

BOX ELDER COUNTY PLANNING COMMISSION MINUTES AUGUST 16, 2018

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. Director
Mellonee Wilding	Vice-Chair	Marcus Wager	County Planner
Kevin McGaha	Member	Steve Hadfield	County Attorney
Michael Udy	Member	Jeff Scott	Commissioner
Desiray Larsen	Member	Diane Fuhriman	Excused
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 Laurie Munns.
Pledge was led by Commissioner Kevin McGaha.

The following citizens were present & signed the attendance sheet

See Attachment No. 1 – Attendance Sheet.

The Minutes of the July 19, 2018 meeting were made available to the Planning Commissioners prior to this meeting and upon review a **Motion** was made by Commissioner Desiray Larsen to approve the minutes as written. The motion was seconded by Commissioner Kevin McGaha 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 said the applicant is requesting site plan approval for a storage unit facility. Originally when this came before the commission, there was a list of items needing to be taken care of, most of which have been completed. Staff then explained the updated site plan to the commissioners and recommended approval subject to approval from the engineer and UDOT.

MOTION: A Motion was made by Commissioner Bonnie Robinson to approve Application SP18-002, Site Plan for Open Country Storage with the conditions of engineer and UDOT approval. The motion was seconded by Commissioner Jared Holmgren and unanimously passed.

MILESKI ROAD VACATE, VAC18-001, at approximately 11600 North – East of Hwy. 38 in the Deweyville Area of Box Elder County.

Staff explained this came before the planning commission in April and was forwarded to the county commission with a recommendation of approval. Since then additional information has come about and the county commission made a motion to return it to the planning commission for further review and a new recommendation. This county Class D Road is located north of Deweyville. The petition from the applicant states the road dead-ends on his property. The road does not extend to the forest service property to the east. Letters have been received from residents who have an interest in having the road maintained as a public right-of-way because it provides access to the forest service land. The road does stop short on the applicant's property but there is a hiking trail extending up the canyon onto the forest service property. Staff stated anytime a road vacate is taken into account, the first review or approval standard is, is there a prevailing public interest in keeping the road open. In this scenario based upon the two letters we received from the public, there is public interest in keeping the road open. There are three locations where county roads lead to forest service property between Brigham City and the Collinston area. There is one north of Brigham City, one in Honeyville and this one. The concern from the local residents is if this road is vacated it reduces access down to two and the closest forest service access would be in Honeyville. As far as other review or approval standards, staff thinks they do not play a role in this vacate. It comes back down to the question of is there a prevailing public interest in keeping the road open.

Staff said many times these road vacates that come before the planning commission do not provide access to public lands so it can be an easy decision to vacate the road. Staff has spoken with a land use attorney employed by the state of Utah as an ombudsman to receive his opinion on this matter. The attorney stated it may not be a Class D Road as defined in state code but it is a public right-of-way. Section 72-5-104 states 10 years of continuous use by the public equals a public right-of-way. Staff is of the opinion that the evidence suggests there is a public right-of-way accessing public lands and recommends forwarding a recommendation of denial to the county commission.

Commissioner Desiray Larsen asked for the definition of a Class D Road. Staff defined a Class D Road as any roadway or other land surface route that has been established by use or constructed and has been maintained to provide for usage by the public for vehicles with four or more wheels that is not a Class A, Class B, or Class C Road.

Commissioner Mellonee Wilding verified the road itself is a Class D Road and the trail leading to the forest service land is a public right-of-way.

Toby Mileski stated the trail is used more by game than the public. He said the ombudsman is correct on the right-of-way where the trail begins and the Class D road ends if the landowner has done nothing in 10 years to stop it. Mr. Mileski explained he has tried to stop it by installing signs, gates and posts which have all been ripped down. He has reported trespassers on multiple occasions and had the sheriff, in addition to the Utah Highway Patrol, come out to site them and remove the cars. The reason he is asking for the vacation is 1) to stop the theft on his property and 2) Garland City has a spring and holding facility servicing Garland City with a 5" water line running through his property. Tremonton also has a spring the road touches as it goes up and just below there is a holding facility and an additional spring to the north. The EPA (Environmental Protection Agency) suggests the cities that have water systems look at every strategy possible to avoid the terrorism threat. He said Garland City wrote a great letter supporting closing the road because people shoot at their tank facility all the time. Mr. Mileski said the road has not been maintained and where the road dead ends, a 4-wheeled vehicle cannot get up past that point. He stated a Class D road gives someone the right to pass but not the right to park which is another problem.

Commissioner Kevin McGaha stated the first criteria is prevailing public interest and there is a real concern where there are only three accesses within a significant distance. If one of those is closed down the only way to reopen it would be to have the county pay for an access through a condemnation action and if access is limited it seems to contravene the public interest.

Commissioner Desiray Larsen said the applicant did bring up the idea of parking. Because the trail is not a Class D Road but is a public right-of-way clearly they would need to park a car somewhere.

Staff had clarified with the ombudsman that parking equals the historic area used and his opinion is there is a public right-of-way all the way to the forest service land based on continuous use. At the end of the road and beginning of the trail only one, maybe two cars can park there.

Commissioner Mellonee Wilding verified it is not up to the planning commission to decide if something is a public right-of-way or not. All we can do is say there is a possibility of one. In her opinion the planning commission should not take a step to prohibit that; it is up for the courts to do. If we leave it open as it is it can go to the courts if it needs to.

MOTION: A Motion was made by **Commissioner Kevin McGaha** to forward a recommendation of denial to the county commission. The motion was seconded by **Commissioner Mellonee Wilding** and passed unanimously.

PUBLIC HEARINGS

Chairman Laurie Munns 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.

MINCHEY HOME BUSINESS CONDITIONAL USE PERMIT, CUP18-002, Request for a Conditional Use Permit for a home business located at approximately 3325 North Hwy. 38 in the Harper Ward area of Unincorporated Box Elder County.

Staff explained the applicant is requesting a CUP for a home business for portable restrooms located approximately at 3325 North Hwy 38 in the Harper Ward area. The applicant manages a route for the Honey Bucket business and he would like to live in the home and operate his business from the property. He is proposing to build a 40 x 60 building to park service and delivery trucks inside as well as store between 50 - 150 clean portable restrooms. The area to the north, south, east, and west is zoned Rural Residential 5-acre and is being used as such.

Staff clarified when a home business has been decided as acceptable as a conditional use in a zone, it is basically saying we are okay with this use being permitted or existing in this zone as long as any negative impacts created by the use can be mitigated through conditions. In this situation, what the planning commission would want to do is look at the particular use and ask what negative impact might this use have on the community and what conditions can be applied to that use in order to mitigate those negative impacts. Staff has reviewed some of the negative impacts and generally they tend to be associated with 1.) *Conditions relating to safety of persons and property;* 2.) *Conditions relating to the compatibility of the use;* 3.) *Conditions relating to health and safety;* 4.) *Conditions relating to environmental concerns;* 5.) *Conditions relating to compliance with the General Plan and characteristics of the zoning district;* 6.) *The aesthetic impact of the proposed use on the surrounding area;* 7.) *Present and future requirements for transportation, traffic, water, sewer and other utilities for the proposed use;* 8.) *Safeguards proposed or provided to ensure adequate utilities, transportation access, drainage, parking, loading space, lighting, screening, landscaping, open space, fire protection and pedestrian and vehicular circulation;* 9.) *Safeguards provided or proposed to prevent noxious or offensive omissions such as noise, glare, dust, pollutants and odor from the proposed facility or use.*

Staff has compiled a list of conditions based on potential negative impacts that staff feels are necessary relating to health and safety:

- a. *No unsanitized portable restrooms stored on the property.*
- b. *No unsanitized holding tanks (whether on a truck or not).*
- c. *No storage of black water or sewage on the property.*
- d. *Holding tanks and portable restrooms should be emptied, cleaned, and sanitized off site.*
- e. *No dumping of black water, sewage, or water used to clean/rinse portable restrooms or storage tanks on the property.*
- f. *No smells of sewage or chemical agents.*
- g. *No business conducted during nighttime hours.*
- h. *Limited business traffic – How many trucks/trailers and trips?*
- i. *Annual application of magnesium chloride on private drive from Hwy 38 to storage structure to suppress dust.*

Compliance with characteristics of the zoning district:

- a. *Portable restrooms must be stored within a building that is aesthetically compatible with the surrounding area.*
- b. *Associated trucks and trailers must be stored within a building that is aesthetically compatible with the surrounding area.*

Staff would also recommend any lighting as part of the new structure be directed downwards as to not pollute the neighborhood with unnecessary nighttime light. Any additional adverse effects the commission can think of should be addressed with the applicant.

The public hearing was then opened for comments.

Shaun Thornley, 3365 N. Hwy. 38, lives on the property directly to the north of the applicant. There is a shared access designed to be a residential access UDOT allowed. Many of his concerns are the same as staff has presented. He asked that there will be no unsanitized outhouses or storage tanks on the property whether they are on a truck or not; that any business trucks, trailers, storage tanks or outhouses be stored indoors; no storage of sewage, black water, gray water, or the like take place on the property and there would be no dumping of these type of things. He hopes minimal business will be conducted during the evening and nighttime hours as it is a residential zone and there be limited traffic because it is a gravel road. There is also some concern about smells, either sewage or chemical agents. These are the major concerns he has as a neighbor and hopes they can be addressed in the conditional use permit. Mr. Thornley thanked the commission for their service to the community.

DeVon Breitenbeker, 3220 N. Hwy. 38 lives across the road from the property. He has lived there for approximately 40 years. The RR-5 zoning was instigated many years ago for one basic purpose and that is country living. Prior to living in Harper Ward he lived in Brigham City and operated a business there but he wanted rural living. He said staff has indicated all of the provisions needing to be done but his concern is who is going to monitor all of the odors, dust control, and number of trucks going in and out of the property. Mr. Breitenbeker related what he told people when he was in business. If you hire an employee, the very best that employee is going to be is on the first day. He thinks that is what you are going to run into when you talk about the provisions being met after they have been there a while. There is also a financial situation. If 150 buckets are stored on the property and the homeowner right next door to them wants to sell his home, what kind of an impact is that going to have on the sale of his home? He is very concerned about maintaining the RR-5 zoning.

Dale Richards, 3015 N. Hwy. 38, stated his concern is mainly the smell. He works in Weber and Davis Counties and goes into all new subdivisions and sees these porta potties and he thinks they are disgusting. They are not maintained very well. His concern is they are going to get hauled out there and the wind blows from the west to the east all the time and the smell is going to impact everyone through the area. He is concerned with the property value of his home going down to nothing.

David Griffith, 3485 N. Hwy. 38, he and his wife are concerned about changing the nature of the neighborhood from rural residential to letting a toe-hold get placed there for industrial/commercial use and the precedence it will set for others to follow. He would hate to see the nature of the area change. He is also concerned about the enforcement of the CUP. Who, how often, and what are the consequences of not meeting the conditions?

Mike Timothy, 2978 N. Hwy. 38, has traveled around a lot to Evanston Wyo., Vernal Utah, all these places where there is a large number of Honey Buckets because of the nature of the

businesses going on in that part of the country. He said if you go to those places and look at the sites that are maintaining these buckets, it is disgusting. He asked the commissioners to look at the picture presented by staff and see how nice the area is. If you can imagine broken, discarded Honey Buckets placed in one area, the storage of ones getting ready to go out in another area, and storage of the ones not in use in another area, and trying to keep all of that organized. He thinks the broken ones just add up as he has noticed in these other cities. They just stay there and it would be a real sore site to have to live by. He hauled 14 tons of hay this morning and he does not need Honey Bucket's smell or to have to see those as he is out working and doing the things he moved out there for. Mr. Timothy said when he first built up there in 1970 it was his father-in-law's property. He could close his eyes and move out of the driveway onto Hwy. 38. He put a stop sign at the bottom of his driveway, because if you do not stop and look both ways two or three time you are going to get killed. The speed limit is 55 mph and is not the right place for small business to come in and do business and have it be safe. He wants his neighborhood to be just like it is now.

Jerry Wilde, 3102 N. Hwy. 38, said he was the chairman of the county planning commission when this area was zoned. He did not participate in making up the rule because he did not want to be chastised. The people of Harper Ward made the rules the way they wanted. He has a hard time understanding how we deviate from Rural Residential 5-acres. Just a year ago we were here because someone wanted to put 30 houses in the area and count the steep hillside as part of their 5-acres. People always want to deviate from the way it was zoned. He thinks it was zoned properly.

Dale LeDuc, 3380 N. Hwy. 38 stated he was told there would only be sanitized units moved into the area. Nothing in this world is 100%. They will not be 100% sanitized. So there is a health hazard to our area. This is a beautiful rural area and a magnificent home there. There are industrial areas in Brigham City only 4 miles away and another one in Corinne that would welcome industry in their area. He would encourage the applicant to consider these areas as a possible option.

Diane Minchey, 3121 W. 5200 S. Roy, Utah, is the applicant who wants to purchase this home. She ran the Honey Bucket business out of her back yard in Roy for 3 or 4 years and never had a neighbor complain about it at all. We bring them in clean and there is a storage unit where we keep all of the toilet paper and chemicals. The acreage on her house in Roy is not as big as this home and she thought the property was zoned agricultural. She wants the residents to know her business was never a problem where she lives now.

Rod Cottle, 3325 N. Hwy. 38, appreciates the concerns expressed. He said the applicant is trying to sell a home in Roy to purchase his. He has gone on the MLS to look at their home in Roy and it is immaculate. As you drive along the highway, you see a bit of everything, you see one home that is beautiful, well kept, and nice and the next one can be a junkyard. We have heard a lot about agricultural and which is what he was attracted to as well. There are businesses in the area doing things with wood, contractors that have debris scattered everywhere, and there are mechanics along the road with cars all over the place. Not all the businesses in the area are agricultural businesses; there are all sorts of businesses going on out there. He said these people are my friends and neighbors and he wants everybody to be happy even though things do not always work out. Hopefully if this goes through the owners will take care of the property and will abide by the requirements outlined for them.

Hearing no further comments a motion was made by **Commissioner Mellonee Wilding** to close the public hearing on the Minchey Home Business Conditional Use Permit, CUP 18-002, the motion was seconded by **Commissioner Kevin McGaha** and passed unanimously.

ACTION

Chairman Laurie Munns explained at this time the commission will discuss and ask staff or the applicant any questions they might have. She stated it is permitted to have a home business in an RR-5 zone. It is not the job of the planning commission to decide if they can have a business because it is already a permitted use.

Commissioner Desiray Larsen asked for clarification on what determines a home business vs. an industrial use.

Staff explained the definition of a home business is a business that manufactures or provides a service for agricultural and residential uses with fewer than 10 employees and that is incidental and secondary to the use of the structure or dwelling for residential purposes and does not change the current character of the dwelling or neighborhood.

Commissioner Kevin McGaha said he cannot imagine a situation that is more changing to the character of the dwelling, let alone the neighborhood, than bringing those types of items in and out of the neighborhood. He thinks it does not qualify as a home business under the definition given. Anyone who looks at those items and the character of the dwelling and the neighborhood, it will be changed.

Commissioner Desiray Larsen said if those items are coming and going they will be visible but if they are stored out-of-sight then would it qualify as a home business? If Honey Bucket is littering the property it no longer qualifies as a home business but becomes an enforcement issue also.

Staff said that is the problem with these types of uses is the enforcement because it really depends upon how well the person adheres to the conditions set. If they adhere to them then there is the argument that it would not change the current character of the neighborhood. If they do not comply with those conditions and the neighbors feel as though it is changing the character of the neighborhood, generally an enforcement is reported to the community development office. The office staff will investigate and go to the site and determine if there are issues. A letter is written to the property owner citing the particular complaint based on the conditions in the permit or the section of code that applies, and give them 10 days to contact the office to resolve the issue. Then the issue is moved into the resolution process. In this scenario where there is a specific permit on the property, if the issue cannot be resolved, the permit can be revoked. Then the business would be operating without a permit.

Commissioner Kevin McGaha said another issue is not having a definition for sanitized or unsanitized.

Chairman Laurie Munns asked the applicant to explain sanitized and what the process is prior to being stored in the facility.

Lowell Minchey explained this industry is heavily regulated by the state and other agencies. All the cleaning is done in a yard in an industrial area in South Salt Lake. Then the units are transported out to the outlying yards. The sanitizing is all done in South Salt Lake and is not something done in the outlying yards. The definition of sanitized is the tanks are cleaned and the insides are power-washed and sanitized with a sanitizing agent before they are transported.

After some discussion on what qualifies as a home business, Attorney Stephen Hadfield explained the commission would need to make findings as to why the commission thinks it does not fall within that definition. Then if it is found that it does not fall within the definition, it is not a home business and would be denied. He said the commission would want to make findings and if the applicant disagreed with them they could appeal the findings.

Lowell Minchey said it was never his intent to come in and do something that was not above board. He was trying to be upfront with all of it. At this point with the amount of opposition and outcry to the application he would like to pull the application from submission.

MOTION: A Motion was made by Commissioner Kevin McGaha to accept Mr. Minchey's withdrawal of the application. The motion was seconded by Commissioner Bonnie Robinson and passed unanimously.

STAHELI ZONING MAP AMENDMENT, Z18-008, Request to rezone a 2.45 acre property from A-20 (Agriculture 20 acres) zone to C-E (Commercial Enterprise) Zone at approximately 1175 West HWY 13 in the Brigham City area of Unincorporated Box Elder County.

Staff said the request is for a rezone from A-20 to C-E. The commercial enterprise zone is what would be considered heavy commercial or light industrial. The area is surrounded by A-20 zoning. The approval standards for review for this rezone are as follow:

A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan;

The County General Plan recommends that commercial development be located within or adjacent to existing communities or service areas. Where feasible, commercial areas adjacent to municipalities should be annexed. The County supports appropriately designed and sited development along major thoroughfares and in unincorporated communities as long as adequate services can be provided and the location is compatible with desired growth patterns. This area falls within the Brigham City annexation area. The Brigham City General Plan and Future Land Use Map has this area reserved for light industrial which would fit the proposed use of a storage facility.

B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;

The area is a combination of commercial/industrial and agricultural uses. Staff feels the proposed amendment is harmonious with the overall character of existing development as there are other storage facilities as well as commercial and industrial uses nearby.

C. The extent to which the proposed amendment may adversely affect adjacent property; and

Staff doesn't feel there should be an adverse effect on adjacent property based on the existing development in the vicinity as well as the future land use planning for the area as proposed by Brigham City. The public hearing process may shine additional light on this.

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.

The facilities and services intended to serve the subject property are in the area. Proof of these facilities is required prior to approval of a development plan or building permit.

The public hearing was then opened for comments.

Jim Flint, engineer for the applicant, thinks the project fits the proposed rezone.

Frank Rees owns the adjacent property to the west. He has farmed there for the last 39 years. It is a high water table area and his first concern is the displaced water. Brigham City has had problems with an encroaching sewer to the north and west of this property and there is a possibility of litigation. He questioned where the displaced water would go. He has an irrigation ditch and there has been talk of putting a moat around it. If the water is not pumped somewhere it will seep into the ground and his tractor is going to get stuck. If this property is rezoned he wants some contingency so he can get his irrigation water down the road and still be able to have a head gate on the highway end of it. He wonders what UDOT is going to have with another commercial property there as far as the ingress/egress. His basic concern is water and whether it will be pumped north into the Brigham drainage system or pump it south back into the canal running along SR-13.

Hearing no further comments a motion was made by **Commissioner Bonnie Robinson** to close the public hearing on the Staheli Zoning Map Amendment, Z18-008. The motion was seconded by **Commissioner Kevin McGaha** and passed unanimously.

ACTION

Commissioner Bonnie Robinson stated there are storage units by the property along with Skywalker Trampoline and Vulcraft which seems to justify rezoning to commercial. There are already existing businesses in close proximity to the property.

MOTION: A Motion was made by **Commissioner Bonnie Robinson** to forward a recommendation of approval to the county commission for the Staheli Zoning Map Amendment, Z18-008 with the request to rezone a 2.45 acre property from A-20 (Agriculture 20 acres) zone to C-E (Commercial Enterprise) Zone. The motion was seconded by **Commissioner Desiray Larsen**.

AMENDED MOTION: A Motion was made by **Commissioner Kevin McGaha** to add conditions as recommended by staff.

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

NEW BUSINESS

STAHOLI STORAGE SITE PLAN, SP18-003, at approximately 1175 West HWY 13 in the Brigham City area of Unincorporated Box Elder County.

Staff said the applicant is proposing enclosed storage as well as outdoor storage on this site. The only outdoor storage allowed in the county is 'outdoor storage clean' which is defined as: *"The area must be kept clean, organized, and weed free. The surface must be asphalt or treated road base to eliminate dust. The site must be surrounded by screening no less than six feet in height."*

Staff explained the road and the parking area for the outdoor storage is all road base surface so it does not drain as well as what is out there but it does drain better than asphalt. Staff and the applicant's engineer, Jim Flint explained the proposed drainage system and addressed the concerns expressed by Frank Rees in the public hearing.

Frank Rees stated spring and fall time are wet times of the year. If they dig down two feet for a retention pond even without a rain storm, it will fill up with water. It is a high area of water. He would protest them draining the water in high times back in his irrigation ditch because when it is wet he does not want irrigation water. He said the solution would be to put a pump in it and pump it back into the original ditch that goes along SR-13.

Commissioner Bonnie Robinson asked where the water drains now. Mr. Rees stated it does not drain, it soaks into the ground.

Commissioner Mellonee Wilding asked if the county engineer has reviewed this and if he thinks the current plan is adequate. Staff said based on the county engineer's knowledge of the site he does think it is adequate. The problem is adjacent property owners who have used the land for decades know how the water goes, the engineer goes off elevations and calculations based on flood years etc. On the ground issues are different enough that it may have a different impact.

Commissioner Desiray Larsen inquired if this were to be allowed and built according to the site plan, what would happen if it had a significant impact on the neighboring property. What recourse would the property owner have and would it become a civil issue?

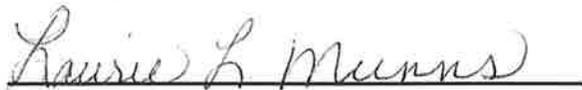
MOTION: A Motion was made by Commissioner Mellonee Wilding to table the review of application SP18-003 Staholi Storage Site Plan because the commissioners need more information from the county engineer to make sure he is clear on this and the commissioners would like to have the UDOT access and any other conditions from staff. 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 August 16, 2018 commission meeting. The motion was seconded by Commissioner Mellonee Wilding and meeting adjourned at 8:59 p.m.



Laurie Munns, Vice Chairman
Box Elder County Planning Commission

