

**MINUTES OF COMMISSION COMBINED WORKING SESSION AND REGULAR
SESSION MEETING HELD JUNE 11, 2012, BEGINNING AT 1:00 P.M. IN
COMMISSION CHAMBERS, IN DUCHESNE, UTAH**

Present

Commission Chairman Kirk J. Wood, Commissioner Ronald Winterton, Commissioner Kent R. Peatross, Sheriff Travis Mitchell, Deputy County Attorney Marea Doherty, Deputy Clerk Auditor Connie Sweat, Attorney Roland Uresk, and Commission Assistant BobbiJo Casper taking minutes of the meeting.

Opening Comments

Chairman Wood offered the prayer. There were no other comments.

Consideration Of Payment Vouchers

Clerk Auditor Diane Freston joined the meeting at 1:04 P.M...

The commission reviewed vouchers #121758 through #121853 dated June 11, 2012, in the amount of three hundred fifty five thousand five hundred eight dollars and twenty eight cents (\$355,508.28) as presented by Auditor Freston. *Commissioner Peatross motioned to approve the vouchers as presented. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Tax Adjustments– Assessor

Deputy Assessor Kathy Heaps joined the meeting at 1:06 P.M...

Deputy Assessor Heaps presented the commission with the attached list of tax adjustments and stated that the State of Utah wouldn't reimburse if what was registered was done in a different month from the requested reimbursement date. What the county has been doing is giving thirty (30) days from the registration date. All commissioners agreed that the policy will remain thirty (30) days from the registration date. *Commissioner Winterton motioned to approve the tax adjustments as recommended by the Assessor's Office. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Business License Application For ICU Pilot Car Service LLC

Deputy Clerk Sweat stated that this is a pilot car service from Talmage. This application has been approved by the Planning and Zoning Department. *Commissioner Peatross motioned to approve the business license application as presented. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Business License Application For Uintah Mountain Housing, LLC

Deputy Clerk Sweat stated that this is a youth residential treatment center. Attorney Doherty stated that this business is to be treated as a single family residence. Everything is in line for the business. Planning and Zoning Department approval is not applicable pursuant to the settlement agreement for the fact that this is a group home for the disabled. *Commissioner Peatross motioned to approve the business license application as presented. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Ratification Of The May 2012 Tax Sale

Auditor Freston stated that she hasn't received any complaints about the tax sale. They sold everything at the tax sale and she has received all of the money. *Commissioner Winterton motioned to ratify the delinquent tax sale that was held on May 25, 2012. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Alcohol Tax

Sheriff Travis Mitchell joined the meeting at 1:06 P.M...

Auditor Freston stated that this is a new law and the information has to be turned in by June 22, 2012. Sheriff Mitchell stated that we need to come up with a plan to spend this tax money. We are expecting thirty seven thousand eight hundred thirty dollars and ninety eight cents (\$37,830.98) through different entities that we cover in Duchesne County including Duchesne City, Myton City, Tabiona Town, and Altamont. If we get the full money, he would propose spending it on prosecution, incarceration, and enforcement. Five thousand dollars (\$5,000) to the Attorney's Office for prosecution of

alcohol related cases. Ten thousand dollars (\$10,000) to the jail for the cost of housing alcohol related inmates. Twenty two thousand eight hundred thirty dollars (\$22,830) for law enforcement. One thousand dollars (\$1,000) for portable breath testers. Eight thousand dollars (\$8,000) for car cameras and the remaining thirteen thousand eight hundred thirty dollars (\$13,830) for DUI, intoxication, illegal sales, and officers to target those types of cases. Auditor Freston stated that this will go into fund 23 and the report will be submitted annually. The money comes directly to the county.

Commissioner Peatross motioned to adopt the Beer Tax Fund annual plan for fiscal year 2012. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.

Consideration Of Contracts With Myton City Including Animal Control, Law Enforcement, And Enforcement Of Land Use Ordinances

Attorney Doherty stated that she has reviewed and revised the Animal Control and Law Enforcement Contracts with Myton City. The agreement for enforcement of land use ordinances still needs additional discussion between Sheriff Mitchell, Myton City Mayor Kathleen Cooper, and County Attorney Stephen Foote because not everyone is in alignment with the intent of the agreement. The only change with the law enforcement agreement will be that the Prosecutor's Office will keep records of the cases as required by law and permit review access to Myton City, but the amounts remain the same as the previous agreement. The only change with the animal control contract is that there is now a section that has bullet pointed items of specific services that will be provided. Sheriff Mitchell stated that he is meeting with Myton City on June 15, 2012. *Commissioner Winterton motioned to approve the Animal Control and Law Enforcement Contracts with Myton City and to authorize Chairman Wood to sign and approve the resolutions that accompany the agreements. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Public Hearing- 1:30 P.M...

County Community Planning Administrator Mike Hyde, Ryan Fitzgerald, Richard Fitzgerald, Vickie Fitzgerald, Randy Fitzgerald, Brent Fitzgerald, Jason McKenna, Walt Burdette, & LouAnn Burdette joined the meeting at 1:30 P.M...

Consideration Of An Appeal By Walt & LouAnn Burdette Of A Conditional Use Permit Granted By The Planning Commission To R. Chapman Construction For The Extraction Of Earth Products (Gravel Pit And Rock Crusher) On Lands Owned By Richard & Vickie Fitzgerald, Located Approximately Two Miles Southwest Of Myton

Administrator Hyde stated that the Planning Department received an application for extraction of earth products on the Fitzgerald property in early April of this year. Those types of uses are a conditionally permitted use in the zoning ordinance for this land use district. The zoning ordinance provides for land uses that are outright that don't require Planning Commission review. They just come in for a building permit. Typically, conditional uses are land uses that may have adverse impacts on surrounding properties. As a result, we have a public hearing on those before the Planning Commission and typically look at conditions of approval that could be imposed on the land use to help them fit into the neighborhood in a satisfactory manner and mitigate any adverse impacts. The conditional uses are presumed to be approvable if adequate condition can be imposed to mitigate impacts. The Planning Commission held a public hearing on this request May 2, 2012. Chapman Construction is the applicant; they and the Fitzgerald's appeared to speak in favor of the request. Mr. Burdette appeared and spoke against. The Planning Commission, after closing the public hearing, voted unanimously to approve the request subject to six conditions that are stated in the attached report. The parties opposed to the permit had 10 days to appeal the decision, which they did. As a result, we have noticed this public hearing for today; it's been mailed out and published in the local newspaper as required by law.

Attorney Uresk stated that he is representing the Burdette's and in this county, everyone has the right to enjoy their property. In some instances, there are some uses that are incompatible that's why there are zoning ordinances. In some areas there are restrictions of what can be done there. The ones that are incompatible are generally regulated to those particular areas. There is a group of properties that are in the middle where they have an adverse effect on the neighboring property, but the county has decided that under certain conditions they can have a conditional use permit. This matter came before the Planning Commission and it's our position that the Planning Commission didn't consider the affect

that this will have on the Burdette property. The Burdette's are concerned about the potential of dust. This is a mining and crushing operation. There is going to be a considerable amount of dust generated by the crusher or the removal of the product. Another concern is that the Burdette's raise horses; these horses are cutting animals with high values. Dr. Mark Dennis prepared a letter indicating that dust can cause problems and compromise their immune system that can lead to pneumonia and death. This is a major concern because it will affect an income source that the Burdette's have. They also have health concerns for their daughter who has asthma. She doesn't reside at the property, however in the summer time she visits regularly. They are concerned that the dust generated will adversely affect her health condition and the fact that she may not be able to visit her parents. It is purposed that the hill that sits 500 feet from the Burdette's back door be extracted. We have major concerns with that. Mrs. Burdette has an arthritic condition and requires a therapeutic soaking in the hot tub in the back. The proximity of a mining site is causing concern for their privacy, which this will adversely affect. It is our position that all of these things are going to adversely affect the Burdette's quality of life on their property. They are not moving into this area and making a change, they moved there and established their lifestyle and now someone else is coming in and making use of their property and changing it to a manner that is adversely going to affect them. The question that the Planning Commission had was that they thought the conditions that were imposed on the conditional use permit were sufficient to address these issues; we do not think so. The hours of operation are seven days a week and go from 7 a.m. to 9:30 p.m. The potential is that this operation is going to be running seven days a week for the majority of the daylight hours; in the winter it's all of the daylight hours. In the event that the dust is not sufficiently controlled, we have the right to come back to the Planning Commission, but that takes weeks. The affects can be very aggravating during this period of time. For those reasons, we have opposed the issuance of the permit. The argument can be made that this adversely affects the Fitzgerald's right to enjoy their property. The Fitzgerald's have their property, they have been there, and they have used their property in a manner that has not been incompatible to the Burdette's. It's this mining operation that is incompatible. You shouldn't deprive them of the ability to maximize their income out of their property, but who is going to bear the burden of this permit? It will be the Burdette's, is that fair? There is an alternative that may be considered. We are asking the commission to deny the permit and send it back for reconsideration. There is a possibility that the mining operation or the property owners can buy out the Burdette's interest, operate their crusher, and when they are done they can sell the property and recoup their losses. On this adverse effect that the Burdette's are having, they can't recoup their losses; they don't have the ability to. If this operation comes in, the ability for them to sell their home is diminished. We feel that it's fair that this permit be denied and that they look at another alternative so that the Burdette's don't have to suffer the consequences of this operation.

Mr. Burdette stated that there is a lot of wildlife near our home and if this operation moves in, it will all go away. If it happens, we don't see a reason to stay there.

As there was no additional testimony in favor of the appeal, Chairman Wood called for the permit applicants to speak.

Mr. McKenna representing R. Chapman Construction stated that he is over the new development of gravel resources. He has a plan overview that they submitted to the Health Department showing what measures and devices they plan on utilizing on this site. He agrees with everything that the Burdette's have said. Dust is a problem and it is something that needs to be taken care of and dealt with. Unfortunately, it is an everyday problem especially in this area with the high winds that we get. He has been doing research on what other people are doing and is hoping that what they have planned will work. There are other types of chemical treatments that are used that are more expensive and hopes they don't have to use those, but if it comes to that, they will. Dust does cause problems and it has affected one of their employees causing silicosis. We are invested in dust control and improving the conditions. We don't want to affect our neighbors adversely. Magnesium Chloride creates a seal on the road that will trap the dust and that, depending on the traffic, will last six to twelve months; this is an ongoing investment. The quickest and most effective way is to spray the dirt down with a water truck. We are investing in a dust fogger that atomizes streams of water and puts it in the air so any dust that goes up will be trapped and fall back on the earth. It's basically a portable rain storm.

We will also put sprayers on our stackers. We can make good use of our resources. We have looked into the sprinklers that are easy to move and position where we need them. They can be put on a timer and a sensor to mitigate the dust. The crusher will always be in the same spot, he doesn't see any reason to move it; they will haul the material to the crusher.

Commissioner Peatross asked if this is the best location for the crusher or could it be somewhere else and be more sensitive to the Burdette's issues.

Mr. McKenna replied by stating that we could open discussion with the Fitzgerald's to see if there are some other areas, but honestly the only place they have to go is up, which he feels would make matters worse. The idea is to keep it all down. We are going to do our best to keep the dust down.

Commissioner Peatross asked if they anticipate using the entire fifty six acres.

Mr. McKenna replied by stating over time, probably. The plan is to excavate the hill directly adjacent to the crusher site and the hill south of the crusher site. The last place would be the longest hill, which is west of the Burdette's. We are expected to move over 1.5 million yards of material before we are finished, which will take a while.

Commissioner Peatross stated that the time does seem excessive, is that realistic to be operating seven days a week?

Mr. McKenna stated that we do have sites that run that much, but we don't like to work weekends and holidays, so if it's your decision to limit us; we will abide by that. It costs us money for us to shut down and ramp up again. We feel that this operation will benefit the Fitzgerald's and their lifestyle and we look forward to the association with them.

Mr. Richard Fitzgerald stated that he feels for the Burdette's. It's amazing how something like this can destroy a friendship. He doesn't see any problems in this operation and gravel pit; it's an ideal location. It's under the hill, there is a stream of water, and it's protected. Chapman Construction is a top of the line company and has taken all of the precautions because they want to stay in business and he doesn't see any problems at all. We are in an area where the wind blows all of the time, so it's something that we have to put up with. The oilfields have moved in the county and he doesn't want them here, but we need the fuel and we need the gravel, so that roads can be built and dairy products can be hauled. These are benefits to the people and the county. As far as we are concerned, every precaution is being made and this gravel pit is a savings to us and is a big benefit to quite a few families. God created heaven and earth and he feels that those mountains on that location are there for a purpose and requested that the county move forward with this. Our neighbors around our dairy don't like the smell or the traffic, but they like the ice cream, cheese, butter, and all of that good stuff, so we have to put up with these kinds of things. We have to work around it the best we can and watch out for the best interests of everybody. We think the world of the Burdette's and it's a great location. There is a stream next to the site that can be used to mitigate the dust.

Commissioner Peatross asked Administrator Hyde to explain the process in the event that the Burdette's had a problem with the dust and contacted him of the situation.

Administer Hyde stated that if people have a dust complaint, they can contact his office, Tri County Health, or DEQ. If he receives a complaint, he immediately contacts the pit boss or whoever is designated by the operator. If it's in the evening or during the weekend, we typically try to provide the surrounding owners with a contact number so that there is someone they can contact 24/7. If we continue to have dust control problems after the calls don't get addressed in a timely manner, the Planning Commission can schedule a public hearing which takes a few weeks to advertise and notice to consider revocation of the permit.

Mr. McKenna stated that if it were him, as a property owner, he would contact MSHA or DEQ to report dust problems because they can issue citations and as an operator, that does get our attention. We want to be part of the solution and not the problem. We are willing to spend the money and put in the effort to control our dust to be a good quality

operator and provider of aggregate in the area.

Attorney Uresk stated that we recognize that the Chapman's have a good reputation doing their permits. The county should be very vigilant in enforcement if you are going to require it for everyone. Where you have gravel pits in a vicinity of residents, there is a problem. There are several sand and gravel permits already in this area and they all generate dust and are all supposedly under control. The fact is that your restrictions on the conditional use permit are vague. It allowed another gravel pit to operate out of compliance. If this commission is not inclined to deny this permit like we are asking, we are going to ask that you scale the operation down and restrict weekends. We are just asking that you consider some of these ideas to benefit the Burdette's. Mr. Fitzgerald is getting reimbursed for the use of this property. That dust is not adversely affecting his crops or his property and it does affect the Burdette's who aren't getting compensated.

Administrator Hyde stated that once a conditional use permit is in place, the follow up on the conditions is that the applicant is to submit things to us prior to the operation such as the DEQ permit, Tri County Health approval, and the bonding. In some cases operators are good about doing that. It does take some vigilance and we rely heavily on the surrounding property owners. We all do our best with what we have. The Planning Commission was comfortable with the conditions to allow the permit based on what the law allows. The Planning Commission is considering a change in the zoning ordinance to make it more stringent for gravel pit operations in terms of setbacks from properties. We will review this again July 10, 2012. We are trying to reduce the impacts. The commission has the ability to change operation hours and the area that would be mined.

Mr. McKenna stated that if we started on the south end, we would have a good operation for some time. We would be crushing for 30 days and would be gone for 50, so there will be loading and sales operations, but not crushing. The dust control will still be maintained even when the crusher is not on site. We want to limit the speed of all of the trucks that will be using our pits. We have to live here and we don't want anyone getting hurt.

Commissioner Winterton stated that his concern is that if we are going to permit this, we need to be on top of it. We need to know what the concerns are in order to enforce them. He has reservations on the hours of operation and as a truck driver, he understands the dust, but there are ways of controlling it. If people don't want to play by the rules, we don't need them here; we can find people who can play by the rules. He suggested that we grant this with a three month review. Operate for a while to see if there is a dust issue and we need to stay on top of it. He wants to see the Fitzgerald's be able to use their land, but the Burdette's were here first. He doesn't want to see the Burdette's have to sell out to have the quality of life that they are experiencing right now. We need to meet in the middle so everyone is happy. If you can operate there and the Burdette's don't know that you are there, he thinks we can still protect that integrity. Like other areas in the industry, we have to fine tune it so everyone is happy with it.

Attorney Uresk stated that the problem is that the county is depending on the surrounding land owners to make their complaints before they act. The problem is that the surrounding landowners don't realize that they have that authority or power to make the complaint so they suffer. One issue is the timing, can they run the operation five days a week and let the Burdette's have the weekends to enjoy their property?

Mr. Brent Fitzgerald stated that we are getting compared to other pits that weren't in compliance and that pit was shut down because of it. Chapman's is a reputable company and that's why we chose to do business with them. We have faith and trust in them. We don't want to adversely affect the neighbors, but we have to do what we have to do. Chapman's are going to take all of the precautions necessary to keep the dust down they have a reputation to uphold or they will be shut down. He used to work on a crusher at Kennecott and if it broke down and it had to be fixed, he had to go to work on the weekends to keep the operation running. The point is that everything is in the county regulations and if it's not, their name is on the line also. The Burdette's have their home for sale and he feels for them. This has been strung out a month now where we could have been in operation. If this is denied, who is going to compensate lost revenue to us?

Chairman Wood stated that he has heard several suggestions; including phasing the

operation, hours of operation from 7 a.m. to 7 p.m., and fewer days a week.

Commissioner Peatross stated that his thoughts are the crusher can run twelve hours a day, six days a week. If the crusher needs maintenance, it would be done outside of that as long as dust and noise aren't being made.

Mr. McKenna stated that he is willing to come up with a contact list to give out to surrounding owners of all of the different agencies and the president of our company. Also he will put up signage with contact information for complaints.

Commissioner Peatross stated that the bottom line is that the crushing operation fits within the guidelines that we have in our current county zoning policy. While there is a lot of emotion, it doesn't establish a rule that it can't happen.

-Entered back into Combined Commission Meeting at 2:54 P.M...

Commissioner Peatross motioned to adopt the findings of fact and conclusions of law recommended by the Planning Commission as our findings and conclusions and uphold the granting of the conditional use permit, subject to the conditions imposed with the following amendments: (1) that the operation hours will be Monday through Saturday 7 a.m. to 7 p.m. only as far as the crushing operation is concerned and (2) this land use authorization is limited to lands within Phase I of the project shown on the phasing map enclosed. Before any operations could be conducted within Phase II, a new conditional use permit criteria in effect when the original application was made (April 2012). Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.

Consideration Of A Memorandum Of Understanding Between Duchesne County And The Bureau Of Land Management Designating The County As A Cooperating Agency In The Greater Sage Grouse Planning Process And Designate A Point On Contact

Administrator Hyde stated that in 2011, the county expressed our interest in being a cooperator agency on the Greater Sage Grouse Conservation Planning process on BLM and Forest Service Land. It's taken six (6) months for the BLM to finalize their MOU's. Attorney Doherty has reviewed the MOU and we would like a seat at the table. The recommendation is that the commission authorize Chairman Wood to sign the MOU and designate an official point of contact. *Commissioner Winterton motioned to authorize Chairman Wood to sign the MOU and authorize Administrator Hyde as the point of contact. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Amendment #12 To Contract #011481 Of The Duchesne County Predator Control Program

Commissioner Peatross stated that this is the same contract that we have had in the past and remains the same amount of five thousand dollars (\$5,000) with a twenty five hundred dollar (\$2,500) reimbursement. *Commissioner Peatross motioned to approve the Predator Control Contract. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Commissioner Peatross excused himself from the meeting to attend other business at 3:15 P.M...

Consideration Of Minutes For Special Commission Meeting Held May 11, 2012

Commissioner Winterton motioned to approve the minutes as corrected. Chairman Wood seconded the motion. Both commissioners voted aye and the motion passed.

Consideration Of Minutes For Combined Commission Meeting Held June 04, 2012

This agenda item was postponed by general consent.

Commission Calendaring

Closed Meeting -

No discussion was necessary.

Adjourn

Chairman Wood adjourned the meeting at 3:22 P.M...

Read and approved this 25th day of June 2012.

Kirk J. Wood
Commission Chairman

Diane Freston
Clerk/Auditor

Minutes of meeting prepared by BobbiJo Casper _____