

**MINUTES FOR REGULAR COMMISSION MEETING HELD DECEMBER 06,
2010 BEGINNING AT 1:00 P.M. IN THE COMMISSION BOARD ROOM IN
DUCHESNE, UTAH**

Present

Commission Chairman Kent R. Peatross, Commissioner Kirk J. Wood, Commissioner Ronald Winterton, Deputy County Attorney Jonathan Stearmer, Deputy Clerk Auditor Leann Stewart, and Commission Assistant BobbiJo Casper taking minutes of the meeting.

Opening Comments

Chairman Peatross gave the prayer. There were no other comments.

Pledge of Allegiance

Any wishing to participate.

Tax Adjustments – Assessor

The commission reviewed the attached tax adjustments presented by Deputy Clerk Stewart. *Commissioner Wood motioned to approve the tax adjustments as recommended by the Assessor's Office. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Payment Vouchers

The commission reviewed vouchers #116175 through #116272 dated December 06, 2010 in the amount of three hundred eighty eight thousand six hundred thirty two dollars and sixty three cents (\$388,632.63). *Commissioner Winterton motioned to approve the vouchers presented by Deputy Clerk Stewart. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

1:00 P.M. Public Hearing –

Public Hearing To Receive Comment With Regard To The Proposed Issuance By Duchesne County, Utah Of Not To Exceed \$22,400,000 Hospital Development Bonds (Uintah Basin Medical Center Project)

Chairman Peatross stated that there is no public present to make comment or consideration for this item and closed the public comment period. The purpose of the bond as discussed earlier this year with Uintah Basin Medical Center (UBMC) CFO Brent Hales, the UBMC refinancing their current debt structure and is not new debt. This has allowed them to have considerable savings by refinancing and will be able to pay off the CIB loan.

-Back In Regular Commission Meeting At 1:11 P.M...

Consideration Of A Business License Application For CJ's Repo

Deputy Clerk Auditor Connie Sweat joined the meeting at 1:13 P.M...

Deputy Clerk Sweat stated that this is an auto, ATV, and skip trace company located in Roosevelt. *Commissioner Winterton motioned to approve the application as presented. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Beer License Application For Moon Lake Resort, Inc.

Deputy Clerk Sweat stated that this beer application has been signed by the Sheriff's Department. *Commissioner Winterton motioned to approve the application as presented. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Beer License Application For Neola Store

Deputy Clerk Sweat stated that this beer application has also been signed by the Sheriff's Department. *Commissioner Winterton motioned to approve the application as presented. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Agreement With Chadwick Booth And Company

Chairman Peatross stated that we discussed this earlier in the Commission Work Meeting. This contract has to do with the county entering into an agreement in the amount of twenty nine thousand four hundred dollars (\$29,400.00) for the purpose

of joining with a consortium of counties to provide a TV show called "The County Seat" that would promote county issues and educate the public on county government throughout the next year. *Commissioner Winterton motioned to approve the contract agreement with Chadwick Booth and Company. Chairman Peatross seconded the motion. Commissioner Wood voted nay. Both commissioners Peatross and Winterton voted aye and the motion passed.*

Consideration Of Software License Agreement With Singer Software Inc.

Assessor Greg Garff joined the meeting at 1:21 P.M...

Assessor Garff stated that the contract looks the same as the previous contract with Singer. Treasurer Colene Nelson spoke to then about the increase request. They have done a lot of rewriting for us at no additional cost and feels that the increase is justified. It is recommended that this be approved and signed by the commission. *Commissioner Wood motioned to approve the agreement with Singer Software Inc. for five (5) years at three thousand dollars (\$3,000.00) a month. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Agreement With Herb Gillespie For Legal Services

Attorney Stearmer stated that as the commission knows, the county has a responsibility for indigent defense council when it is so required by court. In our Juvenile Courts, Attorney Herb Gillespie has covered that for us and is willing to continue that service for the next three (3) years pursuant to the contract. *Commissioner Wood motioned to approve the contract with Herb Gillespie for legal services. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of Minutes For Combined Commission Meeting Held November 22, 2010

Commissioner Winterton motioned to approve the minutes with the changes suggested by Attorney Stearmer. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.

Consideration Of Minutes For Working Commission Meeting Held November 29, 2010

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

Consideration Of The Minutes For Regular Commission Meeting Held November 29, 2010

Commissioner Winterton motioned to approve the minutes as presented. Commissioner Wood seconded the motion. All commissioners voted aye and the motion passed.

-Entered Recess At 1:23 P.M...

-Back In Regular Commission Meeting At 1:30 P.M...

1:30 P.M. Public Hearing –

County/Community Planning Administrator Mike Hyde, Jeff Henderson with Newfield, Dave Allred with Berry Petroleum, Tim Eaton with Newfield, Dave Nelson with Millstream Properties, Fred Goodrich with Berry Petroleum, Jason Danley with Millstream Properties, Wayne Garner with El Paso, Allan Smith who is a land and mineral holder, Joe Sager with El Paso, & Cathy Hammock with El Paso joined the meeting at 1:30 P.M...

Consideration Of Ordinance No. 10-286, And Ordinance Amending Title 8, The Duchesne County Zoning Ordinance

Administrator Hyde stated that this proposed zoning ordinance amendment comes about because of a number of things such as labor camps, oil wells extending off of the BLM Lands into Pleasant Valley, and a few other minor things. In the ordinance that is proposed from the Planning Commission you will see in Section 1, they are proposing to change some definitions and add definitions such as the definition of an accessory dwelling was changed slightly; we would add a new definition of a caretaker dwelling, which is typically a dwelling put on a business property so someone could take care of a business in terms of security. The definition of a labor camp was changed and is patterned after what they have in Uintah County. We did add on to the labor camp definition and it does not include facilities located on individual oil and gas well pads. The Health Department told us that they consider those to be labor camps, but that's not the intent of this definition. Typically, you see labor camps when all of the RV Parks are filled.

In Section 2, this is a portion of the table of land uses in the zoning ordinance. An accessory dwelling might be a small house or a manufactured house that a person might want to put on their property for an elderly parent for example. Those are now a conditional use in several of the zones. We are proposing making them an outright use that would not have to be approved by the Planning and Zoning Commission in the five, ten, two and a half, and one acre zones. Camp grounds, we have had a couple requests for those in the two and a half and one acre zones, so we are proposing making those a conditional use. The dwellings, we are proposing that they be a conditional use in the one, two and a half, five, and ten acre zones permitted in commercial and industrial, but not R-1/2 zones. Same thing for labor camps, but they wouldn't be allowed in R-1 zones.

In Section 3, there are the regulations on labor camps. Right now, we don't have any, so this would all be new code. We relied heavily on what Uintah County provides on their labor camp, so we can be as consistent as possible across the county line. Hopefully, the standard will help us process and review labor camps in the future and since they are a conditional use in a number of zones, some of the property owners can weigh in and try to avoid the situation we had last year.

In Section 4, it deals with conditional use permits and we are proposing a new subsection D, because right now, if an applicant needs a variance to the zoning ordinance, they cannot have that consideration by the Planning Commission at the same public hearing. They would have to go to the Board of Adjustment unless it's a routine and uncontested matter that he can approve by himself administratively.

In Section 5, it deals with gravel pits and if you are going to be rock crushing, you have to submit a copy of your DEQ Air Quality Permit to the county unless DEQ has exempted the crusher from the permit requirements due to the small output of the crusher.

Under Bonding, we have had a number of cases where property owners doing their own work with their own equipment on their own property in terms of taking out gravel or shale. They have requested in those cases to not have to bond to take care of their own property, so we are adding in that proposal. The Planning and Zoning Commission can give the property owner the opportunity to opt out of the bonding requirement.

In Section 6, it deals with oil and gas wells. We have had a lot of testimony on this at the Planning Commission level. A lot of the response to some of the oil and gas development encroaching on some of the residential areas. The big issue is whether or not the county has the ability to regulate oil and gas wells knowing that there are provisions in state law and we have the Division of Oil, Gas, and Mining that regulates them. We asked the Attorney General's office their opinion and they basically said that they weren't in any hurry to write a formal opinion, but their informal opinion was that the county can adopt regulations using their land use powers and if they do so in a way that does not prevent mineral owners from accessing their minerals there won't be a problem. We are trying to find a way to regulate these and help protect the surface owner and surrounding property owners, but still allow for the minerals to be extracted because it's a major part of our economy. El Paso did request the wording that you see that says in the event of a conflict between this ordinance and the DOGM rules, the DOGM rules will control, but our rules are meant to be consistent with DOGM.

In subsection A, we added agriculture lands and irrigation systems to try to minimize the impacts on farmers to keep as much agriculture land in production. We added that nothing in this subsection shall prohibit oil and gas drilling including roadways on those lands provided that the damage is minimized in terms of a surface use agreement that has been approved by the property owner or the Division of Oil, Gas, and Mining if they can't reach an agreement. When you are using county roads to get to oil and gas well development you are going to have to get an encroachment permit or a road use permit. It would be up to the Public Works Director to determine if one will be required. For hazardous materials, the main hazard is H₂S Gas and we would like to see warning signs on well sites.

In subsection E, the new code would be that well site engines should be powered by electricity when located within six hundred sixty (660) feet of a dwelling provided that the power company has adequate capacity to supply such power. Engines located at well sites not ran by electricity shall be muffled to mitigate noise impacts.

In subsection F, we added tanks to the list of required above ground facilities that must be painted to blend in with the environment.

In subsection G, the distance on dwellings is currently that we require wells to be at least six hundred sixty (660) feet away. We would like to build some flexibility in there and clarify when measuring; it's from the well head itself. If a property owner consents in writing for it to be less than six hundred sixty (660) feet away they can do that. The property owner can also waive the six (6) foot fence requirement in writing.

In subsection H, the county wants a copy of your state permit before you drill, so that we know everything is in order. We also want to see a copy of the reclamation plans submitted to DOGM.

In subsection J, it deals with access roads being built to suitable standards. Some comments received suggest that we can delete this paragraph.

In subsection K, it deals with sanitary facilities. We have heard complaints from property owners about some of the truckers who go out in the field because there are no bathrooms at some of the well sites. The Health Department is going to make a determination on which ones need a facility. Oil companies need to do some training on where these facilities are located.

In subsection L, it deals with the performance guarantee, which is a bond required by Utah Division of Oil, Gas, and Mining. Originally, our code required the county to be named as an additional insured on a bond; DOGM won't do that, so we have stricken that language.

That is the proposed ordinance, also in your packet are comments received (see attached).

PUBLIC COMMENTS-

Wayne Garner with El Paso stated that they have in excess of one hundred eighty thousand mineral acres leased. Our lease document says that we can build within two hundred (200) feet of a structure and are signed by the mineral lease holders and get recorded; they are all legal instrument. These documents are what DOGM adheres to and mineral lease agreements supersede surface use agreements. According to this new ordinance, they want us to get a Conditional Use Permit when we already have a lease for two hundred (200) feet. We work with landowners on the surface use permit when we stake the location to try to put the location as far away from houses and everything as possible. Most of the stuff in this ordinance, we are already doing and suggested that this ordinance be tabled until we get some kind of ruling from the Attorney General.

Attorney Stearmer stated that he understands where the mineral holders and the people who lease those rights need to be able to go in and realize that benefit and property right. At the same time he thinks it's a little presumptuous for a lessor to say that you can go within two hundred (200) feet of a house; that's not their house. He would like to see the parties agree and have the surface use owner or surface right owner have input on how close a well can be next to their home. He thinks this will be better to keep this under local control rather than have the state take that up. The person who owns the mineral rights cannot trump one hundred percent (100%) the person who owns the surface rights on the surface. There has to be interplay between the two.

Administrator Hyde clarified that that the conditional use permit is not triggered by the set back from a dwelling of six hundred and sixty (660) feet, it's triggered by the zone that the proposed well is located in.

Cathy Hammock with El Paso stated that we try to work with our surface owners and even though the leases say two hundred (200) feet, we don't have wells currently within two hundred (200) feet. Her concern is that they recently bought three (3), ten (10) acre tracts in Sundance Subdivision and with the six hundred and sixty (660) foot setback, we will not be able to drill a well; you would be prohibiting us from extracting those minerals.

Administrator Hyde stated that Sundance West is zoned A-5, so none of these requirements would apply in that area.

Jeff Henderson with Newfield stated that he would prefer that this ordinance not be tabled and approve it with some of the changes discussed because the existing ordinance is too restrictive. The changes proposed are workable, but we do have a little bit of heartache with the six hundred and sixty (660) foot setback, but in most cases we can work with that.

David Nelson with Millstream Properties stated that we own five thousand (5,000) acres and have no interest in restricting or prohibiting the mineral right owners in getting their minerals, but thinks there needs to be some restrictions. We applaud these things being discussed such as more cooperation between the landowner and the mineral right owner. He completely concurs with Attorney Stearmer that local authority is the best level. We feel that we should have the right to require wells being fenced in due to the safety of visitors on his properties. He believes in reclamation and feels there should be a time after production is done to have the well removed.

Allan Smith stated that he hopes that private oil well roads do not become access for public use. All we are doing is leasing the access to oil companies.

Attorney Stearmer stated that there is a possibility that these roads can become public. If the public establishes a right of way on an existing road it doesn't matter what the landowner says.

Allan Smith stated that this may be a problem and maybe the commission down the line will need to address this.

Chairman Peatross stated that the easiest way to resolve this would be for oil companies to restrict the access. We have very valuable comments and thinks we are ready to address this, so what we would do is put this together in an official ordinance and it would be his recommendation to recess this hearing. There are enough issues at hand and a serious enough nature that we don't want to move this along too quickly and suggested recessing this ordinance until January 24, 2011 at 1:30 P.M. A motion to recess the hearing as described passed unanimously.

-Entered Recess At 3:00 P.M...

-Back In Regular Commission Meeting At 3:00 P.M...

Adjournment

Chairman Peatross adjourned the meeting at 3:00 P.M.

Read and approved this 20th day of December 2010.

*Kent R. Peatross
Commission Chairman*

*Diane Freston
Clerk/Auditor*

Minutes of meeting prepared by BobbiJo Casper
