

**MINUTES FOR REGULAR COMMISSION MEETING HELD NOVEMBER 19, 2012  
BEGINNING AT 1:00 P.M. IN THE COMMISSION BOARD ROOM IN DUCHESNE,  
UTAH**

***Present***

Commission Chairman Kirk J. Wood, Commissioner Kent R. Peatross, Commissioner Ronald Winterton, Deputy County Attorney Marea Doherty, Uintah Basin Standard Reporter Steve Puro, and Commission Assistant BobbiJo Casper taking minutes of the meeting.

***Opening Comments***

Commissioner Winterton offered the prayer. There were no other comments.

***Pledge Of Allegiance***

Any wishing to participate.

***Tax Deferrals – Assessor***

*Clerk Auditor Diane Freston joined the meeting at 1:11 P.M...*

The commission reviewed the attached tax deferrals presented by the Clerk/Auditor's Office. *Commissioner Winterton motioned to approve the tax deferrals as recommended by the Assessor's Office. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of Payment Vouchers***

The commission reviewed vouchers # 123303 through 123418 dated November 16, 2012, in the amount of three hundred fourteen thousand seven hundred seventy nine dollars and fifty cents (\$314,779.50) as presented by Auditor Freston. *Commissioner Peatross motioned to approve the vouchers as presented by the Clerk Auditor's Office. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For Emily Lemon, TEC Practitioner***

*Deputy Clerk Auditor Connie Sweat joined the meeting at 1:14 P.M...*

Deputy Clerk Sweat stated that this is a mobile business doing emotional healing and energy work. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For Jille Dunsmore Photography***

Deputy Clerk Sweat stated that this is a mobile photography business. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For Kyle Farnsworth Const. Inc.***

Deputy Clerk Sweat stated that this is a construction business. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For Rhinehart Oil***

Deputy Clerk Sweat stated that this is a fueling station near Newfield in Pleasant Valley. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For TGK Trucking, Inc.***

Deputy Clerk Sweat stated that this is a trucking company that has one water truck. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of A Business License Application For Wall's Oilfield Services, Inc.***

Deputy Clerk Sweat stated that this business does flow testing, pumping unit maintenance, and welding. *Commissioner Winterton motioned to approve the business license application as presented by Deputy Clerk Sweat. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

***Consideration Of Bids For Construction Of The Duchesne County Emergency Watershed Protection Flood Rehabilitation***

Commissioner Winterton stated that they are not prepared to award the bids at this time because the scope of the work has changed.

***Consideration Of Resolution No. 12-16, A Resolution Authorizing Seasonal Road Closures Within The Tabby Mountain Wildlife Management Area***

*County/Community Planning Administrator Mike Hyde joined the meeting at 1:17 P.M...*

Administrator Hyde stated that the commission met with Boyd Blackwell and Miles Hanberg from the Division of Wildlife Resources (DWR) a few weeks ago discussing a seasonal road closure from December 1<sup>st</sup> to April 30<sup>th</sup> of each year in the Tabby Mountain Wildlife Management Area. The commission discussed authorizing the road closure on the basis that DWR would report back to the county on an annual basis to discuss the effect of these closures on the public and wildlife and to also coordinate with the county on potential amendments of the access management plan on a five (5) year cycle. This resolution was prepared to do just that. It has been reviewed by Attorney Doherty and the DWR who recommends your approval. Commissioner Winterton stated that most of the land that will be affected by this is on DWR land. Administrator Hyde stated that they are Class D Roads on our road map; that's why they need our authorization to close them on a seasonal basis.

## **RESOLUTION NO. 12-16**

### **A RESOLUTION AUTHORIZING SEASONAL ROAD CLOSURES WITHIN THE TABBY MOUNTAIN WILDLIFE MANAGEMENT AREA**

**WHEREAS**, the Utah Division of Wildlife Resources manages the Tabby Mountain Wildlife Management Area in western Duchesne County; and

**WHEREAS**, this area provides critical winter habitat for big game animals, supporting thousands of deer and elk annually as well as a significant sage grouse population; and

**WHEREAS**, seasonal closures of Class D county roads within this area are important to reduce the opportunities for disturbance of wildlife during the winter season when they are most vulnerable to such disturbance; and

**WHEREAS**, Duchesne County supports the seasonal restriction on access to these lands for the benefit of wildlife as it helps to increase winter survival rates, reduce the negative impacts of wildlife on private lands, reduce the spread of noxious weeds, reduce road damage and erosion and reduce poaching; and

**WHEREAS**, the Duchesne County Commission desires to be informed of the effectiveness of the seasonal road closures on an annual basis and to participate in the review and potential amendment of the Access Management Plan on a five-year cycle.

**BE IT THEREFORE RESOLVED** by the Board of Duchesne County Commissioners that

**SECTION 1.** The Access Management Plan for the Tabby Mountain Wildlife Management Area, as depicted in Exhibit A attached hereto and incorporated herein, is hereby adopted for the purpose of authorizing the subject seasonal road closures.

**SECTION 2.** The Utah Division of Wildlife Resources shall contact the Duchesne County Commission annually to report on the effectiveness of the seasonal road closures.

**SECTION 3.** The Utah Division of Wildlife Resources shall coordinate with Duchesne County during review and potential amendment of the Access Management Plan on a five year cycle.

**PASSED** this 19th day of November 2012 by the Board of County Commissioners. Members: Kirk J. Wood, Kent R. Peatross and Ronald Winterton. All present and voting in favor thereof.

## **THE BOARD OF DUCHESNE COUNTY COMMISSIONERS**

\_\_\_\_\_  
Kirk J. Wood, Commission Chair

Attest:

\_\_\_\_\_  
Kent R. Peatross, Commissioner

\_\_\_\_\_  
Diane Freston  
County Clerk/Auditor

\_\_\_\_\_  
Ronald Winterton, Commissioner

Approved as to form:

\_\_\_\_\_  
Marea Doherty, County Counsel

\_\_\_\_\_  
Boyde Blackwell, Director, UDWR NE Region

*Commissioner Peatross motioned to adopt Resolution No. 12-16 dealing with the seasonal road closures. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

### ***Consideration Of Minutes For Working Commission Meeting Held October 29, 2012***

Commissioner Peatross motioned to approve the minutes with the necessary corrections. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.

### ***Consideration Of Minutes For Working Commission Meeting Held November 05, 2012***

Assistant Casper stated that these minutes are not ready for approval.

### ***Consideration Of Minutes For Regular Commission Meeting Held October 05, 2012***

Assistant Casper stated that these minutes are not ready for approval.

### ***1:30 Public Hearing***

*Commissioner Winterton motioned to amend the agenda to continue the public hearing on the Gardenbrook Subdivision before considering the ordinances. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

### ***Continuation Of Public Hearing From October 15, 2012: Appeal Of Planning Commission Decision To Approve The Gardenbrook Subdivision, Lot 4, Plat Amendment, Neil Wilkerson, Appellant (Paul Wells, Applicant)***

*Jason Wells, Paul Wells, Liisa Hancock, Anne-Marie Hancock, Kent Wilkerson, Jim David, & Neil Wilkerson joined the meeting at 1:30 P.M...*

Administrator Hyde stated that this was last before the commission on October 15, 2012 where findings were presented that the applicants wanted to run by their attorney for review and the hearing was recessed until today. After the discussion with their attorney, the applicant has a request to make at this time.

Jason Wells stated that our attorney advised us to take this any further would require lots of legal action against Mr. Neil Wilkerson and Duchesne County. It was never our intent to have this big drawn out fight with either party. We withdraw our application for the minor subdivision and thank you for your time.

*Chairman Wood closed this portion of the public hearing and stated that this case is now closed.*

***Consideration Of Ordinance No. 12-305, An Ordinance Amending Title 8, The Duchesne County Zoning Ordinance***

Administrator Hyde stated that when the Planning Commission was considering the Integrated Water Management conditional use permit issue regarding odors, the meeting got out of control and we had to call the Duchesne County Sheriff's Office to maintain order. Because of the disorderly conduct, some folks felt intimidated and didn't feel safe offering testimony due to the threats and harassment coming from the audience. In order to protect their due process, Integrated Water Management hired an attorney and found that the county didn't adopt formal rules of procedure for the Planning Commission as required by 2011 Utah Legislative House Bill #267. The public hearing was recessed so the Planning Commission could consider adopting rules of order to comply with the House Bill and this ordinance does that. We had rules of order but they had not been adopted by ordinance. This is our attempt to get these rules of procedure formally adopted in an ordinance and rules of civil discourse set forth. It will be the duty of the Chair to enforce these rules at the hearings. The Planning Commission has reviewed these amendments and recommends you approval.

**ORDINANCE #12-305**

**AN ORDINANCE AMENDING TITLE 8, THE DUCHESNE COUNTY ZONING ORDINANCE**

WHEREAS, the 2011 Utah Legislature approved HB 267, which requires that Planning Commission rules of order and procedure be adopted by Ordinance; and

WHEREAS, the Duchesne County Planning Commission has rules of order and procedure; however, they have not been adopted by Ordinance; and

WHEREAS, the Duchesne County Planning Commission has conducted a public hearing regarding a proposed amendment to the Zoning Ordinance to comply with HB 267 and has recommended approval.

BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS that:

**SECTION 1.** Section 8-3-3 (G) of Title 8, Zoning Regulations, is amended as follows:

G. Meetings, Hearings and Procedure:

1. The planning commission shall establish a regular meeting schedule. This shall be noticed on the county administrative building bulletin board, and during December of each year, the subsequent year's scheduled meetings shall be published in the local paper.
2. Special meetings may be requested by the county commission, the chair of the planning commission or the planning director.
3. If a matter is postponed due to lack of a quorum, the chair shall reschedule the matter to the next available planning commission meeting. The recording secretary shall notify interested parties and all members of the planning commission of the date of the continued meeting.

**4. The Planning Commission follows Robert's Rules of Order, Tenth Edition, for parliamentary procedure and order. A copy of these rules is available for review at the County Administration Building. The following Rules of Order and Procedure are to be read by the Planning Commission Chair at the start of public meetings:**

- a. **The Planning Commission will open public hearings today to consider the matters listed on the agenda.**

- b. State law designates these hearings as “quasi-judicial” hearings; therefore, “courtroom-style” decorum is expected. Planning Commission ex-parte (pre-hearing) contacts must be disclosed. Pursuant to Utah Code Section 17-27a-301 requirements for ethical behavior, are there any members of the Commission who wish to announce pre-hearing contacts, site visits or conflicts of interest?
- c. The hearings will be conducted as follows:
1. Staff will present a report that includes applicable ordinance criteria and standards for the matter under consideration in the application. Staff will make a recommendation whether the request should be approved, approved with conditions or denied.
  2. The Chair will accept testimony relating to the application. The Chair may state a time limit for testimony. To be most effective, testimony should be directed toward the applicable ordinance criteria.
  3. The proceedings are being recorded and will be transcribed to written minutes. Thus, only one person should be speaking at a time.
  4. When testifying, please step to the podium and state your name and mailing address.
  5. To ensure compliance with Utah Code Section 17-27a-301 requirements for civil discourse, the audience shall remain quiet while the hearing is in progress. The Planning Commission may remove persons from the meeting if they create a disruption to the orderly conduct of the meeting. Unacceptable conduct includes the utterance of loud, threatening or abusive language, whistling, clapping, booing or similar disruptive acts.
  6. The applicant will be invited to speak first, followed by proponents, then by opponents, and then by any parties neutral to the application. Proponents, then opponents, will be provided an opportunity to clarify any issues or to rebut testimony.
  7. Members of the Planning Commission may ask questions of the staff or hearing participants at any time. The Chair will then close the hearing or continue the hearing to a specified time and place.
  8. All decisions must be based on findings from the staff report or evidence and testimony received which relate to the criteria of the land use decision.
  9. Decisions of the Planning Commission may be appealed to the Duchesne County Commission within ten (10) days.

**SECTION 2. Severability.**

*If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only, and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.*

**SECTION 3. Effective Date.** *This ordinance shall become effective fifteen (15) days after publication.*

DATED this 19<sup>th</sup> day of November, 2012.

ATTEST:

DUCHESNE COUNTY  
BOARD OF COMMISSIONERS

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Diane Freston  
County Clerk/Auditor

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Kirk J. Wood, Chairman

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Ronald Winterton, Member

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Kent R. Peatross, Member

***Consideration Of Ordinance No. 12-306, An Ordinance Amending Title 8, The Duchesne County Zoning Ordinance***

Administrator Hyde stated that there have been a number of issues raised in the interpretation of the zoning ordinance that we would like to get corrected. In Section 1, a new subsection D has been added. Historically, land farms have not been addressed in our ordinance. We have relied on the Utah Division of Oil, Gas, and Mining to regulate them. We don't have the staff to regulate them, but this change gives us the ability to allow such land uses even if they are not mentioned in the zoning ordinance.

Administrator Hyde stated that in Section 2, there are three (3) new proposals. The first one is regarding lot sizes. We had recent cases where there has been arguments regarding the rounding of lot sizes. In working with County Surveyor Jerry Allred, Surveyor Allred pointed out that a standard survey section can vary from the standard 5,280 feet wide to as little as 5,247 feet wide to as large as 5,313 feet wide because not every section of land is a full 640 acres. We often find situations where a five acre lot is not a full five acres. The recommendation is to adopt this subsection based on the irregularity of sections to allow lot sizes if they are within 98.75% of the standard (they still meet the standard due to the irregularity of section sizes).

The next issue, also in regards to lot size, is whether or we count that area within the right of way towards the minimum lot size? Historically it has been accepted by the county, but this would make it clear.

Another issue that came up is when you have zoning boundaries that cross property lines and parcels are divided into different zones. A way to handle it in the past is to say that if the majority of the property is commercial, we will treat the whole property that way. However, we ran into litigation doing it this way in the Vonsville area and decided to handle it based on where the actual mapped zoning boundaries are.

Administrator Hyde stated that in Section 3, back in the 1990's, the county had a provision in the zoning ordinance that said you can only put one permitted principal or accessory structure on a parcel of land. This created a problem with the larger parcels we have in the county. A lot of times people, want to put more than one building on their property. In 1999/2000 that language was stricken from the ordinance. Ever since, the county has allowed more than one building as long as they have met all of the standards, setbacks, and zoning and building codes.

Ms. Liisa Hancock asked for clarification on multiple buildings and if it allows people to put primary use buildings or if it's just defined secondary buildings.

Commissioner Winterton stated that from his perspective, by passing this ordinance, it would permit him to put an out building or commercial building on a piece that he wouldn't of been able to do so before on 2 ½ acres. He likes the idea that he doesn't need to split it off.

Ms. Liisa Hancock asked if the county would be undermining its zoning regulations by allowing more than one principal structure on a parcel.

Chairman Wood stated that his understanding is that we currently allow more than one principal structure on a parcel. This proposal clarifies that.

Ms. Liisa Hancock thinks it's in opposition to the mapped zoning principals. She feels this is a creative way to go around zoning mapping and this is a congruous approach.

Administrative Hyde stated yes, the proposed amendment does apply to both principal and accessory structures. If you have a smaller lot, it's going to be harder to put more than one principal structure on a property. The larger lots are where people will have more flexibility and ability to put in more than one principal structure. This is how the current ordinance is being interpreted and this ordinance is meant to add clarification.

## **ORDINANCE #12-306**

### **AN ORDINANCE AMENDING TITLE 8, THE DUCHESNE COUNTY ZONING ORDINANCE**

WHEREAS, some recent cases involving administration of the zoning ordinance have revealed a need for clarification of some provisions to avoid misunderstandings; and

WHEREAS, the Duchesne County Planning Commission has conducted a public hearing regarding these proposed amendments and has recommended approval of this Ordinance.

BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS that:

**SECTION 1.** Section 8-1-3 of Title 8, Zoning Regulations, is amended as follows:

#### **8-1-3: APPLICABILITY:**

- A. No building may be erected and no existing building shall be altered or enlarged, nor shall any land, building or premises be used, designed or intended to be used for any purpose or in any manner other than allowed by this title.
- B. The provisions of this title shall apply to all lands within the unincorporated area of the county, as indicated on the county official zoning district map, accompanying and incorporated herein by reference.
- C. The provisions of this title shall be held to be the minimum requirements necessary to protect the public health, safety and welfare of the citizens of the county. Additional requirements may be imposed by the zoning administrator, board of adjustment, planning commission or county commission to more fully ensure the public health, safety and welfare of the residents of the county are protected. The county is authorized to enter upon any land at reasonable times to make examinations and surveys pertinent to the preparation of its general plan and land use ordinances and the enforcement thereof.
- D. **If a use, activity or practice is not specifically prohibited by this code, such use, activity or practice shall be considered to be permitted.**

**SECTION 2.** Section 8-5-1 of Title 8, Zoning Regulations, is amended as follows:

#### **8-5-1: ZONING DISTRICTS SPECIFIED; PURPOSE:**

Consistent with the goals and policies of the county general plan, the zoning districts are formulated to provide and achieve the following purposes:

- A. Agriculture Districts (A):
  - 1. A-10, ten (10) acre minimum zone, is provided and designed to protect and encourage the continued use of land for agricultural purposes and to discourage the preemption of agricultural land for other uses. Other purposes of this district include the protection of the economic base of the county for such uses as forestry, oil and gas drilling, pipelines,

petroleum storage and distribution and the protection of significant natural features of land, creeks, lakes, wetlands, air and the preservation of open areas for wildlife habitat and range livestock. This district is characterized by production farms and ranches, including smaller hobby farms. The A district requires, for residential development, either a Tri-County health department approved nonpublic water source or a connection from a public water source to the family dwelling and a wastewater system permit. Representative uses within this district include, but are not limited to: family dwellings, barns, corrals, crops, livestock raising, farm dwellings, guest ranches, produce retail sales and petroleum drilling and storage.

2. A-5, five (5) acre minimum zone. The purpose of the A-5 zone is the same as that of the A-10 zoning district.
  3. A-2.5, two and one-half ( $2\frac{1}{2}$ ) acre minimum zone, is to conserve and protect farms and other open land uses, foster orderly growth in rural areas, and prevent land development and agricultural land use conflicts. Principal uses permitted in this zoning district include both farm and nonfarm residential uses. Residential development in the A-2.5 district requires either a Tri-County health department approved nonpublic water source or a connection from a public water source to the family dwelling and a wastewater system permit. Representative uses within this district include, but are not limited to, family dwellings, barns, corrals, crops, livestock raising, farm dwellings and produce retail sales.
- B. Residential Districts: The residential districts of the county (R-1, one acre minimum and R- $\frac{1}{2}$ , one-half acre minimum) are formulated to provide family housing choices to meet the needs of county residents, to offer a balance of housing types and densities, and to preserve and provide safe and convenient places to live. The R-1 district requires a public water source and a Tri-County health department wastewater system permit, while the R- $\frac{1}{2}$  district requires both a public water source and a public sewer system to the family dwelling. Proof of a public water connection is all that is required for property to be zoned R-1 and proof of both a public water connection and a public sewer is all that is required to be zoned R- $\frac{1}{2}$ . It is not necessary to rezone property to the higher density zone when the official zoning map shows available public water service. Representative uses include, but are not limited to, family dwellings with minor agriculture uses and public facilities necessary to meet the needs of residents.
- C. Commercial District: The commercial (C) district is intended to provide controlled and compatible locations for retail, office and business/commerce activities, to enhance employment opportunities, to encourage the efficient use of land, to enhance property values and to strengthen the county tax base. Typical uses allowed in this district include, but are not limited to, retail sales and services, offices and institutional uses. There is no minimum area requirement for the commercial district.
- D. Industrial District: The industrial (I) district is formulated to recognize existing industrial sites and activities within the county, to provide opportunities and economic stability to provide employment opportunities for county residents. Typical uses allowed in this district include, but are not limited to, all uses that are not permitted in any other zoning district. There is no minimum area requirement for the industrial district.
- E. **Lot Size Rounding: Because of the way land was originally surveyed by the General Land Office, a section of land in Duchesne County may not be a full 640 acres, a quarter section may not be a full 160 acres, a "quarter-quarter" section may not be a full 40 acres, and so on. According to the County Surveyor and the Manual of Surveying Instructions, Section 3-34, the distance between regular corners is to be normal according to the plan of survey, with certain allowable adjustments not to exceed 25 links (16.5 feet) in 40 chains (2640 feet) or 33 feet in 5280 feet. Thus sections as small as 5247 feet by 5247 feet or as large as 5313 feet by 5313 feet are considered regular sections. Thus, lot sizes within 98.75% of the minimum lot sizes specified by this code may be rounded up to meet said standards.**
- F. **Lot Size and Rights of Way: For existing parcels of land and when new parcels of land are created, those portions of said parcels containing easements or rights of way may be counted toward the acreage needed to meet the minimum lot size standards of this code.**

**G. Parcels in More Than One Zoning District: When a single parcel of land is located within more than one zoning district, the provisions of each zoning district shall apply only to those portions of the parcel within said district boundaries.**

**SECTION 3.** Section 8-6-1 (A) of Title 8, Zoning Regulations, is amended as follows:

8-6-1: TABLE OF USES:

A. Scope: The table of uses identifies the uses allowed within each zoning district of the county. **Nothing in this code shall be construed to prohibit the location of more than one permitted principal or accessory structure or use on a parcel of land, provided that all standards of the building permit process are met.**

**SECTION 4. Severability.**

*If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only, and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.*

**SECTION 5. Effective Date.** *This ordinance shall become effective fifteen (15) days after publication.*

*DATED this 19<sup>th</sup> day of November, 2012.*

ATTEST:

DUCHESNE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Diane Freston  
County Clerk/Auditor

\_\_\_\_\_  
Kirk J. Wood, Chairman

\_\_\_\_\_  
Ronald Winterton, Member

\_\_\_\_\_  
Kent R. Peatross, Member

***Consideration Of Ordinance No. 12-307, An Ordinance Amending Title 9, The Duchesne County Subdivision Ordinance***

Administrator Hyde stated that as with the zoning ordinance, we have had issues with the subdivision ordinance and how that's interpreted. Especially with regards to minor subdivisions which is a fairly new concept that came into place around 2005. The minor subdivisions are divisions of land into ten or fewer parcels through an administrative review process as opposed to a standard subdivision that goes to the Planning Commission and County Commissioners. In the minor subdivision provisions, we propose to clarify a few issues through this ordinance amendment. This ordinance makes it possible for people to amend a prior minor subdivision survey without having to wait a year to do another one. In the past, the Recorder's Office wanted an electronic copy of the map, now they can scan them in, so they don't need the disk. It wasn't clear that the map needed to be filed with the County Surveyor, so this is now clear that it needs to be filed in both places. In the past we have had a problem with people creating agricultural parcels and not doing the perk test or providing a water source and they would put on the survey, "not a proposed building lot," to avoid doing these. When they would sell the lots, people would immediately want to build on them. There is a state law that agricultural parcels can be created if there is a document recorded stating that they will remain in agricultural use until such time that the parcels are approved by the county as building lots. We want to start doing that. The language in bold and underlined text is the new proposed code. This will help iron out the problems we have had in dealing with minor subdivisions. The Planning Commission recommends your approval.

Ms. Liisa Hancock stated that our biggest concern with the minor subdivision change is in Subsection D. To more specifically state that a property owner is only required to get the public access way adjacent or as a part of their subdivision and that any road

leading into that subdivision they do not need to go back and obtain a right of way across those roads. She thinks this is concerning. It will lead to a greater number of vehicles on the road that is not wide enough and the public access is not sufficient. It will affect the current property owners. She thinks the statute causes concern and that it ignores the underlying principal that essentially allows any subdivision to come in and for that initial concern to homeowners or property owners to be ignored and not be addressed in the process that we have seen with the Gardenbrook Subdivision. There are other ways to get around that, they are traditional in land use. The person who wants to put in the minor subdivision can approach the property owners and negotiate a contract or an easement over their property. That is traditionally how land has been acquired and how right of ways has been acquired because their property will be adversely affected regardless. Additionally, the county can go through the eminent domain process. Our concern is that property owner's rights along the way will be negatively affected if it's changed, it will result in a non-uniform use of the roads that could cause potential problems.

Chairman Wood stated that the way he reads it is that we really haven't changed anything. It's originally stated that all parcels have public access and no additional right of way is required to be dedicated. We have simply added from the applicant's property to that standard that has been there.

Ms. Liisa Hancock stated that it is a significant change as you are looking at the language because the current language states that you allow the minor subdivision process, if not, there is additional right of way is required to be dedicated. Otherwise, it goes into a regular subdivision process, so what you only have to have the right of way across the land. That significantly cuts it down, whereas before, all access to the subdivision would need to have a right of way. Previously it had been a restriction to the minor subdivision.

Attorney Doherty stated that the language that we are adding would be more restrictive as far as what we are requiring an applicant to do.

Commissioner Winterton stated that in our county, county roads can be anywhere from 25 to 66 feet wide. Today's standard is 66 feet, but it is not reasonable to force someone to buy land to bring the road up to today's standards for a minor subdivision.

Ms. Liisa Hancock stated that's why the restriction is on there to add protection to property owners. The purpose of Subsection D as it currently is serves as a restriction on minor subdivisions, so that before they can get the minor subdivision, they have to talk to the prior property owners and have to purchase the access. It is a significant change. We ask that you deny that change to let surrounding landowners come in and voice their concerns.

Commissioner Peatross stated that your saying that the significant change is how the applicant doesn't have to deal with the surrounding property owners.

Ms. Liisa Hancock replied by stating yes, because of that, the property owners aren't protected and she doesn't feel this should be approved.

Administrator Hyde stated that we are trying to strike a balance between allowing people to have a minor subdivision where you aren't creating a bunch of extra traffic and not require them to buy right of ways on a road that is already serving a purpose. It's not realistic to have a 66 foot right of way in many parts in the county. The ordinance as stands leaves room for interpretation. We have been interpreting it as that we can only require someone to get a dedicated right of way from their property that they are dividing.

Commissioner Peatross stated that what he is thinking has nothing to do with the Wilkerson's, he is looking at the whole county and doesn't believe we can go back into a rural county and start trying to get 66 feet into every subdivision that comes along because we have that kind of issue throughout the county that don't have that kind of access. He can relate to what Ms. Hancock is saying and feels she brings up an

excellent point, but at the same time he can see what Administrator Hyde is saying. We have to do what we think is good for the greater interest of the county as a whole. It's going to be a hardship on some and a blessing to others, which is typical of everything we do.

Commissioner Winterton stated that we are trying to build for the future and this takes into account that we require the same thing from people and eventually we will have that wide of roads, but this is typical around our county.

Mr. Neil Wilkerson stated that his property is a prime example, the problem didn't start here, it started when Gardenbrook was divided. They drew 30 feet of his property as road to make it legal, so the county would accept it without buying it from him. We are trying to avoid this down the road. The Wells are getting the brunt of what happened back then.

## **ORDINANCE #12-307**

### **AN ORDINANCE AMENDING TITLE 9, THE DUCHESNE COUNTY SUBDIVISION ORDINANCE**

WHEREAS, some recent cases involving administration of the subdivision ordinance pertaining to minor subdivisions have revealed a need for clarification of some provisions to avoid misunderstandings; and

WHEREAS, the Duchesne County Planning Commission has conducted a public hearing regarding these proposed amendments and has recommended approval of this Ordinance.

BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS that:

**SECTION 1.** Section 9-1-4, of Title 9, Subdivision Regulations, is amended as follows:

#### **9-1-4 DEFINITIONS:**

MINOR SUBDIVISION: The division of land into ten (10) or fewer parcels; provided that:

- A. A minor subdivision survey is prepared by a professional land surveyor for review and a decision by the land use authority after the required public ~~hearing~~ **notice**;
- B. Minimum lot size and other land use standards are met (or a variance granted);
- C. Written approval has been received from the sanitary sewer authority;
- D. All parcels have public right of way access and no additional right of way is required to be dedicated **from the applicant's property** pursuant to the official map or county standards;
- E. There is a water source, approved in writing by the culinary water authority;
- F. No further division by minor subdivision shall be allowed within one year. Further division within one year shall be accomplished by the standard subdivision process **or by an amendment to a previous minor subdivision survey**;
- G. Divisions requiring the construction of public roads, public water lines or public sewer lines are not eligible for the minor subdivision process;
- H. The minor subdivision survey map is recorded in the county recorder's office **and filed with the County Surveyor**. ~~An electronic copy of the map shall also be provided to the county recorder at or before the time of recording;~~
- I. HB 1001 exemption: One new minor subdivision parcel, at least one acre in size and located at least one thousand feet (1,000') away from another parcel created under this

exemption, may be created from a parent parcel of at least one hundred (100) acres in size in accordance with Utah Code Annotated section 17-27a-603(4), effective October 1, 2009, including any subsequent amendments.

**J. Minor subdivisions containing more than one parcel designated as “not a proposed building lot” or as agricultural parcels may be approved only if such lands are deemed agricultural on the county tax rolls and the property owner(s) sign and record an agreement stating that such parcels shall remain in agricultural use until such time as the parcels are approved by the county as building lots.**

**SECTION 2.** Section 9-3-3 of Title 9, Subdivision Regulations, is amended as follows:

9-3-3: MINOR SUBDIVISION REVIEW PROCEDURES:

The ~~zoning administrator~~ **community development administrator** is the land use authority for minor subdivisions and shall act as the hearing officer for minor subdivisions. A notice of intent to act upon a minor subdivision request shall be mailed to property owners within three hundred feet (300') of the land being subdivided. Said notice to be mailed at least seven (7) days in advance of the administrative decision date. The community development administrator shall use the standards in the definition of "minor subdivision", as defined in section 9-1-4 of this title, in making the decision to approve, approve with conditions, or deny the request. The planning commission shall serve as the appeal authority for administrative minor subdivision decisions. For minor subdivision parcels created under the HB 1001 exemption, the above review process is not required. However, prior to the issuance of a building permit for such a parcel, the following shall be provided to the county, in addition to any submittal requirements of the department of building safety:

- A. A site plan showing the location of the proposed building in relation to parcel boundaries prepared by a surveyor licensed in the state, to ensure that the building meets safety setback standards of title 8 of this code;
- B. Proof of purchase of a culinary water connection if the parcel is less than two and one-half (2 1/2) acres in size;
- C. Proof of an approved water right, from the state division of water rights, for a private water well, or proof of purchase of a culinary water connection, if the parcel is between two and one-half (2 1/2) and forty (40) acres in size;
- D. Evidence of legal access to the property that complies with this title and the wildland urban interface code;
- E. Evidence of wastewater permit approval from the sanitary sewer authority for the new parcel.

**SECTION 3. Severability.**

*If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only, and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.*

**SECTION 4. Effective Date.** *This ordinance shall become effective fifteen (15) days after publication.*

*DATED this 19<sup>th</sup> day of November, 2012.*

ATTEST:

DUCHESNE COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Diane Freston  
County Clerk/Auditor

\_\_\_\_\_  
Kirk J. Wood, Chairman

Ronald Winterton, Member

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Kent R. Peatross, Member

*-Re-entered Regular Commission Meeting at 2:45P.M...*

*Commissioner Winterton motioned to adopt the findings of fact and conclusions of law recommended by the Planning Commission and approve Ordinance No. 12-305. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

*Commissioner Peatross motioned to adopt the findings of fact and conclusions of law recommended by the Planning Commission and adopt Ordinance No. 12-306. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

*Commissioner Peatross motioned to adopt the findings of fact and conclusions of law recommended by the Planning Commission and adopt Ordinance No. 12-307. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

***Adjournment***

*Chairman Wood adjourned the meeting at 2:50 P.M.*

*Read and approved this 28<sup>th</sup> day of January 2013.*

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*Kirk J. Wood*  
*Commission Chairman*

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*Diane Freston*  
*Clerk/Auditor*

*Minutes of meeting prepared by BobbiJo Casper* \_\_\_\_\_