referring to the cell tower change in July (2014), the text was being changed by the applicant. That was noticed on the county website, the state website, two newspapers, and posted in three public locations; basically what is required by the state. There is not money in the department's budget to send out notification to all residents in the area for any change or proposed text change within a zone. The state requires on a map change, or zone change, that all residents within the area be notified by letter, for a text change it is required as was stated earlier, the county website, state website, two newspapers, etc.

**Fred Sorensen** asked about which two newspapers the notices are place in and was told that they are put in the two local papers for the area, *The Box Elder News Journal* and the *Tremonton Leader*. **Mr. Sorensen** said that these newspapers are published once a week, a reader would only see the notice [perhaps] twice; hardly anyone in Bothwell takes the *News Journal* and if you don't take the *Leader* then you are not going to see any notices. Staff then explained that the notice for the public hearings are noticed in the two local papers at least ten days prior to the meeting and the full agenda for the meeting is published the Wednesday prior to the meeting to be held on that Thursday. **Mr. Sorensen** then said that basically they are only getting one paper (*the Leader*) that the notice would be in and probably many take the *Ogden Standard*. In conclusion he felt that if the notices are going to be placed in one newspaper then it should be in one that everyone reads on a daily basis, i.e. *The Ogden Standard*.

**Victoria Tennis** said that she appreciated the work done by the planning commission and that this is a challenging item; also appreciated the letter that they all received. She said that she felt the biggest objection was concerning the two-family dwellings. Could also see the advantages to both and that requiring a CUP would allow neighbors to have input on different uses in the area. Perhaps the commission could take the best of both, but eliminate the two-family dwellings as this would cause the most conflict. She also noted that it is the responsibility of the public to stay informed.

**Mike Tennis** said that he would not want to be seated on the side of the table as the planning commissioners. Agreed with others about being against the two-family dwellings, but felt that there is a lot of unnecessary interaction with government officials. He moved to Bothwell because it was a very rural area and liked that concept and being left alone up there and didn't feel like they needed to have someone breathing down their necks. When he purchased his land he had to get a building permit to build his home and understood all of that. However things have been the way that they are in Bothwell for forty years and everything has been fine.

**Buster Marble** asked how or who they would need to talk with in order to get the law changed in regards to how notices are sent out as he felt it (notice) was after the fact instead of before. Who would they need to talk to? **Chairman Chad Munns** said that would be the state government and that would probably result in an increase in taxes; that is why the notices are placed in the two local newspapers within the county. The planning commission usually has at least one public hearing every month and the county commission has two meetings per month. If individual notices had to be sent to everyone the cost to do so would be high. Just with one issue, i.e. the Sexually Oriented Businesses, a notice would have to be sent to everyone within the county for each time there was a public hearing being held. There are public hearings held at both the planning commission level and at the county commission level and notices would need to be sent out for each one. It is not necessarily a bad idea, just a difficult one. The best option is to check the county website for information, whether weekly, monthly or daily because it will be posted there.

**Chairman Chad Munns** also said that the public's attendance was appreciated by the commissioners as many times there is no one at the public hearings to voice any opposition or support on an issue. **County Commissioner Jeff Scott** concurred with this comment saying that they did appreciate the comments made by the public and they would be taken into consideration by the planning commission and they in turn would make a recommendation to the county commission. Nothing was being "set in stone" at this meeting tonight.

**Micky Williams** asked about the line dividing the two zones and it was clarified that it is 12800 North (section line) with the area below that zoned as **RR-5 Modified** and above as RR-5. **Kris Oyler** was also confused by the map and what was being affected with the change.

**Lynn ???** said that she has a trailer in her back yard currently where her father-in-law lives, but when it is no longer needed it will be removed. As for the duplexes, she was against those and also against any correctional institutions being a neighbor.

**Roselin Gould ???** said that they received notices about this change and it was in the newspaper, but they were never informed about the tower. Is that going to happen again with the correctional institution? If we don't read the newspaper then we will have a correctional institution, because that is in the same area as the cell tower. Somehow the cell tower was allowed by the planning commission to proceed without anyone knowing about it. Do they have to watch for notices in the paper like a hawk in order to know what is going on in the area where the tower was permitted?

**Katherine Summers** said that she was on the 2004 committee and they thought that the map was all inclusive. Her biggest concern was that they have lived with the **RR-5 Modified** (for 53 years) and it has worked really well. There has to be a better way of informing the public; could be on Facebook or with e-mail. Didn't think this was a minor change, more of a lie as this would have a big impact on everyone there. Don't have to use stamps, there a less expensive ways to send out information.

**Larry Ellis** said that the residents of Bothwell like it the way it is. "If it ain't broke, don't fix it."

**County Planning Scott Lyons** said that a lot could be learned from tonight's meeting, both the public and the staff and as a planner this was something that he looks forward to as planning is more than what is taught in school. Half of planning is hearing what the community wants. Before something like this happens the planning commissioners meet with staff and the item is discussed thoroughly. It is not just something that is picked out of the air. That is half of it and the other half is holding the public hearings and taking the public input and questions and then the planning commission takes those comments and concerns into consideration when making their decision. Staff will look into setting up some sort of an RRS feed where citizens can enter their e-mail address and will receive an agenda each month. Didn't know what the cost associated with that would be. If that is not cost effective then they could look into a Box Elder County Planning Facebook page that could be friended. The residents of Bothwell live in a community that is very unique; it is rural, growing, gorgeous, and there are things that the people want to protect and things that they love about it. As the Bothwell area is facing some challenges for growth it is important that the residents stay informed and involved. He encouraged the residents to check the newspapers, the county web site as all requirements were being met in the noticing processes that are currently required. Everyone can learn from this experience.

**Douglas Call** said that he felt the RR-5 zoning was taking away more of the property owner's rights by having to ask the county for permission to do what they want with their property. He said that he has several neighbors that are beekeepers and that they would be grandfathered in. How would that be proven? He didn't think that it was documented who was presently keeping bees. If someone new moves into the area and wants to see a permit how would it be proven that this use was grandfathered.

There was also a comment made about the restriction regarding "churches" in the **RR-5 Modified** zone as there is a church in the area presently. According to the allowed uses, a church is not permitted in that zone.

Hearing no further comments a Motion was made by **Commissioner Laurie Munns** to close the hearing; seconded by **Commissioner Desiray Larsen** and passed unanimously.

A proposal was made by **Commissioner Desiray Larsen** to take a 5 minute break at this time before moving forward with the New Business. 8:46 p.m.

**Chairman Chad Munns** called the meeting back to order at 8:54 p.m.

## **UNFINISHED BUSINESS--NONE**

Before proceeding with the meeting, **Chairman Chad Munns** again thanked the citizens for attending this meeting and said that he had been keeping notes during the public hearing regarding the Bothwell issue. Much has been learned from this meeting, but perhaps not everything will be finalized tonight. However, what this zoning is about is about land owner rights and that was what was trying to be accomplished. There was a comment made earlier about the commission trying to get something pushed under the rug and that was not the case; the

purpose was to try and made the Code easier and from the input tonight it was found that the Bothwell residents did not like or want change. Motion was then made by **Commissioner Laurie Munns** to start with the Bothwell re-zone items and move through the new business items in reverse order. Motion was seconded by **Commissioner Desiray Larsen** and passed unanimously.

## **NEW BUSINESS**

### **ZONING MAP AND TEXT AMENDMENT REGARDING RR-5 AND RR-5\* (MODIFIED) ZONES IN THE BOTHWELL AREA OF BOX ELDER COUNTY.**

**County Planner, Scott Lyons**, said that this re-zone had been discussed at other meetings and in work sessions and now they had received input from the citizens in the area, and now a decision could be made based on that. The commission has the option of acting on the issue tonight, or if they feel that further discussion needs to occur they could table it. **Chairman Chad Munns** said that comments had been given regarding the 36 years living with the zone as it currently is; however some things change and others do not. He had noted about twenty different comments and felt the perhaps some time needed to be taken in order to consider those comments. Perhaps look at the RR-5 zone and consider combining the two together into one zone; however, then all of the residents in the RR-5 and RR-5 Modified zones would have to be noticed. Comments from the other commissioners were then encouraged.

**Commissioner Jay Christensen** said that as far as him living in the Bothwell area and being a part of this process he could see that this was coming to the residents as a tidal wave and something that they did not want. The commission was trying to simplify things in the Code, but not at the cost of anyone's rights or what the community currently has and enjoys. He also said that the input that had been given would be considered and the commission would try to follow and adhere to the advice and counsel as much as possible. The biggest complaint was that the residents did not feel they had been informed about what was going on and that was not the intent at all. The residents will be informed. The communication needs to be improved and as for his personal feelings, he said that he would like to see it stay as it currently is as much as possible. He has had a riding arena over the past years for his daughter's use and under the current guidelines he has been in violation. The two-family dwelling home is a big issue and always will be in Bothwell. If that needs to be eliminated then it will be. If it is possible to make both zones/areas one, that would probably be best so that one area is not living with guidelines or restrictions that the other area is not. He wants the zone to stay as the current 5 acres, with perhaps a few changes in what is restricted in the zone.

**Commissioner Bonnie Robinson** talked about the noticing to the residents with e-mails, etc., but then they also did not want a cell tower in the area that could facilitate with the noticing. There are no right-of-ways allowed for utilities, but what if fiber optics are needed or wanted there; those are not allowed. She also mentioned that during the break she had heard a comment regarding Bothwell incorporating and that too might be a possibility. That way the citizens would have more control over what happens in their community with their own elected officials. Also noted that several comments were made regarding the plan that was adopted in 2004 and that those involved thought that the zone was all the same already.

**Commissioner Kevin McGaha** said that when the initial proposal came before the commission regarding the cell tower, he thought that was because there was a “dead spot” in the area. This was a unique situation because the proposed location for the cell tower was in a “modified” zone that did not allow those uses. This is the only area in the entire county that has the RR-5 Modified zone and when looking further into the language of the Code it was found that there were other uses that were also not allowed, i.e. private roads, public roads, a church and it looked like it (modified zone) needed to be adjusted. However many concerns had been voiced by the public wanting it to be left as is. There was no ulterior motive by the commission in proposing this change, but to have better service in the area for the residents with the additional cell tower.

**Commissioner Chad Munns** then said that there had been a comment made about other things changing in the area. He noted that it is the right of every citizen/landowner [present in the room] to bring a petition before the planning commission to ask for a change in the zone. That is their right as a citizen of the U.S. The zone that is currently in place is there to help protect some issues. Whenever a petition comes before the planning commission, it is their obligation to grant that wish unless there are set restrictions against it. Everyone would go through the same process and that is what happened with the cell tower. Zoning helps to protect the rights of citizens, but this issue needs to be analyzed more before any decision is made. There will probably be a second public hearing to discuss what it is that the public wants. There probably should be a few changes such as utilities and roads. This community has changed over the years. Some have lived there for many years (53) and others for less time (4-5 years). They don’t want it taken out of the agriculture uses and that is what the commission will try and preserve. He felt that it should be tabled and a work session should be scheduled.

**Commissioner Desiray Larsen** asked if additional information would be solicited from the residents. There needs to be a balance between the landowner’s rights and also how to restrict the government to infringe on those rights. Counter balance is important. When the public participates in a public hearing it gives information that was maybe not thought of by the commission members.

**Commissioner Laurie Munns** mentioned that this commission is made up of individuals from various backgrounds and as a county entity they make a recommendation to the county commission. Staff makes a recommendation and legal counsel is followed. Private property rights are important, but so are the rights of your neighbors if a particular use could affect them. Some of the fine print needs to be looked at more closely. A recreational trail is not allowed in the RR-5 Modified, but sometime in the future one may be wanted by the residents. Public riding stables are not allowed, but if you board someone’s horse or they are riding in your arena it becomes a public arena; not allowed. These things need to be considered.

**MOTION:** A Motion was made by **Commissioner Bonnie Robinson** to Table the **Zoning Map and Text Amendment regarding RR-5 and RR-5 Modified zones in the Bothwell area**. A work session will be scheduled and the public will be allowed to attend. The work session will be noticed as required in regards to the location and time. Motion was seconded by **Commissioner Kevin McGaha** and passed unanimously.

**ORDINANCE TEXT AMENDMENT; BECLUM&DC ARTICLE 1; 1-3-040, DEFINITIONS FOR HOUSEHOLD PETS AND REGULATIONS REGARDING THE NUMBER OF ANIMALS ALLOWED.**

The commissioners discussed the ordinance as it was currently written with the proposed changes, noting that some comments had been made regarding the number of animals allowed and the acreage size and if it should be limited especially in the areas of the county where zoning is larger than the one half acre. **Commissioner Jay Christensen** said that he liked the comment about two acre size as the problems seem to occur more in the southern part of the county where lots are one half to one acre in size. There is also an area that is zoned as 8000 square feet but consists of approximately ten lots. The various zones and sizes of lots were reviewed and it was noted that when animals become a nuisance to the neighbors is when problems occur. Also odors associated with animals can become a problem. There was some concerns regarding the number of cats and dogs being combined rather than separated, resulting in 4 cats, 4 dogs, etc. not limiting to either dogs or cats at the number of four. **Commissioner Kevin McGaha** also commented about the Ferrell cats that were mentioned. They could be eliminated as being part of the number of cats allowed. **County Planner, Scott Lyons** reviewed the size of lots within the county, noting that there are RR20 and R-1-20 (one half acre lots), also A1/2 (agricultural), A-1 (one acre) and also RR-2 (two acre lots) then the jump is to the five acre lots. Staff liked the idea of the five acre lots; however could it become a problem in a subdivision such as Stevenson Farms where the lots are five acres and someone deciding to have a large number of animals. **Chairman Chad Munns** then said that a lot of this ordinance revision deals with household cats and not necessarily animals that would be considered as an agricultural use. Most of the issues of concern would probably never come up in the RR-5 and RR-5 Modified areas. This was more to help deal with the number of animals, whether domestic or agricultural on the smaller acreages. **Commissioner Jay Christensen** noted that part of the reason many people move to the areas where the lots are larger in size is in order to have animals and restricting that might cause problems. Staff was not opposed to the two acre lot size saying that might help with the problems that happen in areas such as South Willard. However, **Commissioner Bonnie Robinson** said that even on a one acre parcel people should be able to have some animals that are not considered household pets. Commissioner Kevin McGaha was curious as to how many homeowners [currently] on one acre lots may already have a number higher that would be allowed. Following more discussion regarding the number of animals and types of animals to be allowed the following motion was made.

**MOTION:** A Motion was made by **Commissioner Laurie Munns** to Table finalization of this ordinance in order for more work to be done in reaching the number of animals, the size of the lot (possibly one acre lots) and also eliminating [household pets] young animals under the age of six months. Motion was seconded by **Commissioner Kevin McGaha** and passed unanimously.

**ORDINANCE TEXT AMENDMENT; SECTION 4-5 SEXUAL ORIENTED BUSINESS, MODIFICATIONS TO ORDINANCE 224.**

Changes to this ordinance had been reviewed by Staff and **Chairman Chad Munns** noted that there was no public still present to learn more about what this ordinance is about. Staff said that the zone that had been discussed and agreed upon is currently in the industrial zone located at the site of the Procter & Gamble plant in the West Corinne area. Because of the limitation of having

to be located 2000 feet from a residential zone/area a SOB would only be able to locate at this site currently. As the ordinance is being written not only does a SOB need to locate in an industrial zone but it would also be a requirement to have an overlay zone place at the location site. **Chairman Chad Munns** asked if this would satisfy any potential petitioner that may ask for a SOB and would the county be protected with the revised ordinance. **County Attorney, Steve Hadfield** asked if any other counties had been looked at in reaching a conclusion as to a location for the SOB. Staff reported that several other counties and cities had been looked at within the state and the majority of those placed the SOB in industrial areas. The county attorney also asked if the language was written in the ordinance as to exclude the location of a SOB in an un-zoned area of the county, because an argument could be made that an un-zoned area could potentially be zoned as an industrial area with an overlay that would allow the SOB. Reference was made to the gravel pit ordinance and the rezoning that is required for that use.

**MOTION:** A Motion was made by **Commissioner Bonnie Robinson** to Table the **Ordinance Text Amendment – Sexually Oriented Businesses** in order that the language of the ordinance be reviewed to meet the necessary guidelines, restrictions, and requirements to best protect the county. Motion was seconded by **Commissioner Jay Christensen** and passed unanimously.

**TEMPORARY USE PERMIT, TUP14-001; DESERT TECH TRAINING FACILITY, LOCATED IN THE BROAD CANYON OF PLYMOUTH FOR A FIREARMS TRAINING FACILITY. (FILED 10-21-2014)**

Staff informed the commissioners that they had two options with this petition. 1) they could table it as there did not seem to be any representatives from Desert Tech at the meeting, or 2) they could approve it with the condition that the road be improved to the county standard of twenty feet wide with an all weather surface. The sheriff's office had said that if any events were held off of the site they would need to inform them as they had in the past. **County Attorney, Steve Hadfield** said that the current litigation that Desert Tech is involved in should not have any bearing on the decision made by the planning commission; it will be more of a hardship to the petitioners. Again, Staff said that the issue with the road is that it is not wide enough for the county standard or for emergency vehicles if they were needed. Also, Staff had not yet heard back from the county health department, but it was noted that for a temporary use permit items related to a septic system and water are not necessarily needed. Those approvals would be needed for a building permit to be issued. **Commissioner Laurie Munns** asked why this application would be any different than if an individual wanted to build a home in this location. Staff said that the county road standards are more for residential area roads and for commercial uses the road standards fall more under the codes of the fire department/marshal.

**MOTION:** A Motion was made by **Commissioner Desiray Larsen** to grant approval for the **Desert Tech Training Facility Temporary Use Permit** with the condition of improving the road to meet county standards at 20 feet wide and an all weather surface. Any building built on the site would need to have fire suppression and any other conditions as required by Staff. Motion was seconded by **Commissioner Jay Christensen** and passed unanimously.

**RE-ZONE, Z14-007, LEGRAND JOHNSON CONSTRUCTION CO.; TO RE-ZONE PARCEL 06-175-0011 OF APPROXIMATELY 30.13 ACRES FROM THE CURRENT UN-ZONE TO MG-EX FOR FUTURE MINING AND GRAVEL EXCAVATION. (FILED 10-1-2014)**

This parcel is approximately 30.13 acres and is located in an un-zoned area of the county where two other gravel pits are also located. The surrounding property is also un-zoned except for that to the west of I-15 which is Agriculture RR-5. The applicant is requesting the re-zone to MG-EX for future gravel excavation purposed.

**MOTION:** A Motion was made by Commissioner Bonnie Robinson to grant approval for the LeGrand Johnson re-zone to MG-EX with conditions as outlined by staff. Motion was seconded by Commissioner Jay Christensen and passed unanimously.

**Conditions for Approval:**

1. Compliance with Article 5 of the Box Elder County Land Use Management & Development Code.
2. Compliance with Article 2-2-080, Zoning Map and Text Amendments, of the Box Elder County Land Use Management & Development Code.
3. Compliance with all applicable county, state and federal laws regulating the proposed zone and use, including all current licenses, permits, etc.

**WORKING REPORTS**

**DISCUSSION REGARDING DISSOLVING THE BOARD OF ADJUSTMENT.**

Staff talked with the Planning Commissioners about the current Board of Adjustment, noting that over the past 10-15 years, there have only been two cases that were filed for the board to act on. One was withdrawn and the other went before the board on October 28<sup>th</sup> of 2014. It was further explained that there are certain guidelines that are to be considered when a variance is requested and the board is called to make a decision. Currently, because the board is made up of five individuals from the county, and because they do not meet very often, it is difficult for them to be trained properly in the procedures and requirements for granting a variance; therefore, other personal emotion can direct the final decision. At the October meeting there were only three members (of the five that make up the board) that were still living in the county; however three members+ constituted a quorum. Staff further explained that because it has been so seldom that this board has been required to meet, and because of the insurance requirements of the county, it was being suggested that a hearing officer be obtained to hear any future variance requirements that may be filed. This officer could be an attorney or professional planner that would be apprised of the five approval standards that are required in order for a variance to be granted. This could be either a paid position or voluntary. This change would be a text amendment and Staff would prepare the necessary paperwork for the Planning Commission to review at the next meeting.

**DISCUSSION REGARDING ELIMINATION OF THE “NOTICE OF DECISION” TO APPLICANT FOLLOWING PLANNING COMMISSION ACTION.**

Staff talked with the commissioners regarding the process of sending out a “notice of decision” when the planning commission has made a motion regarding an applicant’s request. This is something that is required in the BECLUM&DC, but is not a requirement of the state and most other jurisdictions do not practice it either. The pros and cons were discussed and it was decided that it would be brought back to the planning commissioners at a later time for the final decision on whether or not to continue sending out these notices.

Staff concluded the meeting by informing the planning commissioners that the possibility of paying mileage expenses for their travel time/distance to planning commission related meetings had been discussed with the county commissioners and funds were being appropriated in the 2015 department budget to cover these expenses. It was not decided how this would be reimbursed to the planning commissioners, monthly, quarterly, or yearly; however the planning commission members were appreciative of this gesture.

**PUBLIC COMMENTS – NONE**

A **Motion** was made to adjourn at 10:20 p.m., unanimous.

Passed and adopted in regular session this 22nd day of January 2015.

\_\_\_\_\_  
Chad Munns, Chairman  
Box Elder County  
Planning Commission