

Marilyn Feldman/Bothwell
Douglas Call/Bothwell
Max Moore/West Corinne
Robert Anderson/West Corinne
Tamera Newman/Bothwell
Scott Newman/Bothwell
Lee Summers/Bothwell
Carol Rindlisbacher/Scenic Development
Richard Day/South Willard

Gary Feldman/Bothwell
Steve & Courtney Zollinger/Bothwell
Whitney Young/West Corinne
Douglas Newman/Bothwell
Charley Young/Promontory
Katherine Summers/Bothwell
Kim Rindlisbacher/Scenic Development
Tara Rindlisbacher/Scenic Development
Amy Hugie/BE County Attorney

CONSENT AGENDA ITEMS

BOX ELDER COUNTY PLANNING COMMISSION/RULES OF PROCEDURE

Mr. Day reviewed the Rules of Procedure that he and Ms. Pat Comarell had been working on and were presented to the Planning Commissioners at their April 24, 2003 meeting for preliminary approval. The changes that were suggested at that meeting were made to the procedures and were being submitted for final approval of the Planning Commissioners. Once approved by the Planning Commission they will be presented to the County Commissioners for approval and adoption.

MOTION: A motion was made by **Commissioner Thompson** to grant approval to the Rules of Procedure and recommend them to the County Commission for their approval. The motion was seconded by **Commissioner Holmgren** and passed unanimously.

NEW BUSINESS

KRYS OYLER RE-ZONE, BOTHWELLPOCKET AREA FROM ABOUT 12800 NORTH INCLUDING SECTIONS 21, 22, 23, 26, 27, 28, PART OF SECTION 14 WEST OF 184, SECTIONS 9 AND 10 WEST OF 184

Mr. Day told the commissioners that his office had received a petition regarding a request for a re-zone in the Bothwell pocket area. The petition was brought by Krys Oyler, Guy Harris, Knud Fridal, James Bingham, and Thayne Oyler. Mr. Day went on to state that there were a few small areas that had not been included in this re-zone petition and the commission may want to consider including them in their discussions and rulings. Mr. Day's summary of the issues for this re-zone included:

- ⇒ Does the application conform to guidelines contained in the General Plan?
 - The Land Use Element of the General Plan outlines these findings for land use decisions
 - Maintaining the current quality of public services through balanced growth and development;
 - Protecting rural, agricultural, mineral, wildlife and other traditional land uses;
 - Promoting development patterns consistent with, and sensitive to resident preferences.

- ⇒ Is the zoning appropriate for the area? (The petition is for RR-5 [five acre minimum lot size zoning as the southern part of this “pocket” area is currently zoned RR-5])
- ⇒ Does the zoning reflect the uses both now and in the future?
- ⇒ How can the County best service the area?

As this is quiet a large area that is being petitioned for re-zoning, [and as the County is in the process of updating its General Plan], Mr. Day stated that the Planning Commissioners need to consider the land use decision in its context of making any decisions regarding this petition. With those comments made, Mr. Day recommended accepting the petition for review and set a date for a public hearing concerning the application. Since the time that this petition was received, there have been two petitions signed by several individuals opposed to this re-zoning and a copy of those petitions were given to the Commissioners (a copy also accompanies the official Minutes). **Chairman Kimber** suggested that the Commission follow the same procedure with this petition as with any other by setting a public hearing to enable the Planning Commission to hear from all side concerning this re-zoning. **Commissioner Eberhard** asked about the **RR-5** and the **RR-5 modified** codes and which one this area is being petitioned as. The answer to this was unclear and Mr. Day recommended that because the application was for **RR-5** that the Planning Commission accepts it as such, and that if there was a difference, they would be able to build a better recommendation during the approval process.

MOTION: A motion was made by **Commissioner Davis** to accept the petition for the re-zone and to set a date for a public hearing, incorporating the petitions against the re-zone. The date for the Public Hearing was set for June 19th at 7:00 p.m. in conjunction with the regularly held Planning Commission meeting. The Motion was seconded by **Commissioner Tea** 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 reviewed the summary of issues relating to this four-lot subdivision, which had first come before the Planning Commission in January 2003. The issues to date that have been a concern for the staff and petitioners are:

- ☉ water availability for fire protection
- ☉ flooding and storm drainage
- ☉ access and improvements to service the development

The property is currently un-zoned and each lot is one acre in size with culinary water provided by the Bear River Water Conservancy District. The staff has met with the BRWCD and the County Fire Marshal to determine the best course of action regarding fire protection, not only for this subdivision, but for other areas of the County that may be difficult to reach. The County does

not have an ordinance that requires a minimum amount of water flow for fire protection. According to Mr. Day, in rural areas that is appropriate. It has been decided, however, that fire hydrants will be put in place in conjunction with the subdivision, and although they will not meet the minimum [state] recommended fire flow at this time, through upgrades in the system, those minimum requirements will be met sometime in the future. The recommended minimum guidelines from the State are 1200 gallons per minute and the BRWCD is furnishing 500-800 gallons per minute. The recommended fire flow from the State is based on "two concurrent fires lasting two hours each." An agreement was made between the Fire Marshal, the [subdivision] engineer, and Mr. Day's office that as the system is being built, the 500-800 gallons would be sufficient for the area and is better than is available in other remote areas of the County.

Kunz Engineering has conducted a minor study on the area regarding the flooding issue and based on their review Mr. Day recommended the following notations be made on the subdivision:

- ▶ The finished floor area of all dwelling structures should be set at a minimum of one foot above the adjoining roadway to ensure any run-off will be directed to the channel on the west side of 10800 West. Any basements should have window wells set at one foot above the adjoining road.
- ▶ As part of the improvements for phase one of this development, a culvert should be placed under 10800 West at the south end of the improvements to channel any run-off to the east side of the improved road to the drainage ditch to the west.

Mr. Day went on to say that this four-lot subdivision should have little or no impact on the flood potential in this area (meaning that these homes will not contribute to the flooding issues in the area) because the lots are large enough to handle any run-off that is generated from the rooftops; that run-off should be absorbed in the lots themselves. However, as the development continues, run-off from the paved areas will be restricted to .2cfs per acre by control structures such as detention ponds and piping. The engineer did not look at the other potential flooding issues in the area, as the Planning Office does not have the resources at its disposal at this time for such a study.

All of the improvements will be required to be installed within the required two year time period as stated in the Land Use and Development Code for the County. This includes the road being fully developed as submitted in the construction plans. A bond will be required to insure that these improvements are made regardless of the timeframe (two years). The developer will be dedicating thirty-three feet of his property for the road. There is no other property being dedicated from other landowners in the area for the road.

Based on the above, Mr. Day recommended granting final approval at this time.

MOTION: A motion was made by **Commissioner Davis** to grant **Final** approval for the Country Classic Four-Lot Subdivision Phase I based on the Staff's findings. **Commissioner Eberhard** seconded the Motion and it passed unanimously.

PROMONTORY LANDFILL, LLC, APPROXIMATELY 2000 ACRES LOCATED ON PROMONTORY POINT

Mr. Day presented this conditional use permit for a landfill located at Promontory Point (west of Plain City and south of Brigham City) to the Commissioners and mentioned some of the issues surrounding this petition. Mr. Day's office received a fax from the *Utah Artemia Association* and also a letter from *Parsons, Behle & Latimer* both of which have addressed concerns over this proposed landfill along the Great Salt Lake. **County Attorney Amy Hugie** had also given Mr. Day a letter in response to these two afore mentioned letters addressing their concerns and also those of the County at this time. The proposed landfill consists of approximately 2000 acres. Mr. Day went over his findings on this petition stating that a CUP is required because this part of the County is unzoned and because this petition falls within one of the three conditions requiring a permit (a nuclear waste storage facility, a gravel pit, or a landfill); the Planning Commission and the County Commission have a responsibility of reviewing this application for conditional use. The land issues involved with this permit are:

- ⊙ access and public safety
 - access is to be primarily by rail
 - there are roads available [adjacent to the causeway, but restricted]
 - another road goes through the GSL which will be the primary vehicular route [as understood by the Planning Office]
 - ⊙ environmental concerns
 - concerned about contamination of the lake whether through leaching of ground water, storm water run-off, dust and debris
 - ⊙ performance and viability of the project
 - Mr. Day stated that once an area is approved as a landfill and one ounce of waste is put there, it remains a "landfill in perpetuity"
 - if the company is approved and starts the landfill and then cannot continue with the operation, the area will still be a landfill; the County would continue to be responsible for it
- (A copy of Mr. Day's background and summary of issues accompanies the official Minutes)

Due to the above-mentioned items, Mr. Day stated that his office has asked for a business plan and a pro-forma for the project; copies of [signed] contracts from agencies that have been named as participants in the landfill; engineer plans for improving the roads from the primary access to the site (roads will have to be brought to County standards, sixty-six feet wide, fill in place, plus fully oiled). The environmental concerns will rely mostly on State and Federal Governmental regulations. The letter from *Parsons, Behle & Latimer* questioned whether some of the basic sighting criteria had been met. Mr. Day then read the summary from the letter received from **County Attorney Amy Hugie** as follows:

"My recommendation is for the Planning Commission to postpone making any decision as to recommendations regarding the conditional use permit regarding the proposed landfill until the necessary information has been provided and the developer addresses the above concerns in detail. This should not only be done in fairness to the community but also in fairness to the developer and would greatly limit our legal liability since it will provide a basis for any decision made by the County in the future." (A copy of the complete letter is attached to the official Minutes of the meeting)

Based on this recommendation, Mr. Day stated that it would serve the Planning Commission to have the developer get these issues taken care of before moving forward on this permit. This would result in fairness, not only to the community, but also to the developer in getting these concerns and issues out of the way before moving forward. This would also limit the County's liability issues (legal exposure) in the future and would better serve the Planning Commissioners in making their final decision and recommendation to the County Commission. The Commissioners discussed these concerns and **Commissioner Davis** questioned whether or not this body [of Planning Commissioners] was technically competent to review all of the requirements for such a permit, as the County looks to the DEQ for protection in such matters, relying on the DEQ to make sure that the required conditions are met. Would it be possible to bring all of the concerned parties together to discuss this matter and make sure that all regulations have been met, instead of just having the compliance issues (affirmed) from the Planning Commission? If they are being met, then **Commissioner Davis** stated that he didn't feel that the Planning Commission had the necessary credentials or qualifications to second-guess the DEQ, causing frustration. Following some further discussion among the commissioners, Mr. Mark Eaton made the following comment addressing the Commissioner's concerns:

"Thank you, Mr. Chairman. What I would suggest, and **Commissioner Davis** is exactly right in what he has said, there are very strict guidelines through the Department of Environmental Quality that cover all of the issues, technically, that have been discussed. The venue that the federal government and the State of Utah has placed that in, is in DEQ's venue. One of the requirements within the DEQ permit is for us (*the developer*) to seek a conditional use permit. I suggested some time ago, perhaps you make it conditioned upon their (*DEQ*) giving an approval, and that way you can follow their process but permit it then to work in the venue of the federal government and the state government have deemed to be the appropriate venue for that to take place; so that you (*the Commission*) can be secured that all of those technical criteria have been met and it will be out of their reporting that it comes to you and their permitting that it comes to you. Now certainly there are some land use issues and some questions with respect to that. The notion that the GSL dike will be the primary, it is a possible way to get to Promontory. The causeway is actually a better connection for us; the railroad causeway, because we don't ever have to get on the County road. We can follow the spur all the way in; we'll cross the County road, if the County road comes that far, which I'm not sure it does. With respect to that, you (*the Commission*) may want to require that a site plan, an approved site plan, be a condition for the conditional use permit. For us (*the developer*) to do all of the site development before a permit is in place would really be getting 'the cart before the horse' because we would be dealing with issues that we may or may never have to deal with. If we've not able to meet the criteria to get a permit then there is no use for us to go through all of the other exercises; so there may be a way for you (*the Commission*) to advance this process, but hold conditions so that it can't be triggered until such a time that all of your questions could be answered in the order that they would operate in. That would be my only suggestion, and I'm not suggesting that we should short-circuit the process, but make sure that the process can work in the venues that both the federal and state governments have set in place and that **Commissioner Davis** brought a question up about. We certainly want to meet all of the criteria, both of your body, as well as the state and federal government, and be a good neighbor to all of the other businesses and property owners that may be impacted. Gentlemen thank you; that was really my only comment, that there are ways to do this without having all of the answers in your hand today. And that might be to set some conditions upon which the conditional use

permit could be approved. And if you were to make a referral to the County Commission, it may be that when it's appropriate for a site plan, that the site plan come back to the Planning Commission, not the County Commission, so that they can fulfill their process. The time frames that we (*the developer*) are working in, with DEQ, we would be ready for a permit; the last well was finished yesterday, the technical data would be available to DEQ within three weeks. I would expect sometime by the end of June that we would be in the public comment periods for DEQ, which is about four/six week period, so the permit could be ready to be granted if a conditional use permit is available as early as the middle or end of July. So in that time frame, it may be the only way to do this is to set certain conditions that would have to be met, or to be triggered, but the notion that it is available or not available, based upon certain conditions. That would put it in the permit . . . and DEQ has said that they would accept that, as long as they know that under certain conditions, a conditional use permit would be granted, that they would accept that in their permit process. Thank you, and I'd be glad to answer any questions if you have any. Thank you." (*Italics added*)

Chairman Kimber brought the discussion to a close by stating that there are issues that come outside of the parameters of what DEQ would look at, and it was those things that were a concern to the Planning Commission. Mr. Eaton asked if a regular meeting could be scheduled to meet with the staff and work with the commission so that when the next juncture is reached, they would have significant work time on a regular basis to get over all of the hurdles. At that point **Chairman Kimber** asked for a motion on this petition.

MOTION: A motion was made by **Commissioner Davis** to table the request for granting a Conditional Use Permit for the Promontory Landfill and refer the petition to the Staff for continued work-sessions with the developer and DEQ. The Motion was seconded by **Commissioner Thompson** and passed unanimously. (*Mr. Day stated that he would meet with both the developer and DEQ to assure that the technical issues are addressed.*)

WORKING REPORTS

A town meeting was held on May 1, 2003 in West Corinne regarding the West Corinne Community Plan and at that time it was determined that a citizens advisory committee would be established for the area. Four of those invited to serve on that committee were present at this meeting; Dee Hardy, Max Moore, Whitney Young, and Robert Anderson. The other three invitees were John Ferry, Bryan Davis and Alan Riser. Ms. Comarell then addressed the Commission regarding the findings that came forth at the town meeting. It is hoped that over the next couple of months that this committee will be able to meet on a bi-weekly basis and work through the issues that were expressed at the town meeting. The major issue that was raised was that of adequate water for the area and the impact that it would have on those who hold water rights. At the monthly meetings of the Planning Commission the citizens advisory committee would report on their work and progress and any other issues that may have come up during that time period. **The first meeting of the advisory committee was set for Thursday, June 12, 2003 at 5:30 p.m.**

MOTION: A motion was made by **Commissioner Davis** to approved the seven person committee members and also approve the process as reviewed by Ms. Comarell and immediately begin the process of coordinating the bi-weekly meetings between the committee members and the County Staff. The motion was seconded by **Commissioner Tea** and passed unanimously.

PUBLIC COMMENTS

•Randy Marble was instrumental in putting together the petition against the re-zone petition in the Bothwell area and wanted to address the Commission and also his neighbors regarding this issue. He invited those from the area to keep cool heads during this re-zone process, as this issue is an emotional one for all those involved.

•Scott Newman commented on the road leading to the Promontory Landfill and wondered about the gravel that would be necessary to build the road up and what would happen to this gravel during times when the lake rises.

•Rhonda Boren from MRI, agreed that the County needs to get with the DEQ and research the landfill in more depth. The coalition that she represents would also like to be a part of the resource process.

•Roger Fridal stated that Krys and Thayne Oyler are [probably] withdrawing their names from the petition for 5 acre re-zone. Mr. Day said that if Krys Oyler withdraws his name (since Mr. Oyler was the original petitioner) the petition would be null and void. If that were the case, Krys Oyler would need to submit written information regarding this withdrawal to the Planning Office.

•Scott Newman was concerned about the possibility of having to condemn property along the road where the County Classics Subdivision is being planned. At this time there are no plans for this to happen.

A motion was made to adjourn the meeting at 8:20 p.m. by **Commissioner Holmgren** and seconded by **Commissioner Eberhard**; all concurred.

Passed and adopted in regular session this 19th day of June 2003.


Richard Kimber, Chairman
Box Elder County
Planning Commission

**CONDITIONAL USE PERMIT APPLICATION
LANDFILL AT PROMONTORY POINT**

**BOX ELDER COUNTY
COMMUNITY DEVELOPMENT**

REPORT OF PLANNING STAFF REVIEW



DETERMINATION: ◆ *Whether or not to recommend to the County Commission approval of a Conditional Use Permit for a Landfill located at Promontory Point.*

1st Review Date - February 13, 2003

2nd Review Date - May 16, 2003

Summary of Issues:

1. Access and public safety.
2. Environmental concerns.
3. Performance and viability of the project.

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Background:

The petition consists approximately 2000 acres proposed as a commercial landfill. 1000 acres for the actual site and 1000 to be used as a buffer zone. The area is currently un-zoned. The actual location is on the west side of the peninsula.

The purpose of this Conditional Use Permit process of the County is to promote the health, safety, convenience, and general welfare of the present and future inhabitants of the County. The land use code provides sufficient flexibility to allow this type of use. The overall goal of the process is to protect the County and the neighboring uses. It is important to remember this area is un zoned.

Conditional uses may be approved by the County Commission upon recommendation of the Planning Commission. Before approval is granted, a report to the County Commission by the Planning Commission shall find that the proposed development will meet the requirements of the Code.

The following is a list of concerns or questions staff has identified that will assist the Planning Commission in formulating the finding to present to the County Commission:

Box Elder County Planning Commission Meeting:

May 22, 2003

Environmental concerns.

- Limitations and/or restrictions on the use and/or location of uses in sensitive areas due to soils capabilities, wildlife and plant life.
- Processes for the control, elimination or prevention of land, water, or air pollution; the prevention of soil erosion; and the control of objectionable odors.
- The planting of ground cover or other surfacing to prevent dust and erosion.
- The site must be covered daily to prevent blowing debris and other problems.
- Restructuring of the land and planting of the same as directed by the Planning Commission when the conditional use involves cutting and/or filling the land and where such land would be adversely affected if not restructured.
- All requirements from the State Department of Environmental Quality must be continuously met.
- The liner to the site must be approved by all applicable state and federal agencies.

Performance and viability of the project.

- Time limits on the validity of the conditionals use permit. Such time limits shall be determined by the following guidelines:
 - ▶ Unless there is substantial and positive development action under a conditional use permit within a period of 1 year of its issuance, said permit shall expire. The Planning Commission and County Commission may grant a maximum extension for 1 year, when deemed in the public interest.
 - ▶ A bond or other valuable assurance in favor of the County in an amount to be determined by the County Commission. The amount of said bond or other valuable assurance shall not exceed the amount calculated by the developer's engineer and reviewed by the County as necessary to assure compliance with all conditions.

Access and Public Safety.

- Are there going to be any buildings on site? If so, building elevations and grading plans must be submitted for review. Based on the location, they should include a design which will prevent or minimize flood water damage, where property may be subject to flooding.
- The relocation, covering or fencing of irrigation ditches, drainage channels, and other potential attractive nuisances existing on or adjacent to the property.
- Increased setback distances from lot lines where the Planning Commission determines it to be necessary to insure the public safety and to insure compatibility with the intended characteristics of the district.
- Appropriate design, construction and location of structures, buildings and facilities in relation to any earthquake fault which may exist on the property, and limitations and/or restrictions on the use and/or location of uses due to special site conditions, including but not limited to geologically hazardous areas; flood plains; fault zones; landslide areas.
- Plans for the location, arrangement and dimensions of truck loading and unloading facilities.
- Construction of curbs, gutters, drainage culverts, sidewalks, streets, fire hydrants and street lighting.
- Reduction of permitted street grades for winter and storm conditions or exposure.
- A guarantee of sufficient water to serve the intended land use and a water delivery system meeting standards adopted by the County Commission.
- A waste water disposal system meeting standards adopted by the County Commission as determined by the BRHD.
- The road from the causeway at GSL to the site should be fully improved to ensure the safe access.

- ▶ Specific short and long-range plans of development may be required to demonstrate timeliness, feasibility and impact on the public.

Additionally, The County Commission should be provided with a business plan and proforma for the project. There should be an escrow account established to guarantee the required improvements are installed correctly, such as the road, etc..

The Planning Commission held a public hearing at the March meeting. A summary of the issues raised is attached as exhibit #1

Findings:

The commission should determine whether or not:

1. The project is in compliance with existing county land use ordinances.
2. The project complies with the guidelines contained in the General Plan.
3. The location is appropriate for such a use.
4. The environmental impacts can be mitigated to ensure an environmentally safe operation.
5. The project is financially viable.

Please feel free to contact me should you have any questions or concerns.



County Attorney's Office
Amy F. Hugie, County Attorney
Kevin McGaha, Chief Deputy County Attorney
Brad C. Smith, Deputy County Attorney
H. Thomas Stevenson, Deputy County Attorney
Kenneth D. Bradshaw, Deputy County Attorney

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Box Elder Planning Commission
Box Elder County
01 South Main Street
Brigham City, UT 84302

May 22, 2003

RE: Proposed Landfill on Promontory Point

Dear Planning Commission Members,

I have reviewed the letter dated May 20, 2003 from Craig D. Galli of Parsons, Behle & Latimer, who represents the Promontory Point Coalition; the letter dated May 8, 2003 from Mark Easton of Pacific West; and the letter and request for additional information dated February 18, 2003 from the Utah Solid and Hazardous Waste Control Board addressed to Mark Easton. I have reached several conclusions as to the possible liabilities the County could be faced with if the County Planning Commission proceeds at this time before acquiring more information.

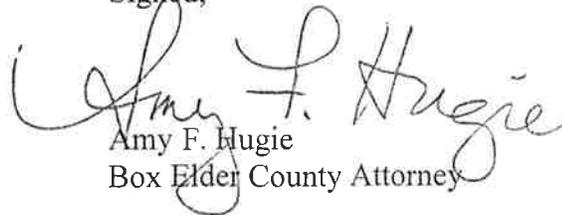
1. It is unclear based on all information received to date as to whether Pacific West has met Federal and State regulatory standards. In fact, the letter from the State from February of this year makes it clear that as of that date, Pacific West still had technical information that needed to be provided. By obtaining this information from the State, I believe that not only will the questions raised by the Promontory Point Coalition be answered but also those questions which have been raised by the Staff for consideration by the Planning Commission.
2. It is also unclear from the letter provided by Mark Easton of Pacific West as to some of the technical aspects of the proposed landfill. The letter addresses some issues, but the answers are not very specific and tend to be very vague and general. The State's letter requesting this information is very specific as to what they are looking for to fulfill the application's requirements. The County should be looking at acquiring these same details so as to make an informed decision as to all aspects and liabilities of this landfill.

Without this vital information being requested and provided, the County could be

putting itself in a precarious position legally if we do not follow our own policies and procedures, especially in making sure that the landfill conforms to State and Federal regulatory standards before the County considers granting the conditional use permit.

My recommendation is for the Planning Commission to postpone making any decision as to recommendations regarding the conditional use permit regarding the proposed landfill until the necessary information has been provided and the developer addresses the above concerns in detail. This should not only be done in fairness to the community but also in fairness to the developer and would greatly limit our legal liability since it will provide a basis for any decision made by the County in the future.

Signed,



Amy F. Hugie
Box Elder County Attorney