

the ability of the snow plows to maneuver in these areas. As the petition appeared to be in accordance with the existing subdivision ordinances and Zoning Requirements, Staff recommended granting Preliminary and Final approval at this time.

MOTION: A Motion was made by **Commissioner Clark Davis** to grant **Preliminary and Final** approval of The Farms Subdivision, Phase III with the stipulation that the financial guarantees for the improvements must be submitted to the Planning Office before the subdivision would be presented to the County Commission for its approval. The Motion was seconded by **Commissioner Richard Day** and passed unanimously.

UNFINISHED BUSINESS -- NONE

WORKING REPORTS

BOTHWELL COMMUNITY PLAN

CITIZENS PRESENT

Katherine Summers 9660 W 11200 N, Tremonton
Lee Summers
Douglas Newman 11495 N 10800 W, Tremonton
Tamera Newman
James Bingham 10010 W 11600 N, Tremonton

The report of the work session between the Planning Commission and the members of the Bothwell Community Planning Committee were reviewed. Staff suggested that a time for a Public Hearing be set for the citizens to review the findings and recommendations of the Bothwell Community Planning Committee. The Public Hearing could be held in conjunction with the regularly scheduled meeting of the Planning Commissioners in September in the Tremonton City Council Chambers. **Commissioner Ann Holmgren-Jensen** stated that she had taken the opportunity to visit and look at the area that is being considered for zoning and felt that it had help her better understand the area and the concerns of the citizens. It was suggested that the entire Planning Commission try and do the same to become better acquainted with the area if they are not already familiar with it. The Planning Commission also received two additional written presentations, one from James Bingham and the other from Rindlisbacher's, outlining their perspective views concerning this zoning process in the Bothwell pocket area. (Copies of those two presentations are included with these Official Minutes.) It was decided that the Public Hearing would be scheduled for September 23, 2004 at the Tremonton City Council Chambers and would begin after the regular business of the Planning Commission was concluded (at approximately 7:00 p.m.).

MOTION: A Motion was made by **Commissioner Clark Davis** to accept the report of the Bothwell/Planning Commission work session and set the Public Hearing for September 23, 2004 following the regular meeting of the Planning Commission. The Motion was seconded by **Commissioner Theron Eberhard** and passed unanimously.

PUBLIC COMMENTS -- NONE

A Motion was made by Commissioner Ann Holmgren Jensen to adjourn the meeting at 7:37 p.m., seconded by Commissioner Jon Thompson.

Passed and adopted in regular session this 23rd day of September 2004.



Richard Kimber, Chairman
Box Elder County
Planning Commission

Bothwell Pocket (Pocket)
Presentation to the Planning and Zoning Commission
August 4, 2004

One acre zoning is the most appropriate for the Bothwell Pocket

- I. Private Property Rights
 - a. Rindlesbachers have the absolute right to develop their property under the rules in place at the time of their application as long as they follow those rules. There is abundant legal precedent for this position.
 - b. The majority of the "equity interest" holders of land in the "Bothwell Pocket" do not favor 5 acre zoning as proposed but favor 1 acre zoning.
 - c. The agreement to designate one acre and three acre zoning is only an attempt to compromise with the 5-acre position. One acre is not high density. ¼ acre and 1/8 acre zoning is high density
 - c. Chanshare Farms, a holder of long standing water rights in the Pocket, has always intended to develop this property some time in the future and believe that their personal property rights would be infringed upon if less than three acres now with the future plan of one acre in the future were imposed.
- II. Highest and best use
 - a. Agriculture has always been a struggle in the Pocket. The high cost of pumping water continues to escalate, (see attached article) and will continue to do so as the urban demand increases. At some future date it will not be at all feasible to pump water for irrigation purposes and the highest and best use will be for urban development. If this area is not left open for development the water will be exited the community to other areas and the Pocket will be left with out water rights. This has happened in many other areas of the country. The water in the Pocket should be used for agriculture as long as economically feasible but should be reserved for development in the future.
 - b. To zone higher than 3 acres would place an economic hardship on land owners in the pocket
- III. Diversity versus Conformity / Majority versus Minority
 - a. The five-acre position is one of desiring absolute conformity to their way of thinking. They want to exclude persons from the community that do not think they way they do. They represent themselves as the majority but indeed they are not. They desire to thrust their will upon the landowners in the pocket in order to promote their personal agendas.
 - b. The people of Bothwell have never accepted the Pocket as part or Bothwell until now when they desire to control the type of people that would locate in the Pocket as evidenced by they cut off line of previous zoning being placed at 12800 N.
 - c. The majority "equity interest" holder in the pocket favors one acre zoning across the board for the Pocket.
 - d. Surveys always represent the bias of the survey takers. The five-acre position petition is not valid. Indeed it is four private agriculture

- landowners exerting their will upon the poor elderly in an attempt to preserve artificially cheap land prices so they can continue to farm.
- e. The prices of land cannot be kept down when a community is being infringed upon by urban development. Land prices in Box Elder County continue to escalate from as low as \$1,500 per acre to now as high as \$8,000 per acre for farm ground. Three of the four representatives for five acre zoning are already developing property elsewhere in Box Elder County or own property at the edge of development. They are protecting their retirement by development but denying others the right to do so.
- IV. Five acre is appropriate below the Highline Canal (Canal). One acre on the Rindlesbacher property with three-acre convertible to one acre is appropriate above the Canal.
- a. Soil types below the canal will not support concentrated septic systems
 - b. Soil types above the canal are ideal for development and placement of septic systems on one-acre parcels.
- V. Who has "Standing" on this matter?
- a. Who give the people of Bothwell the right to have a say on the "Pocket"?
 - b. Why not Tremonton or Garland or for that matter all the people of Box Elder County?
- VI. Five acre enforceability and infrastructure improvement is a nightmare.
- a. Look at Bothwell now. There are numerous infractions. People bending the rules to meet their needs.
 - b. Numerous property owners have "junk yards" on their five acre tract.
 - c. Cluster housing is allowed to accommodate personal needs.
 - d. Community leaders in Bothwell struggle with providing a quality water system to the citizens.
 - e. There is not a good system in place for highway improvement because the burden on very low-density population creates a burden on existing citizens. Road improvement costs are born by the all the tax payers of Box Elder County.
- VII. Development of the Pocket is in the best interest of the people of Box Elder County.
- a. Utilities are readily accessible.
 - i. Culinary water
 - ii. Secondary water
 - iii. Electricity
 - iv. Telephone and internet access
 - v. Perfect soils
 - vi. Natural gas
 - b. Water is the most compelling reason for one acre zoning.
 - i. Private well permits (25 gallon per minute) will not accommodate five-acre parcels.
 - ii. The development of secondary water in the Pocket makes the pocket an ideal location for development.
 - c. The roads in the Pocket require surfacing to eliminate a safety issue.

The Bothwell Community Committee has failed to come to consensus and reach a "balance". Sincere appreciation is expressed for the opportunity to serve and to Pat and Garth for their leadership. Unfortunately the decision of recommendation is left to the Commission. No amount of surveys or filling the room will change the need for decisions and leadership.

Thank you for the opportunity

LIMITATIONS ON THE PROCESS=LACK OF UNANIMITY

We need to candidly confess that this committee has been unable to arrive at a consensus and to present you with a clear and unanimous course of action. In large part this divergence of opinion stems from the structure of the process. The individual committee members were drawn from those indicating a willingness to serve on committee. In most cases they were willing to serve on committee because they had strong feelings about issue. As a result the committee is reflective of the strong opinions present on this issue, but is not necessarily representative of majority opinion of community. Individual committee members came to this process with strong and divergent opinions and we have been unable to bridge that gap. A majority of the committee advocated an extension of RR-5 zone, which prevails in the more populous part of Bothwell, to northern part of pocket. Three members disagreed, advocating one acre lots. In an effort to bridge the gap the majority of the committee agreed to compromise with an RR-3 designation, which was also rejected by the minority.

RESTRICTIONS ON LAND USAGE

The proponents of residential development in the Bothwell pocket do so by citing their constitutional right to utilize private property as they choose. Their position is that this right cannot be abridged or limited. I believe that is an oversimplification.

Property rights have never been absolute. Our law recognizes many significant limitations on property rights.

1. We have the right of eminent domain, where the state's right to exercise its eminent power in behalf of the larger interests of society supercede the rights of an individual property owner.

2. Governmental entities also retain the right to remove hazards and abate nuisances, and to require property owners to restrict or conform their usages in ways that do not create hazards of nuisances for the larger community.

3. Governments also have long exercised the right to impose zoning restrictions.

All of the above are limitations on individual property rights, imposed at the discretion of elected representatives of the people, in behalf of the larger interests of the community.

The whole concept of zoning is that one person's utilization of his or her property, may disadvantage or circumscribe a neighbor's right to use his or her property as they wish. As a result we don't allow hog farms next to hospitals, where noise, dust, and animal smells would undoubtedly devalue the real assets of the nearby hospital. Similarly, no one I know would place refineries or steel mills adjacent to residential neighborhoods. The whole intent of zoning is to avoid conflicts by grouping compatible usages into defined areas. In areas where incompatible usages exist, the ensuing and inherent conflicts oftentimes leads to the survival on only one of the

conflicting usages..

In 1977 the community of Bothwell made a decision to remain a rural agricultural zone by adopting a five acre residential lot requirement, a decision that has been repeatedly ratified and remains in effect today. This committee declined to change this designation. About six years ago when some property owners petitioned the County for a variance, the County formed a committee, on which I served, to gauge the feelings of the community we polled the community and two-thirds to three-fourths of the community supported the continuation of the RR-5 zone.

It is instructive to look at the results of this five acre zoning requirement. It has not, nor was it ever intended to, shut out residential building completely. Since the imposition of the five acre zone, thirty eight new homes have been built. Five additional homes have been built on lots where a previous home was torn down. I believe that the reason the RR-5 zone has retained such strong support in the community is that it has slowed the pace of residential development while at the same time diffused it throughout the community and allowed the community to remain as a rural community. Given the obvious strong public support for the RR-5 zone, this committee declined to recommend a change in the existing zone for the lower part of Bothwell.

The focus of our efforts has therefore been the land in the upper part of the Bothwell pocket, which was not included in the original RR-5 zone. In 1977, with the exception of electrical service to deep irrigation wells, there were no utility services and no paved roads in the upper part of the Bothwell pocket. At the time there were only three homes in the roughly two to three thousand acres. Because the prospect of residential development was so remote, this land was not included in the zoning proposal. With the purchase of some of those deep irrigation wells by the Bear River Water Conservancy District, with the intent to divert the water to residential and municipal use by the Conservancy District, some services are now available. In the approximately 12 years since the purchase of the land and wells in the upper pocket by the Bear River Water Conservancy District, six new homes have been built in the upper pocket. Interestingly, the rate of residential development in the RR-5 zone has been approximately twice the rate of residential development in the unzoned part of the upper pocket. As a result, the land in question has remained an overwhelmingly agricultural zone, with only approximately one home per four hundred acres..

The proposal now is to put a concentrated residential development in the Bothwell Pocket. Not an incremental development but a concentrated development. Not on the periphery of the agricultural zone, but right in the middle of the valley, right in the middle of the agricultural zone. Proposal has been forwarded because those who advocate it have deny the basic incompatibility of the two usages. I would like to tell you why I believe that they are wrong:

Implications:

First, in proximity to residential developments, agricultural operations are frozen into existing usages. Fearful of the implications of changes in agricultural operations, residential neighborhoods for the most part oppose changes or modifications in the agricultural operations

which may be necessary for their financial survival. No livestock, dairies, corrals, etc. Urban residents tend to look at rural operations as static, something which, I believe, is not true. To remain viable, agricultural operations must constantly adjust, and evolve, like any other economic endeavor. When you place a concentrated residential development next door, it removes that option. Agricultural operations generally wither, in part because their options are increasingly limited. Lacking ability to adjust they wither and die. One recent newspaper article noted that northern Utah has lost ten percent of its agricultural land in the last five years.

Government has recognized that this is an ever larger problem. To address this issue the legislature has created Agricultural Protection Zones. These designations are helpful but inadequate. To bring large numbers of people who have no clue what it is like to live in a rural environment, into an agricultural community is to invite difficulties. They look at the country as an opportunity to enjoy the conveniences of the city, in a rural atmosphere. For the most part, they are unprepared for the noise, dust, smoke, animal smells, and water conveyance issues that are part of agricultural operations. Because they usually outnumber the agricultural operators, their voice becomes preeminent in the community. While the agricultural operator may well have the legal right to operate in the manner which offends his newly-found neighbors, he can usually assert those rights only by opposing a large part of his own community, and then often only by incurring substantial legal costs. Given these alternatives, most farmers and ranchers usually accept the large payout, sell their land, and move on or retire.

This basic incompatibility may be grouped into three or four categories:

Trespass violations into cropland. Story about the four wheeler accident. "We didn't think that we were at fault, but we were lucky. We were not sued. We could have lost everything that it has taken a lifetime to build."

Nuisance complaints, dust, smoke, animal smells. Police: "You can't bale at night."

Obstruction of ditches and water conveyance systems. chain link fence in middle of ditch.—turning headgate on.

Vandalism of equipment

Difficulty in moving oversized agricultural machinery on congested roads.

Issues have grown more acute in large part because, on liability issues, the law has become a fool. There is no probability that it will punish the guilty, or protect the innocent. It oftentimes does just the opposite. Four wheeler accident, "We were lucky, no lawsuit, We could have lost everything we have worked a lifetime to build. Even though we didn't feel we were wrong." At the very least you often have to spend tens of thousands of dollars defending yourself and then the outcome is uncertain. Why not just cash in your chips while you still have them and walk away.

Five acre zone has worked well for Bothwell in another way. It has allowed residential development while diffusing it throughout the community and therefore reducing traffic congestion and other problems. Those who have joined our community under the five acre requirement have some affinity for the rural lifestyle, a reality which has greatly reduced conflicts.

We have an agricultural zone designation on the books for Box Elder County. If that is a viable option, where would it more likely be applied than in the Bothwell pocket-a place where we only have six homes on two to three thousand acres. If that is a viable option then this is the logical place for it to be applied. If it is cannot be applied here, then it is not a viable option anywhere and we ought to remove it from the list of zoning alternatives completely.

NEED FOR UNIFORMITY:

One of the reasons for lack of unanimous conclusion by the committee was the insistence by the majority on the need for a uniform rule. Other community plans are a jumbled collection of individual preferences. One landowner has a one half acre option, while his neighbor has a three acre option. While these choices may offer a short term panacea, they will, I believe result in long term problems. Are these plans really consistent with the intent of zoning to group compatible usages. Or is the intent just to come up with a plan, any old plan, even if it lacks consistency or viability. We have asked for a uniform rule, because under a uniform rule all are treated equally. I have always said that I am not in the business of providing open space for adjacent housing developments. If you cannot adopt a uniform rule that applies to all, then we reject any attempt to apply it some. The big inequality in residential development is that you privatize the benefits and socialize the costs. Such an option would permanently freeze us into a land usage that would force us to deal in perpetuity with all of the problems associated with farming next to a concentrated residential development-without having that option ourselves. We believe that to be unfair. We ask that the zone be applied to all or to none.

In a larger sense, we would invite the planning and zoning committee to look at a related issue. One of the reasons that developers come into agricultural zones is that the land is cheaper than that adjacent to municipalities. The land in rural areas is cheaper because it does not have the utility infrastructure, the paved roads, and the services that are available in a municipal zone. Inevitably, those services will be requested by the new arrivals, and although the developers are required to pave the roads on the frontage of their lots, the taxpayer will be required to pave the roads to the development itself. Lee Allen, the former chairman of the Box Elder County Commission once told me that it cost a million dollars a mile to pave an unimproved roadway. We need to take a hard look at whether the taxpayer is being disadvantaged by this kind of development in rural areas. Whether the provision of services that inevitably follows this kind of noncontiguous development is costing more than the taxpayers can reasonably be expected to pay, and whether it would be advantageous and fair to all concerned to consider some sort of an impact fee, that would help the taxpayer meet the costs of these services.

Thank You for Your Time,

James W. Bingham