

CONSENT AGENDA ITEMS -- None

NEW BUSINESS

SAWTOOTH STONE SUPPLY, LLC; BUSINESS LICENSE APPLICATION/MINING-BUILDING STONE PRODUCTS; LOCATED IN THE COTTON THOMAS BASIN

Mr. Day presented this petition for a conditional use permit from Sawtooth Stone Supply, located in the Lynn Pass area in the western part of the County. Mr. Day stated that one of the issues that the planning office has is knowing exactly what mining operations are currently under use. Since many of the operations are on federal or state owned land [and un-zoned] the petitioner will often go to the state land trust office, the BLM or the forest service to obtain a permit to operate the mine. Until recently the BLM and the federal agencies had not informed the planning office before issuing these permits, leaving the County with road maintenance, and liability issues, etc. Because of this, an agreement has been worked out with the BLM that when these particular permits come forward, before an actual permit is given, the petitioner must apply for a Conditional Use Permit in the Planning Office of the County. In the County Code, even though the area is un-zoned, a CUP is required for a mining operation. This mine is an existing site and currently under operation. The materials extracted are moved from the site to a road that connects with the Cotton Thomas Basin Road, and ultimately taken to Oakley, Idaho. Although the planning office is still in the beginning stages of reviewing these permits, this petition meets all of the necessary requirements at this time. Mr. Day recommended that the Planning Commissioners grant approval for this petition with the following conditions:

1. *the proposal must continuously meet all current ordinance requirements in relation to safety of persons and property, health and sanitation and environmental concerns; and*
2. *the operation must meet all Federal, State and Local environmental regulations; and*
3. *a re-vegetation and re-grading plan be submitted prior to any excavation; and*
4. *the operation must obtain a County Business License within thirty days of CUP approval*

Chairman Kimber had some concerns regarding the usage of the roads in the area of this mining operation. One condition that the **Chairman** thought would be advisable to add to this CUP was that the petitioner be required to maintain the road from the mining site to where it [the private road] connects onto the County Road. There are cattle guards and gates also leading to this site and they need to be maintained, particularly in regards to the opening and closing of gates.

Commissioner Davis felt that the definition of surface rock as a mineral was somewhat ambiguous. Mr. Day stated that surface rocks are defined as a mineral for royalty purposes; however when it is associated with a mining claim it falls into a different arena. It is the responsibility of the BLM to prove that it is not a mine, but a gravel pit operation. It takes so long (four or five years) for the [appeal] process, that by the time all of the legalities are taken care of the minerals are already extracted and the operations/operators are gone (since they are allowed to continue with the operation of the site during this legal process). **Commissioner Davis** asked that one of the conditions

of the permit be that if there are modifications in the operation, and revenues are able to be re-cooped from royalties that they not be "grandfathered" in [meaning that the legal nonconforming status would not apply]. Mr. Day stated that his office is hoping that these particular CUPs will be a yearly requirement, as the petitioner has to reapply with the BLM each year and that process would also require them to re-apply with the Planning Office. Commissioner Davis also thought that some type of quarterly or annual mileage report should be required from the petitioner in order to track the usage of the county road. Chairman Kimber noted that the damage that occurs to these roads is quite sufficient because of the large trucks that use them and the loads they carry. Here should also be some sort of a clause that would limit the liabilities issues for the County because of these operations. Commissioner Tea asked about the re-vegetation and re-grading plan and how it would be enforced. Mr. Day told the Commissioners that the State holds a bond (as they are better able to enforce the re-vegetation and regrading). After some further discussion among the Commissioners, Chairman Kimber asked for a motion on this petition.

MOTION: A motion was made by Commissioner Thompson to recommend approval of the Sawtooth Stone Supply Conditional Use Permit (business license) to the County Commission with the following stipulations:

- The proposal must continuously meet all current ordinance requirements relation to safety of persons and property, health and sanitation and environmental concerns; and
- The operation must meet all Federal, State and Local environmental regulations; and
- A re-vegetation and re-grading plan be submitted prior to any excavation; and
- The operation must obtain a County Business License within thirty days of CUP approval; and
- Maintain the road; and
- Maintain the road to where it meets the County Road; and
- Be responsible for opening and closing of all gates in relation to the livestock in the area [from the site to the County Road]; and
- The Conditional Use Permit is issued for a one-year period and subject to annual review.

The Motion was seconded by Commissioner Eberhard and passed unanimously.

UNFINISHED BUSINESS

SCENIC DEVELOPMENT, INC. (COUNTRY CLASSIC SUBDIVISION PHASE I) FOUR-LOT SUBDIVISION, LOCATED AT OR ABOUT 10880 WEST 12800 NORTH IN THE BOTHWELL AREA

Mr. Day referred to two letters that had been received at his office in relation to this petition. One from the Fire Marshal dated April 22, 2003 and another from the Bear River Water Conservancy District office dated April 24, 2003. This petition was before the commission for preliminary and final approval at this time. Phase one of this subdivision consists of four lots, located in an area of the County that is currently un-zoned. Each lot is at least one acre with water being supplied by the

BRWCD. The Fire Marshal expressed concerns in his letter about adequate water in the area for fire protection; the letter from the BRWCD in giving their approval for this subdivision also expressed the desire to work in cooperation with Box Elder County Planning, the Fire Marshal, and the residents/land owners in drafting a plan that would meet the future needs for fire protection in those areas of the County that are in need of such protection. (Those two letters accompany these Minutes) Mr. Day stated that through his conversations with the BRWCD there are ways to improve the infrastructure to get the water necessary for the fire protection. The commissioners discussed the fire protection issue and also the timing of the paving of the road in the area of this subdivision. One misconception that seems to surround this subdivision is that it is located within a flood plain area. As per FEMA it (the subdivision area) is *NOT* in a designated flood area. Although it is in an area subject to flooding, whether or not there are homes in the area, there may still be flooding issues [according to Mr. Day]. The commission also asked if the petitioner has [or could have] their engineer address the flooding and storm drain issues for the commission to review at their next meeting. After some additional discussion regarding this subdivision (which initially came before the Planning Commission in January 2003) Mr. Day added that the petition appeared to be in accordance with the existing ordinances and Zoning Requirements. **Commissioner Eberhard** made a suggestion that a moratorium be placed on any subdivision within the County where inadequate fire protection was available until such time that the water issue(s) has been addressed or taken care of. Mr. Day stated that a moratorium is only allowed for a period of six months. It was determined that the issue of a moratorium would be addressed later in the meeting. Mr. Day also noted that the petitioner would need to submit an escrow agreement and development agreement to the Planning Office prior to final approval to ensure that the necessary improvements would be made. This escrow agreement is based on the engineer's cost estimate for the improvements.

MOTION: A motion was made by **Commissioner Thompson** to grant preliminary approval for the Country Classic Four-Lot Subdivision Phase I with the requirements that the petitioner submit an escrow agreement and development agreement prior to final approval; that the petitioner is working with the BRWCD in providing fire protection to the area for this development as well as future phases; and additional engineering be produced for the Commission's review in regards to the flooding issue. **Commissioner Davis** comment: *the Commission feels that its hands are tied because of no zoning the area of this development and the Commission is sympathetic to the input that was received at the March public meeting regarding this subdivision, however, legally the Commission cannot deny this petitioner's request as they have met all of the existing requirements; the Planning Commission is only acting within the confines of the law.* The Motion was seconded by **Commissioner Tea** and passed unanimously.

RUPP/DEWEYVILLE SIX-LOT SUBDIVISION, LOCATED AT OR ABOUT 13400 NORTH 3100 WEST IN THE COLINSTON AREA

This six-lot subdivision is located in the Collinston area of the County which is currently zoned RR-2 (two acre minimum lot size); and was granted preliminary approval at the March 20th meeting. Each lot meets the two-acre requirement. The six lots will be situated along a fully improved twenty-four foot wide asphalt road with a temporary turn-around on the east end. The petitioner has established proof of utilities with water being provided by individual wells as approved by the Utah

State Division of Water Rights. As each lot is sold and each building permit issued, that is when the water rights will be secured and the protection areas for the individual wells put into place. Two issues of concern were: 1) the letter from the Fire Marshal addressed the fifty foot turn-around at the end of the subdivision. The Fire Marshal stated that this turn-around should be permanent; however, Mr. Day stated that would be in conflict with the development code as these turn-around are typically installed as temporary [being compacted to all-weather surfaces] allowing for future phases in the area; and 2) adequate water flow for fire protection as there will only be individual wells on the lots. Each lot will be required to obtain approval from the Bear River Health Department for a septic system. Due to the size of each lot, no detention pond is required for storm water. **Commissioner Tea** asked about the road in the subdivision and if curb and gutter would be required; because the frontage on each lot is greater than 120 feet, curb and gutter is not required, but the Rural Road Agreement will be in effect. **Commissioner Eberhard** suggested that because of the fire protection issue a moratorium be placed on this subdivision similar to that which he suggested regarding the Country Classics Subdivision until the water issue for fire protection can be fully addressed. **Commissioner Thompson** noted that a petition is currently being circulated in the Deweyville/Collinston area for extension of the water line from the Water Conservancy District and may be a possibility in the future. As the petition is generally in accordance with the existing subdivision ordinances and Zoning requirements, Mr. Day recommended that the Planning Commission grant final approval for this petition. **Commissioner Eberhard** also asked about the access from lots one and four onto 3100 West and if it should be restricted. **Commissioner Tea** wondered if there would be an advantage to restricting the access to 3100 West from these two lots to eliminate any problems in the future as more development occurs in the area and traffic increases.

MOTION: A motion was made by **Commissioner Davis** to grant final approval for the Rupp/Deweyville six-lot subdivision with the restriction that lots one and four have local road access only and no access from 3100 West Street. The Motion was seconded by **Commissioner Tea** and passed unanimously.

WORKING REPORTS

1. Pat Comarell talked with the commissioners regarding the upcoming town meeting that will be held on May 1, 2003 regarding the West Corinne Community Plan. Some of the topics covered included:
 - a. After the welcome to those present at the town meeting, Ms. Comarell suggested that the Chairman explain that no final decisions would be made that night regarding the proposed plan.
 - b. All input would be considered before any action and another notice would be sent out announcing any other meetings
 - c. Zoning maps would be made available for the meeting, as well as, guidelines for the future, i.e. commercial/industrial location in the West Corinne area
 - d. Any direction that the staff needs to take after the conclusion of the town meeting; i.e. working with federal or state agencies.
2. Ms. Comarell presented the "Rules of Procedure" [in regards to the Planning Commission] that had been prepared for their review. Ms. Comarell reviewed the rules with the

commissioners and discussed any changes that they felt needed to be made. None were noted. The rules will be placed on the May consent agenda for approval and then forwarded to the County Commission for final approval and adoption. A motion was made by **Commissioner Thompson** to place the Rules Of Procedure” on the common consent agenda for the May 22, 2003 meeting. **Commissioner Tea** seconded the motion and it passed unanimously. A copy of the “Rules of Procedure” are attached to the official Minutes.

3. Mr. Day led the commission in a discussion regarding the road issue in regards to paving of a road beyond the subdivision by a length of two hundred feet. **Chairman Kimber** asked if it would be adequate for the Planning Commission to make a recommendation to the County Commission to make the two congruent; referring to section 7.7.21.6.2 and 7.7.31.6.2.1 of the **Land Use Management and Development Code** book. Mr. Day stated that it would probably be the best action to take and that the county attorney or an outside attorney would be able to give the necessary legal opinion in this matter. A motion was made by **Commissioner Tea** to ask the County Commission for a legal opinion on this issue. **Commissioner Davis** suggested that the Planning Commissioner might possibly want to give the County Commission some sort of idea or plan as to what is desired in rectifying this road paving issue. The motion was seconded by **Commissioner Thompson** and passed unanimously.
4. Moratorium issue. **Commissioner Davis** felt that it would be unadvisable to have a county-wide moratorium at this time as there are *“too many things going on in South Willard and West Corinne and elsewhere throughout the County,”* and he did not feel that a moratorium was a solution to the issue. Mr. Day stated that when a moratorium is put into place it has to be done for a specific reason. Although there is a specific reason in this instance (fire protection) there also needs to be specific boundaries [he thought]. Mr. Day further stated that it would be in the best interest of the Planning Commission to draw boundaries around the area that would be included in the six-month moratorium and also the reasons for the moratorium. Once this is done, then progress has to be made to take care of the problem that caused the moratorium in the first place. The moratorium can only be extended for two additional six-month periods, or a total of eighteen months maximum. **Commissioner Eberhard** asked if it would be better to limit the moratorium to areas that do not have adequate fire protection. Mr. Day said that it would probably be better to recommend an ordinance from the County Commission that would not allow development in any areas of the County that do not have adequate water for fire protection [as a minimum standard]. **Commissioner Eberhard** and **Chairman Kimber** both expressed a need to know what the requirements for adequate fire protection are that the County needs to adhere to. Mr. Day stated that those requirements are defined somewhere, either in the State Code or the international fire code. **Chairman Kimber** suggested that knowing more what the actual rules are for fire protection would be advisable before an actual moratorium is put into place. The letter from the Fire Marshal was inadequate in advising the Planning Commission as to how they can handle the issue of fire protection, as it only stated that there was not sufficient water in the area of the development(s), but did not offer any solutions to rectify the problems. Mr. Day informed the commissioners that the County Commission will be doing some organizational changes including:
 - a. Training the building inspectors
 1. enable the building inspectors to conduct subdivision inspections

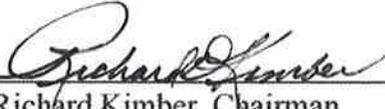
2. enable the building inspectors to enforce zoning within the County
 3. send the building inspectors to fire marshal training
5. Mr. Day advised the commissioners that the petition for annexation in South Willard into the Pleasant View area has been withdrawn. The rules for annexation have changed since the conclusion of the 2003 legislative session and it will be more difficult to annex some areas in the future. The deadline for these changes will go into effect sometime in June 2003. Both sides met and during that time some agreements were made in regards to development in the area, i.e. a development agreement, having the development occur in Box Elder County, etc. Available utilities (water and sewer) in the area is a big concern.

PUBLIC COMMENTS

- **Scott Newman** had some concern regarding the road [10800 West] where there are currently existing homes and would that road have to be widened at some point, taking property from those homeowners. Mr. Day stated that he did not see that happening, however, it is difficult to predict the future and what those in office could feel necessary to carry out as the County does have eminent domain.
- Mr. Day told the audience that the Bothwell Community Plan would probably be next on the agenda for the Planning Commission, once the community plan in West Corinne and South Willard are completed.
- **Commissioner Tea** told those present that they are probably too late to stop the Phase I of the County Classic Subdivision, but they may have a little more control over the subsequent phases.
- **Commissioner Eberhard** stated that there is another road [which runs east and west of this proposed subdivision] that does not have any houses on it and can connect to the freeway frontage road. He suggested that the County do things to encourage the traffic flow along 12800 North rather than along 10800 West.
- **Roger Newman** was concerned about the amount of water that the Water District would be able to draw from their wells in the area as his personal wells have gone dry at times.
- **Lee Summers** asked about the "quality of life", better or worse in a rural setting or a city setting. Quality of life is subjective to those that are talking about it at the time.
- **LaMont Nelson** asked about the zoning that was done in Bothwell; as he was on the committee at the time of the zoning, he thought that the entire Bothwell area (pocket) had been zoned as RR-5. No official Minutes have been located to that effect. The ordinance that was recorded on September 14, 1977 describes the area as ending at 12800 North according to Mr. Day.
- **Steve Zollinger** asked how Bothwell could require larger lots for subdivisions such as five acres lots rather than half-acre lots, as seems to be the norm for un-zoned areas in the County. Mr. Day stated that a petition for re-zoning in the Bothwell area (north of 12800 North Street) has been submitted to the Planning Office and will be included in the May agenda. The process for a re-zone could take approximately four months to conclude, as public hearings are required as part of the process.

A motion was made to adjourn the meeting at 9:45 p.m. by Commissioner Holmgren and seconded by Commissioner Thompson; all concurred.

Passed and adopted in regular session this 22nd day of May 2003.


Richard Kimber, Chairman
Box Elder County
Planning Commission



BEAR RIVER WATER CONSERVANCY DISTRICT

April 24, 2002

Mr. Garth Day
Box Elder Community Planning
01 South Main
Brigham City, Utah 84302

Dear Mr. Day,

The Bear River Water Conservancy District Board has given the approval for District to work in cooperation with the Box Elder County Community Planning, the County Fire Marshal, and the residents, and land owners of Box Elder County to draft a plan defining the requirements, both state and local, and to implements solutions to provide fire flow to those areas in the county that are in need of future fire protection. We look forward to working together to find workable solutions to this matter.

Sincerely,


Voneene J. Jorgensen
General Manager

CLINTON BURT
CHAIRMAN

ROSS RUDD
VICE CHAIRMAN

LOWELL LEMON
TREASURER

ROYAL K. NORMAN
JON E. ADAMS
JOHN Y. FERRY
DAVID B. STYER
DAVID FORSGREN
MERLIN TANNER
LARALL THOMPSON
WAYNE PAYNE

JAMES G. CHRISTENSEN
SECRETARY
GENERAL MANAGER

VONEENE J. JORGENSEN
ADMINISTRATIVE ASSISTANT

DARYL E. ROBBINS
CERTIFIED OPERATOR



FIRE MARSHAL'S OFFICE

April 22, 2003

To: Garth Day, Planning Director
Fm: Greg Martz, Box Elder County Fire Marshal

Subj: Subdivision reviews

Deweyville Subdivision

Concerns to be addressed:

1. 50' radius Temporary Turnaround must be Permanent
2. There is no water to this subdivision for Fire Protection

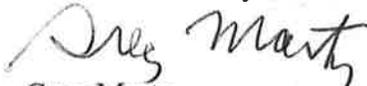
Country Classic Estates "A" Subdivision

Concerns to be addressed:

1. There is no water to this subdivision for Fire Protection

It is in my opinion, and of great concern to not allow projects be approved without adequate water supply. Water Supply gives the Fire Departments a fighting chance of being successful of extinguishing a fire if it becomes necessary. Neither one of these subdivisions meet water flow required in the code.

Box Elder County Fire Marshal


Greg Martz

Fire Marshal.....734-3831
Fax.....734-3867
Secretary/Burn Permits...734-3833
Fire Marshal Cell.....730-4594
Dispatch.....734-3800
Tremonton Line.....257-5657

52 South 1000 West
Correspondence P.O. Box 888
Brigham City, UT 84302-0888

BOX ELDER COUNTY PLANNING COMMISSION

Rules of Procedure

A. Organization

1. Appointment of Chair and Vice –Chair

The Planning Commission shall elect from its members a chair and vice chair, whose terms shall be for one year. Said election shall take place in each calendar year in the regularly scheduled Planning Commission meeting. **(The Box Elder Land Use Management & Development Code 2.1.5)**

2. Chair – Duties

- a. The Chair presides at all meetings of the Commission providing general direction for the meetings, assuring proper order to the Commission and public in all proceedings. Such duties shall include:
 - 1) receiving in the proper manner all motions and propositions presented by the members of the commission;
 - 2) putting to a vote all questions which are properly moved, or necessarily arise in the course of proceedings and to announce the result thereof;
 - 3) maintaining order at the meetings of the Commission;
 - 4) moving the agenda along, hold down redundancy, referencing handouts and procedures in a sensitive way during meetings;
 - 5) recognizing speakers and Commissioners prior to receiving comments and presentations of physical evidence, i.e. plans and pictures; and
 - 6) receiving documents or other physical evidence as part of the record.
- b. The chair may rule out of order any testimony or comment which is irrelevant, personal, or not pertinent to the matter being heard.

3. Duties of the Vice Chair

The Vice Chair, during the absence of the Chair, shall have and perform all the duties and functions of the Chair.

4. Temporary Chair

In the event of the absence of, or disability of both the Chair and Vice Chair, the Commission shall elect a temporary Chair to serve until the Chair or Vice Chair shall return. In such event, the temporary Chair shall have all the powers and perform the functions and duties herein assigned to the Chair of the Commission.

B. Conduct of Members of the Commission

1. Members Attendance at Meetings

- a. Every member of the Commission is expected to attend the meetings of the Commission unless duly excused or unless unable to attend because of extenuating circumstances. Any member desiring to be excused shall notify the secretary. The secretary will alert the Chair when a member will be absent.
- b. Un-excused absences from 3 consecutive regular scheduled meetings of the Planning Commission may be considered by the County Commission as non-performance of duty (**The Box Elder Land Use Management & Development Code 2.1.4**)

2. Conflict of Interest

A Planning Commissioner with a conflict of interest in a matter before the Commission shall state that such a conflict of interest exists and withdraw from participation in the public hearing, work session, or regular meeting on such matter. *Any Planning Commissioner who feels he/she, or any other member of the Commission, may have a conflict of interest on any matter that is on the Commission agenda shall explain the possible conflict to the Commission. The Commission shall then vote to decide whether an actual, apparent, or reasonably foreseeable conflict of interest does exist, and whether the Commissioner should withdraw from participation and voting.* If a Commissioner has a conflict of interest, that person shall not participate in the discussion and voting on that matter, nor attempt to use his/her influence with other Commissioners either before during or after the meeting.

3. Explaining a Vote

After the vote is taken, any member of the Commission desiring to explain his/her vote is allowed an opportunity to do so.

4. Commissioner may not vote unless present.

No member of the Commission shall vote on any question unless the member is present when the vote is taken and when the result is announced. No member may give his/her proxy to any persons whomsoever.

C. Meetings

1. Place

Meetings of the Commission shall be held on the third floor of the Box Elder County Courthouse or such other place as the Commission may designate. A meeting having been convened at the place designated, may be adjourned by the Commission to any other place within the County for the sole purpose of investigating some particular matter of business which may be more conveniently investigated at such other place.

2. Regular Meetings – Time for Notice

Regular meetings of the Commission are held on the third Thursday of each month at 7:00 p.m. At the discretion of the Chair, work sessions, additional public meetings, or field trips may be held at other times during each month as deemed appropriate.

3. Special Meetings

A special meeting may be called at any time by the Chair or by a majority vote of the Commission at any regular meeting of the commission. Notice shall be given to each Commissioner of the time and purpose of every special meeting of the Commission at least 24 hours prior to such meeting. Such notice shall be delivered to each member of the Commission personally or may be given by telephone to the Commissioner. Such notice also may be given by U. S. Mail, directed to the member of the Commission so to be notified at the member's residence and mailed not less than three days prior to the time fixed for such special meeting. It is specifically provided, however, that any member may, in writing, waive prior notice of the time, place and purpose of such meeting; and such waiver, if made, shall be deemed a waiver of prior notice of the time and purpose thereof.

4. Meetings – Matters Considered

Any matter pertaining to the affairs of the Box Elder county Planning Commission and falling within the authority and jurisdiction of the Commission may be considered and acted upon at any regular meeting of the Commission without prior notice thereof, unless other notice is required under statute, ordinance or other noticing policies of the Commission. **At special meetings, a matter not included within the notice may not be considered and acted upon without the unanimous consent of all members of the Commission.**

5. Quorum

Four members of the Commission shall constitute a quorum thereof for the transaction of all business except where unanimous consent of all members is required. Any member disqualified because of a conflict of interest shall not be considered when determining whether a quorum is constituted. Except as otherwise specifically provided in these Rules, a majority vote of the Commissioners present at a meeting shall be required and shall be sufficient to transact any business before the Commission.

6. Open Meetings Law

All meetings of the Planning Commission shall be noticed in conformance with the requirements of the Open and Public Meetings Law of the State of Utah.

D. Procedure – Order of Business

1. Order of Business. The order of business in the Commission shall be as follows:

- a. Approval of the minutes of prior meetings
- b. Common consent (if applicable)
- c. Petitions/applications continued from prior meetings
- d. New petitions/applications to be considered
- e. New business

2. Agenda for meetings

The secretary, with the approval of the Community Development Director, will prepare a written agenda for each meeting.

3. Deadline for Agenda

Requests to be on a Planning Commission agenda shall be filed by noon fourteen (14) working days prior to consideration by the Planning Commission. The Community Development Director shall certify completeness of requests. Certified requests, which have been filed in a timely manner, shall be placed on the agenda. The deadline may be waived by the Chair if he/she determines that good cause exists for waiving the deadline, and the Community Development Director has certified the completeness of the request and determined that Staff has sufficient time to analyze the request and adequately prepare a Staff Report.

4. Special Order of Business

The Commission may at any time, on motion supported by a majority vote of the members of the Commission present, proceed out of order to any order of business, or return to an order already passed. When the Commission shall have reached any particular order of business, any item thereunder may be taken up for consideration out of its regular order upon motion supported by a majority of the members present.

E. Order and Decorum

1. Order of Consideration of Items

- a. Chair introduces item;
- b. County Staff makes presentations and recommendations;
- c. Petitioner/developer makes a presentation of proposal;
- d. Any opponents and/or proponents may comment;
- e. Petitioner/developer responses to comments made;
- f. Concluding comments from County Staff;
- g. Closing the public hearing, if applicable;
- h. Planning Commission discusses the item and votes. This discussion is closed to the Staff, Petitioner, and public unless the Planning Commission requests additional information, clarification or explanation. Chair outlines possible actions: approval, disapproval, continue, approval with conditions.

2. Time Limits

The Chair may impose equitable time limits, if deemed necessary for the expeditious conduct of the public hearing.

F. Procedure – Motions

1. Making of Motions

Upon review of the full public record on a request and due deliberation among the members of the Planning Commission, any Planning Commissioner (but the Chair) may make or second a motion. The motion shall include not only the direction of the motion, but shall also include the **recitation of specific findings of fact supporting such motion**. A second shall be required for each motion citing compatible findings. Other members of the Commission may support the motion adding compatible findings. A motion shall die in the absence of a second.

2. Withdrawing a Motion

After a motion is stated by the Chair or read by the secretary, it shall be deemed in the possession of the Commission, but may be withdrawn at any time before division or amendment by the unanimous consent of the Commission.

3. Motions in Order During Debate

When a question is under debate, no motion shall be received except:

- a. to fix the time to adjourn;
- b. to adjourn;
- c. to continue or table;
- d. to amend
- e. to substitute

4. Motion must be Germane

No motion or proposition on a subject different from that under consideration is in order and no such motion or proposition shall be admitted under color of amendment.

5. Motions to Deny

Where a motion to deny a request shall have been defeated, a member of the Commission shall make another motion to dispose of the issue.

G. Procedure - Reconsideration

1. Who may move to reconsider

If a proposition shall fail to pass on account of not having received a majority vote, any member of the Commission having votes in the negative, shall have the right to move for a reconsideration of such proposition. If a proposition passes by a majority vote, any member having voted in the affirmative shall have the right to move for a reconsideration of such proposition.

2. Vote required for reconsideration

Upon a motion to reconsider the vote on any matter, a majority of all the members of the Commission shall be required to reconsider the same.

3. Time for motion to reconsider

When a question has been decided by the Commission, any member voting with the prevailing side may move a reconsideration thereof, or give notice that he/she will make such motion within the time prescribed by these Rules. In the event notice of intention to move for reconsideration is given, no further proceedings shall be had on the proposition in question until the motion for reconsideration is made and determined, or until the time for making such motion has lapsed. **No motion for reconsideration shall be in order unless made before the adjournment for the next regular meeting of the Commission after the meeting at which the original motion was taken.** Such motion shall take precedence over all other motions and questions, except a motion to adjourn.

H. Procedure – Substitute Motions, Amendments

1. Substitute motions shall supersede the main motion upon receiving the approval of a majority vote.
2. All amendments must relate to the same subject as the original motion, resolution, proposition or ordinance.
3. If any amendment is offered, the question of whether to amend the motion shall be discussed and decided first before acting on the original motion.

I. Procedure - Voting

1. Roll Call on Final Passage

The vote upon the final passage of all business shall be by yeases and nos given by members of the Commission individually on roll call, except motion to adjourn, table, continue or receive for study.

2. Voting or Changing Vote after Decision Announced

When a vote is taken on roll call on any question, no member shall be permitted to vote or to change his/her vote after the Chair announces the decision.

3. Changing Vote Before Decision Announced

On any such vote, any member may change his/her vote before the decision of the question has been announced by the Chair.

4. Commission Members Required to Vote – Late Voting

No member may abstain from voting unless there is a conflict of interest. A member entering the Chambers after the question is put and before it is decided may have the question stated, record his/her vote and be counted. A member who has not been present during the discussion of any matter and feels he/she has insufficient information on which to act may abstain.

5. Tie Votes

If a motion for approval of any matter before the Commission receives an equal number of votes in the affirmative and in the negative, and a subsequent motion on the matter is either not made or cannot achieve a majority vote, the matter before the Commission shall be deemed to be denied. Every effort will be made by the Commission to resolve tie votes. The option of continuing an item with the possibility that an odd number of Commissioners would be at a subsequent meeting may be considered.

J. Documents of the Commission

1. Any and all materials submitted to the Planning Commission regarding a request shall be entered into the public record by the Chair by indicating that the material is “accepted for the record;” provided, however, that the Staff Report submitted to the Planning Commission as part of the agenda shall automatically become part of the public record.

2. All notices, agendas, requests, agency or consultant letters or reports, Staff Reports, minutes of meetings, and resolutions of record shall constitute the documents of the Planning Commission and shall be indexed as public record.

K. Procedure – Suspension of Rules

No standing Rules of the Commission shall be altered, amendment, suspended or rescinded without the vote of a majority of all the members of the Commission.

L. Amendment

These Rules of Procedure may be amendment at any meeting of the Commission held after not less than fourteen days written notice of the proposal to amend the Rules, upon a majority vote of all the members of the Commission.

M. Recording of Rules – Copies to be furnished

These Rules, and all subsequent amendments thereto, shall be recorded by the secretary in the book kept for the recording of such business and shall be furnished to each member of the Commission a copy thereof in form convenient for reference.

Effective Date: April 24, 2003

Richard Kimber, Chair
Box Elder County Planning Commission

Legal Constraints

Procedural and Substantive Due Process

The 14th Amendment of the U. S. Constitution prohibits any government action that “deprives any person of...liberty or property, without due process of law.” The requirement of “due process” involves both procedural and substantive requirements. **Generally, procedural due process generally involves how decisions are made (notices, a hearing, impartiality). Substantive due process involves more the quality of the decision**

Procedural due process. Procedural due process requires notice of possible action to persons affected and a hearing before an impartial tribunal.

- **Notice**
 - Affected persons, e.g., petitioner/appellant, surrounding property owners
 - Description of action to be considered
 - Must follow Notice Policy

- **Hearing**
 - Procedurally fair
 - Opportunity to be heard
 - Right to question/cross examine
 - Open process/disclosure
 - Following adopted rules and regulations
 - Record of proceedings/ability to reconstruct what went on

 - Impartial
 - Free of bias, free of conflicts of interest
 - Financial
 - Family
 - Neighbors

 - Don't express opinion prior to the hearing

 - No ex parte conversations

 - Don't show favoritism

Substantive due process. Substantive due process requires that there be a legal basis for the decision, i.e., based on evidence presented and on applicable law. In other words, (1) that there be a logical, reasonable connection between that evidence and the decision, and (2) that there be a connection between the decision and the ordinances governing the particular decision making process.

This “rational nexus” test is in many ways simply a common sense test. Does the decision make sense, given the information presented to the planning commission? Given the authority of the planning commission, are the decision requirements reflected in ordinances governing the particular development approval? Is there a relationship between conditions imposed and the problems that they were designed to solve?

- **Evidence:** “Decision must be based on substantial evidence on the record”
- **Findings:** reasons for the decision (the evidence that supports the decisions)
- **Evidence/findings must relate** to overall decision as well as conditions imposed.
- **Public clamor**

Davis County v. Clearfield City, 756 P.2d 704 (Utah Ct. App., 1988) Citizens opposition is insufficient basis for denial – lack of any credible evidence in support of articulated reasons.

Overall, is it fair? Does it have the appearance of fairness?

Findings of Fact

It is important that the entire record (minutes, transcripts, staff reports, ordinances) reflect the reasons for the decision. The motion to approve or disapprove should refer to the evidence that was most important to the planning commission in making a decision or in imposing a condition or requirement as part of an approval. The motion should also make the connections between the evidence, the decision or condition, and, if applicable, any ordinances governing the decision. **These statements are commonly referred to as “findings.” They can also be referred to as “written reasons” or justifications.”**

An example of a finding might involve the imposition of a condition requiring a developer to provide a right-hand turn lane into the development. A supporting finding might simply indicate that the ordinance requires the planning commission to determine the adequacy of infrastructure serving the development and that the evidence shows that the adjacent street is inadequate to meet the demands of the development, based on the traffic that will be generated by the development.

The failure to make findings will not necessarily invalidate a particular land use decision, otherwise supported by the record, but it could be critical in some areas. For instance, it is very important in making development decisions that they are governed by specific ordinance standards, such as subdivisions, permit, or site plans. In these areas, a planning commission is usually required to approve applications that meet ordinance requirements or standards, or to deny applications not in compliance (or impose conditions that provide

compliance). It could also be critical in land use decisions affecting certain constitutional rights, such as First Amendment interest.

Overall it is advisable to make findings in all instances. It is a skill that requires practice. Findings can be suggested by planning staff in making specific recommendations. However, if a planning commission is imposing conditions, not addressed or recommend in a staff report, the planning commission must provide its own findings. Findings might also be prepared by planning staff or legal counsel between meeting meetings and adopted at a later meeting. It should be noted, however, that spontaneous motions after a hearing or discussion are often better indicators of a fair decision based on the record.

Obviously, findings provide the legal basis for a decision and can be very valuable, if a decision is contested. A planning commission should not forget, however, that findings can also influence the county commission or city council in the making of recommendations, and provide the basis for community, neighborhood, or developer support of its land use decisions.