

# BOX ELDER COUNTY PLANNING COMMISSION MINUTES JULY 19, 2018

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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 by a roll call, constituting a quorum:

<i>Roll Call</i>		<i>the following Staff was present:</i>	
Laurie Munns	Chairman	Scott Lyons	Com Dev Dir.
Mellonee Wilding	Vice-Chair	Marcus Wager	County Planner
Kevin McGaha	Member	Steve Hadfield	County Attorney
Michael Udy	Excused	Jeff Scott	Commissioner
Desiray Larsen	Member	Diane Fuhriman	Executive Secretary
Bonnie Robinson	Member		
Jared Holmgren	Member		

Chairman Laurie Munns called the meeting to order at 7:00 p.m.

The Invocation was offered by Commissioner Jared Holmgren.  
Pledge was led by Commissioner Bonnie Robinson

### **The following citizens were present & signed the attendance sheet**

See Attachment No. 1 – Attendance Sheet.

The Minutes of the June 21, 2018 meeting were made available to the Planning Commissioners prior to this meeting and upon review a **Motion** was made by Commissioner Jared Holmgren to approve the minutes as written. The motion was seconded by Commissioner Mellonee Wilding and passed unanimously.

**MOTION:** A Motion was made by Commissioner Jared Holmgren to approve the July 19, 2018 agenda. The motion was seconded by Commissioner Mellonee Wilding and passed unanimously.

### **UNFINISHED BUSINESS**

#### **OPEN COUNTRY STORAGE SITE PLAN, SP18-002, at approximately 10620 North 10800 West in the Thatcher Area of unincorporated Box Elder County.**

Staff explained the updated site plan for Open Country Storage was just submitted today. The applicant has asked for this item to be tabled until the August 2018 meeting.

**MOTION:** A Motion was made by Commissioner Kevin McGaha to table this item until the August 2018 Planning Commission Meeting. The motion was seconded by Commissioner Mellonee Wilding and passed unanimously.

## **PUBLIC HEARINGS**

Chairman Laurie Munns introduced the staff and explained public hearings provide an opportunity for the public to voice their concerns or approval on an item. In the meeting there is also unfinished business, public hearings, and new business. The unfinished business and new business provides opportunity for the commissioners to take action on an item. It is not a time for public comment or input. Although the commissioners may ask questions of the applicant during these times.

Chairman Laurie Munns addressed those in attendance regarding lot sizes in the Bothwell area. She stated there are many lots that are not 5-acre lots. Many of these lots have older homes on them, some of the lots are non-conforming, some cannot be developed, and some are not buildable. These are things the planning commission needs to address to be able to forward a recommendation to the county commission. We welcome input on what Bothwell residents want to see happen.

### **HANCOCK ZONING MAP AMENDMENT, Z18-007, Request to rezone a 2.79 acre property from RR-5 (Rural Residential 5 acres) to RR-2 (Rural Residential 2 acres) at approximately 10090 West 12000 North in the Bothwell area of unincorporated Box Elder County.**

Staff said the parcel in question is 2.79 acres and was subdivided on August 17, 1983 as per Entry 99836H Book: 375 Page: 177 in the recorder's office. The zoning was put into place in the Bothwell area on September 14, 1978. The subdividing below 5 acres is what made this parcel illegal. The applicant wants to clean up the parcel, tear down the home currently on it, and build a new home.

The public hearing was then opened for comments.

Calvin Bingham, Bothwell, owns the land east of the parcel in question. He also owns a 30 ft. strip on the other side of the road. Mr. Bingham is in favor of 5 acres parcels but also feels Bothwell residents need to take a look at the situation and try to tweak it a little. He is concerned that as people age and land is turned over to heirs, Bothwell will become a rental community. We will have old homes on lots where young people cannot afford to buy the 40 or 80 acres that go with the home or be able to tear down the old home and build a new one. Mr. Bingham stated people should know there two canal systems in Bothwell and gave a history of the canals and how people have shared the water. The neighbors have worked it out so everyone has water to irrigate their pastures. If someone new came in and wanted to be mean about it, not everyone would get enough irrigation water. He said the re-zone of this piece of ground would be a benefit to him. The applicants have done a tremendous job of cleaning up the property. If the property is not rezoned it will eventually become a junk yard. The people who bought the property did so thinking it was a legal parcel and now find out they are not allowed to do anything with the land.

Brenda Sagers, Bothwell, said she agrees with some of what Mr. Bingham has said. The home is an old, old home. She blames the county that when the ground was sold, the home was not kept on a 5-acre parcel, which it should have been. She thinks the parcel should be grandfathered in because the home was built before 1978. She would like to see the young people who bought the property take it over and do what is necessary to make it a beautiful piece of ground.

Katherine Summers, Bothwell, does not like the idea of an RR-2 stuck in the middle of an RR-5 zone but she thinks it can be remedied by either grandfathering the property or doing some kind of a variance so the Hancocks can do what they want with it. She believes when Mr. Thayer bought the property he was not aware he was in an RR-5 zone. She thinks it was an error that slipped by the Box Elder County Planning & Zoning department at that time. She would like to see the new owners be able to build a home on the property.

Kyle Hancock stated he and his wife bought the land last July. He bought it from Bob Thayer because his wife's great grandparents were from Bothwell; she wants to keep her roots out in Bothwell, raise a family and have a few animals. He stated they are also in favor of 5-acre zoning, but in their situation they have talked to surrounding landowners and have tried to work out buying some land from them but they are landlocked. This is their last effort to be able to build a home and move out to Bothwell. He stated they have spent a lot of time and money working on the land and have enjoyed every minute of it.

Byron Nelson, Bothwell, is heavily involved in the culinary water system. The Hancocks have come to an agreement concerning the water. He would like to keep 5-acre zoning also but would like to let these kids build a home.

Joe Summers, Bothwell, is in favor of the 5-acres. He doesn't think when the 5-acre zone was established, it was intended to affect those who did not have 5 acres. This parcel was made after the fact and some errors were made by people who were in charge back then. He questioned who polices situations like this now. He hopes the Hancocks can get this resolved. He thinks when the 5-acre zone was put in place, it was not meant to restrict those who did not have 5 acres.

Calvin Bingham, Bothwell appreciates the support the Bothwell residents have shown. He also issued a challenge to the residents by stating Bothwell residents have got to come to some kind of an agreement of grandfathering certain areas in.

Bob Thayer, Bothwell, moved here from Los Angeles and has lived in the home for 35 years. The sale was approved by the county so he does not understand what the problem is now with him trying to sell the property to someone else. He wants to sell it and go on with his life. The Hancocks approached him and want to buy it. Mr. Thayer said he jumped at the opportunity to be able to sell it to the great granddaughter of a previous owner. Now all this has thrown a monkey wrench into their plans. He wants them to be able to do what they want with the property. He is extremely disturbed by the whole thing.

Hearing no further comments a motion was made by **Commissioner Bonnie Robinson** to close the public hearing on the Hancock Zoning Map Amendment Z18-007, the motion was seconded by **Commissioner Jared Holmgren** and passed unanimously.

## ACTION

Commissioner Laurie Munns stated she would like to make this portion of the meeting an open discussion. This is not usually done but the commission wants to welcome the input from the Bothwell residents. She asked staff to explain the process involved and the complications the county has as far as people deeding the land.

Staff clarified when a property is split off or subdivided, a proper procedure is supposed to take place. The state put this procedure into code in 1993. This parcel was created prior to 1993 so it did not need to comply with the code. However it did need to comply with the 5-acre zoning, but it did not. Staff explained the scenario of how a landowner would go to a title company and have them put together a deed splitting the land into two parcels. The deed is then submitted to the recorder's office. State code says if a recorder receives a completed document, the recorder is required to record it. After the document is submitted to the recorder's office, the recorder records the document and the parcel is split. The planning and zoning department does not see the document prior to it going to the recorder's office. Unless the landowner contacted the planning and zoning office and asked about the zoning to insure he was doing things properly, planning and zoning would not know about it. Staff said this is basically what happened with the parcel we are discussing today. Years later when the landowner comes in and wants to get a building permit, planning and zoning reviews the application and finds the parcel was subdivided illegally and does not meet the zoning requirements so a building permit cannot be issued.

Staff also clarified about grandfathering the parcel. Grandfathering is technically when a parcel is created prior to the zoning. Any parcel less than 5 acres and created prior to September of 1978 would be considered a grandfathered parcel. Since this parcel was created after 1978 it is not considered grandfathered and is considered illegal. Grandfathering the parcel is not possible in this situation. There are only two possibilities, one of which is to acquire additional acreage so the parcel is 5 acres. The landowner attempted this but it did not work out. The alternative is to request a re-zone and in this case the landowners are asking for RR-2. The reason they are asking for 2 acres is the parcel is 2.7 acres and would not be able to be further subdivided in the future. Their request was to keep the community as it sits currently without the potential to subdivide in the future or cause any increase in density.

Commissioner Desiray Larsen asked about state's ruling in 1993 and how it will be addressed in the future. Staff said the subdivision requirements that came about in 1993 do not come in to play in this scenario, this property was split in 1983. For other properties split from 1993 and into the future, it would come into play if just a deed was recorded. Not only would the zoning need to be changed but the landowner would need to take it through the proper subdivision process which requires a survey, a subdivision plat to be prepared, and utilities to be approved.

Calvin Bingham asked if the recorder's office polices the documents. Staff explained recorder's offices throughout the state are opposed to policing documents. Staff is not aware of anything in state code prohibiting recorders from policing documents but it is something recorders do not want to do. Recently people were purchasing sections of land out in the west desert and having hundreds of deeds recorded splitting the sections down into 1-acre lots and selling them on e-bay. The county had to do an incredible amount of noticing come tax time. People were calling all the departments

in the county asking what they can do with their land only to be told the parcels were illegal and there is no access to the land. This is what pushed the county to try and figure something out. Now when a documents goes to the recorder's office splitting property in unincorporated Box Elder County, an email is sent to planning and zoning. It is reviewed to see if the parcel was split improperly. If it was, a notice of non-compliance is recorded against the parcel and a copy is mailed to the owner of the property.

**Commissioner Mellonee Wilding** said because there is a home already on the property in Bothwell, the home can be lived in but a new home cannot be built because it is an illegal parcel. She stated the commission decision can either be black and white and state 5 acres or nothing. That means to be legally compliant, anyone who is on one of those lots cannot build a shed or a garage or an addition on to the home. What she is hearing from the residents of Bothwell is they do not want any new properties subdivided less than 5 acres but are willing to give some leeway.

**Commissioner Laurie Munns** read what the planning commission reviews prior to making a rezone as follows:

- A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan;
- B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
- C. The extent to which the proposed amendment may adversely affect adjacent property; and
- D. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, and waste water and refuse collection.

She said in order to do this rezone we need to either recommend approval or denial to the county commission or table the item. She feels the consensus of the group on this particular property is to recommend approval.

Staff's recommendation if the commission proceeds with a recommendation of approval for this rezone it be noted in the record that there is an existing home on the property. As future cases come before the commission there will be ones that do not have homes on the property and other that do have a home on the property. By being clear with the precedent the commission is setting, it will make it easier to make a decision in the future.

County Attorney Stephen Hadfield stated one other thing to be considered is if a lot is 4.9 acres and it were subdivided and re-zoned it as two, it could theoretically be divided one more time. This particular parcel cannot be because the lot is not 4 acres.

**MOTION:** A Motion was made by **Commissioner Mellonee Wilding** to forward a recommendation of approval to the county commission on application Z18-007 a Zoning Map Amendment from RR-5 (Rural Residential 5 acres) to RR-2 (Rural Residential 2 acres) because there is an existing structure on it and because it cannot be further subdivided and adopting conditions and findings in the staff report. The motion was seconded by **Commissioner Jared Holmgren**.

**AMENDED MOTION:** Commissioner Kevin McGaha said everyone who spoke at the public hearing was in favor of either grandfathering or some type of exception. With the technical language that needs to be put in to the motion and has been put in, the wishes of the public are being met. Further, there were concerns if this were not accepted, there would be a chance there would be rental properties or abandoned properties that would mar the situation out there. This motion does harmonize with the existing properties because it already exists. This is not a typical situation where we are subdividing more property, it is an existing situation that other jurisdictions would use an infill district to address. In a way it is kind of backing into an infill.

**MOTION:** A motion was made by Commissioner Mellonee Wilding to accept the amendment to the original motion. The motion was seconded by Commissioner Desiray Larsen and unanimously passed.

### NEW BUSINESS

#### BAYVIEW ESTATES SUBDIVISION AMENDMENT, SS18-014, at approximately 7550 South 582 West in the South Willard area of unincorporated Box Elder County.

Staff said this application is requesting an existing plat be amended. The lot being amended is Lot 1 of the Bay View Estates Subdivision plat and would increase from .46 acres to .722 acres. The plat has been through review. The county engineer and county surveyor have recommended approval. The county attorney will review it against the title report which was received today. Staff recommends approval of the amended plat with the county attorney's final review as a condition.

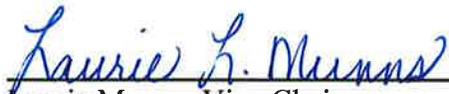
**MOTION:** A Motion was made by Commissioner Desiray Larsen to approve the Bayview Estates Subdivision Amendment SS18-014 and adopting the recommended conditions final review from the county attorney and findings as necessary. The motion was seconded by Commissioner Kevin McGaha and unanimously carried.

### WORKING REPORTS - NONE

### PUBLIC COMMENTS - NONE

### ADJOURN

**MOTION:** A Motion was made by Commissioner Bonnie Robinson to adjourn the planning commission meeting of July 19, 2018. The motion was seconded by Commissioner Desiray Larsen and meeting adjourned at 8:22 p.m.

  
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Laurie Munns, Vice Chairman  
Box Elder County Planning Commission