

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
September 3, 2008 - 5:00 p.m.**

In Attendance were:

Shelly Fabrizio, Planning Commission Chairperson
Leon Sweat, Planning Commission
Chris Peatross, Planning Commission
Dean Burton, Planning Commission
Randy Mair, Planning Commission
John Jorgensen, Planning Commission
Kent Olsen, Planning Commission
Mike Hyde, Community Development Administrator

Visitors:

Scott Hacking (DEQ)
Wayne Garner
John Whiteside
Ryan Fairbanks
Roger Chapman
Ben Hudson
Mike Angus
Becky Rasmussen
Dale Rasmussen
Carol Shields
Lane Yack
Justin Traver

Chairperson Fabrizio opened the meeting at 5:00 PM.

Chairperson Fabrizio asked if any of the Planning Commission had any involvement with either item on the agenda? Commissioner Dean Burton excused himself from the El Paso Exploration & Production Conditional Use hearing, as they are his employer.

PUBLIC HEARINGS:

- A. Recommendation to the County Commissioners regarding a request by Rolsh Investments and Newfield Petroleum to rezone 52.65 acres of land adjoining Newfield Petroleum to the north, at 10288 South Pariette Road, from Agricultural-Residential to Industrial.

Mr. Hyde stated that Mr. Stonaker has 47.65 acres North of the Newfield property and has sold Newfield an additional 5 acres which makes a total of 52.65 acres. The Commission has already looked at this property in April of 2006, when Machine Maintenance and Technical advisors applied for and got a conditional use permit. That partnership has since been dissolved and the permit has expired. Mr. Stonaker would like to have the property rezoned as Industrial so he can market it for resale.

Mr. Hyde stated the criteria for a zone change are:

1. The overall community benefit of the proposed amendment.

Mr. Hyde stated that the community benefit of the proposed amendment would create and generate business development at that location for future expansion and development for the community.

2. In compliance with the general plan.

Mr. Hyde stated that if the rezoning criteria of the zoning ordinance, which implements the general plan are met, then the policies and goals of the general plan are met.

3. Compatibility with the neighborhood.

Mr. Hyde stated that the agenda contains aerial photos showing the proposed industrial site along the West side of the Pariette road. The proposed industrial sites would be compatible with the neighborhood. The increasing development includes a Flying J. fueling facility recently built just north of Newfield and a Natural gas Company office on a five acre parcel in the area. We are seeing a number of energy service businesses locating near Newfield, so this proposal would be compatible with the growth and development in the area.

4. What changes have occurred in the neighborhood since the zoning and map of latest amendment was enacted.

Mr. Hyde stated that changes include the Newfield development, the Flying J site, pipeline mobilization operations and other energy service companies in the area. Also in May of 2007, the Planning Commission and Commissioners rezoned 2 other parcels North of Newfield to commercial zoning.

5. Whether a change in the use for the affected properties will unduly affect the uses for adjoining properties.

Mr. Hyde stated that after viewing the aerial photos you can see that the majority of the land in the area is barren and unimproved. Some land to the Northeast is under irrigation for farming. The planning commission has received an application for a minor subdivision of up to four lots just to the South of Newfield, they aren't sure if they will be

used as residential or business, but we are seeing a cluster of development out in that area.

6.To consider the interest of the applicant.

Mr. Hyde stated that to rezone the property will help to market the property. Mr. Hyde noted that in the past with industrial rezoning outside the city limits, there are concerns by Tri-County Health Department and the Utah DEQ that such rezoning can lead to businesses that may have waste water that cannot be handled by septic systems. When those industrial areas are developed, those businesses will need to work with those agencies, so that the future occupants can handle their waste water appropriately. Also with rezones we need to make sure there is adequate water available to serve future development. In this case there is Johnson Water available at this location to handle the water and fire protection needs.

Based on those findings staff recommends that you recommend to the County Commissioners approval of this zone change.

Commissioner Mair asked if the Minor Subdivision was South of Newfield? Mr. Hyde stated yes. Commissioner Olsen asked if the 47.65 acres was zoned agriculture-residential? Mr. Hyde stated that all 52 acres were agricultural - residential, Mr. Hyde felt that it does not make sense to leave the five acre parcel out of the rezone process to industrial. Mike Guinn of Newfield has agreed to add the additional five acres to the Rolsh Investment request.

Chairperson Fabrizio asked if there were any questions or comments.

Mr. Lane Yack stated that Coldwell Banker Realty currently has the property listed for sale and agrees with Mr. Hyde's report.

Chairperson Fabrizio asked if there were any other questions or comments. There were none so the hearing was closed.

Chairperson Fabrizio asked if there was a recommendation? Commissioner Jorgensen moved that the Planning Commission adopt the findings and conclusions herein and recommend approval of the rezone from Agricultural-Residential to Industrial to the County Commissioners, provided the applicants and future owners coordinate the water disposal issue with Tri County Health and Utah DEQ.

Commissioner Olsen seconded that motion and it passed unanimously.

B. Request by El Paso Exploration & Production for a Conditional Use Permit to locate a wastewater evaporation facility on lands just south of the Blue Bench Landfill, in the NW ¼ of Section 5, Township 3 South, Range 4 West, north of Duchesne City.

Mr. Hyde stated that the property is south of the Duchesne-Wasatch County Land fill and east of State Highway 87 with a mile separation between the Highway and the proposed ponds. Applicants are requesting approval of 15 ponds, only to use 3 in phase one. They want approval now so in the future people cannot build within the 1-mile radius to preclude the applicants from using all the ponds if they need to.

Mr. Hyde stated the criteria for this conditional use permit are:

1. Whether the proposed location would be unduly detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public safety or general welfare.

Mr. Hyde stated that the nearest dwellings are well over a mile away to the south, 2 miles to the west in the Duchesne river valley and 2 miles to the north. The Division of Oil, Gas and Mining requirements will also protect public and environmental safety. Also we have requested UDOT to evaluate truck movement at the Highway 87 intersection with the access road. The access would be a graveled county road, with an easement along private property to the southwest corner of the property approximately 1 ¼ mile long.

2. The proposed location would be in compliance with the goals and policies of the Duchesne County General Plan.

Mr. Hyde stated that the General Plan supports and encourages the oil and gas industry. It is the backbone of the economy, such operation support the industry.

3. The property on which the use, building or other structure is proposed is of adequate size and dimensions to permit the conduct of the use in such manner that will not be detrimental to adjoining and surrounding properties.

Mr. Hyde stated the applicants are the owners of a 160acre quarter section, propose to use approximately 94 acres for the proposed facility, the first phase would only be 22 acres.

Mr. Hyde stated that specifically for evaporation ponds, there are other criteria referring to page 4 of the staff report:

1. The site must be fenced for safety.

Mr. Hyde stated that the applicants site plan shows fencing around the first phase of the project. If additional phases are constructed in the future, fencing will need to be extended.

2. Mandatory compliance with the State of Utah Division of Oil, Gas and Mining general rules.

The applicants are aware that a DOGM permit is required to operate this facility. We have provided notice to that state office.

3. Mandatory odor control.

Mr. Hyde stated that odor is a concern with water evaporation ponds. The applicants have indicated the produced water that has an odor problem is injected into deep injection wells. The water in these ponds would be water they use for drilling or encounter when they drill. So this would be fresh water, not water sitting in reserve pits. With the fresh water and chemical treatment that would be the chance for any odor.

4. Required set backs are at least 1 mile of cities, towns, dwellings and State highways.

Mr. Hyde stated that the proposed facility is about 1.5 miles from any dwelling, Highway 87 is about 1 mile to the west and Duchesne is the closest town, which is about 5 miles away. Therefore the setback requirements are met.

5. Produced water disposal ponds shall be limited by number, on each Conditional Use Permit, and cannot be enlarged or modified until the issue is re-presented to the Planning Commission and the modification is approved.

Mr. Hyde stated that while there are 15 ponds shown only 3 will be constructed in phase 1. It is not known whether the additional ponds will be needed, since the applicants are the only ones that will use them. If additional ponds are needed in the future, it will require another additional conditional use permit.

6. Mandatory bonding is required.

Mr. Hyde stated that bonding is required by Duchesne County in the amount of \$25,000.00 per acre of pond, which would be submitted to the county prior to operations beginning.

Mr. Hyde stated that the U.S. Army Corps of Engineers have notified the Planning Commission to insure that the applicants coordinate with their agency regarding the Clean Water Act, making sure the water does not flow or seep into any drainages. Also the applicants will have to coordinate with the Fish and Wildlife Service to ensure they comply with the Migratory Bird Treaty Act, making sure there are provisions to keep birds from landing on the ponds and to keep other wildlife out of the ponds.

Mr. Hyde recommended that the Conditional Use Permit be approved, subject to the following conditions:

1. Prior the start of construction, the applicants shall submit to the county a copy of their DOGM permit and evidence of coordination and authorization from the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

2. Prior to the start of facility operation, the applicants shall construct the required fencing, post the required bonding and obtain a county business license for the facility. Additional bonding and fencing will be required if the facility expands beyond the first phase.
3. After operations begin, the applicants agree to take prompt action to control and eliminate odors if the county receives any complaints.

Mr. Hyde asked if there were any questions or comments?

Commissioner Sweat asked Mr. Hyde if the applicant is applying for the permit in phases? If they get approval for the 3 ponds they are requesting, would they need to come before the board again if they wanted to expand? Mr. Hyde stated that in 5 years if they needed 3 more the applicants would need to reapply. If the board approves their request for all 15 ponds they could expand, without a new permit, even if someone were to build a home within 1 mile of the location.

Chairperson Fabrizio asked if the Commission approves the request, technically we are approving all 15 ponds? Are they paying the bond for all 15 or just for the first 3?

Mr. Hyde stated that the bond would just be for the first 3, if they expand as stated in condition #2, additional bonding and fencing would be required.

Chairperson Fabrizio opened up discussion from a representative from El Paso Production Company.

Wayne Garner from El Paso Production Company stated that El Paso currently has approximately 250,000 acres leased for drilling and production. Also states that the produced water is injected underground, the only time produced water would be put in the ponds is if there were a leak in their pipeline system, during the repair process they would need to truck water to the disposal ponds. Mr. Garner also stated that after the wells are completed they have to close the reserve pits on their locations, this is when the water is trucked to the disposal facilities. El Paso has plans for drilling 20 new wells and 2 new injection wells for produced water in the year 2009.

Chairperson Fabrizio asked if there were any other questions.

Commissioner Olsen asked if there was a possibility that El Paso would not use the wells for the produced water? Mr. Garner stated they inject all of their water at this time. It is a possibility if the leaks were on this side of the county, they would use these facilities, if there are leaks on the East side (Roosevelt area, Uintah County) they would use the commercial facilities. Mr. Garner stated as in their plan, this facility is not for commercial use, this facility is for El Paso's daily drilling operations only.

Commissioner Olsen asked when referring to the plat map why are the ponds on that angle? Mr. Garner stated that Highway 87 is to the west on the same angle, it was surveyed like that to meet the one-mile requirement for the facility.

Chairperson Fabrizio asked if there were any other persons wishing to speak.

Justin Traver stated that he owns the property to the West that adjoins this proposed facility. Mr. Traver is asking that the commission consider the implications of this project and is concerned that with El Paso's 250,000 leased acres that these ponds will fill up very quickly.

Mr. Garner replied that the State of Utah only allows 2 wells per section (640 acres), currently El Paso is abandoning ineffective wells and drilling a third well in any given section, Mr. Garner also states that there are companies that drill on ten and 40 acre spacing.

Mr. Traver asked Mr. Garner as to production for every one barrel of oil there is 3 barrel's of water? Mr. Garner replied that he cannot honestly answer that question. Mr. Garner stated again this is fresh water, not produced water that will be in the ponds.

John Whiteside, an independent landman who also is contracted by El Paso, asked Mr. Garner at the rate of drilling (20 wells) El Paso is doing now, how long would it take to fill up a 3-acre pit? Mr. Garner stated that the surveyor on this project calculated it at one load per day not allowing for evaporation it would take 3 1/2 years to fill up a 3-acre pit in El Paso's everyday operation. Mr. Whiteside also asked Mr. Garner typically on one well how many loads would you take off one well? Mr. Garner stated you might have anywhere from 8 to 12 loads of fresh water per well. Mr. Whiteside stated that would be 200 loads per year. Mr. Garner stated that this was only the drilling program that El Paso has contracted, but the applicants have many other operations. Mr. Garner stated again this was only for the drilling program that El Paso has established right now.

Mr. Traver asked if you only fill up one pond in three years, its absurd they would need 15 ponds. If you were a neighbor and those ponds were half full who would want to buy your land? Mr. Traver has some concerns about the application. He states that his property is part time residential, it has a well, septic system, electricity and 2 trailers, therefore it does not meet the setback requirements and this should not be approved.

Chairperson Fabrizio asked Mr. Traver where is your land located? To the west he stated.

Mr. Hyde stated that the part time trailers do not qualify as a dwelling. Mr. Traver stated that Mr. Banks lived there all year. Mr. Traver bought the property from Mr. Banks. Mr. Hyde asked if anyone was still living there? Mr. Traver stated no, but implied that this permit should not be issued. In referring to page 3 of the Facts and Findings, The proposed location would be unduly detrimental or injurious to property or improvements

in the vicinity and will not be detrimental to the public safety or general welfare, Mr. Traver states that his health, safety and welfare will be adversely impacted.

Also Mr. Traver is concerned that this project should not be approved due to the fact El Paso does not have legal access to this property, Mr. Hyde stated that the applicants are proposing an easement across the land owners to get to their site. Mr. Traver asks can any one application be voted and approved without access. Mr. Hyde stated that it can be voted on and approved; however, before any construction or improvements begin the access issue will have to be resolved. Mr. Traver stated that with out any access why would the commission even consider approving the permit. Mr. Hyde stated that if they do not have the approval of the conditional use permit, it would not be cost effective to pursue the access easements and hire engineers for the project. Mr. Traver states that El Paso is wasting our time, they have not met the guidelines.

Chairperson Fabrizio stated that the commission is not concerned about access. They want to make sure the applicant has met the guidelines for Duchesne County. Access is not a guideline. Mr. Traver asked if access is a condition? Chairperson Fabrizio stated it is a condition after the conditional use permit has been approved, she also stated if the applicant does not acquire their access, they you cannot build the facility. Then in 18 months their permit will expire if they were unable to build.

Mr. Hyde stated that Chairperson Fabrizio is correct, access is not a concern for the commission, but they will have to get that issue resolved before they can continue with their project. Mr. Hyde referred to a similar situation in Neola at a gravel pit, it took quite a while to get their access issues resolved, then with their permit approval already in place they could move forward with their operation.

Mr. Traver stated that El Paso will not get the access easements they need from Mr. Traver, the Hewitts, Jan, and Cozar, he is also representing their interest's as they could not attend the meeting. They are not in favor of the permit being approved. Mr. Traver is also concerned about the water getting contaminated by dirty oil and it is unreasonable to expect that only 1,2, or 3 ponds would be used when they are requesting 15 be approved.

Mr. Traver stated that he has a purchase contract on his property and the buyer will not purchase the land if the conditional use permit is approved. Chairperson Fabrizio asked what is the buyer afraid of? Mr. Traver stated the odor and aeration, which in some cases can harm the vegetation by contamination. Again Mr. Traver refers to page 3, condition 1 which states that he will be adversely affected with the approval of this permit. It was his vision with the development of Duchesne County to develop this land into 5-acre lots with affordable housing. The commission replies, "if you are selling the ground, that cant happen anyway".

Commissioner Sweat stated the commission needs to deal with the issues at hand, we cannot be responsible for what happens in the future, also noting that there are other farming lands near ponds that are producing alfalfa.

Chairperson Fabrizio asked if there were any other questions or comments.

Mr. Traver asked that the commission not approve the permit, it will devalue his property harming the sale that is pending, feels that El Paso is minimizing the reality, and asks that they only approve 3 ponds at this time, make the applicant reapply if they need more. He still feels that the application does not comply with the 1 mile setback.

Chairperson Fabrizio stated the commission should look at the setback issue and asked Mr. Traver what size are the trailers. He replied 30 foot travel trailer's. Chairperson Fabrizio asked if they have been a permanent residence? Mr. Traver replied, yes Mr. Banks lived there year round.

Mr. Hyde stated that it is illegal to live in a RV trailer at this location and is not considered a residence by county code. They would not be able to have an address, and would be an illegal occupancy. RV's are only approved for occupancy in approved RV parks. Mr. Hyde stated they may camp or vacation at that location but not as a permanent residence.

Chairperson Fabrizio asked if there were any other questions or comments.

Ben Hudson stated he owns the property to the east of this site, he is in favor of production and works in the oil field. El Paso could find another location that was vacant in the area; he states there are larger locations in sections 3 or 4, that the setback requirements are the minimum for this location. He bought this property as an investment for his future. Mr. Hudson also stated there are water purification and drip systems. El Paso should do something to benefit the community, plant trees around the perimeter for the environment. A couple of other concerns are the West Nile virus from mosquito's and weather there will be netting to keep the animals and birds (bald eagles in this area) away from the water?

Mr. Hudson asked Mr. Garner aren't there any other properties in this area for this project? Mr. Garner stated they did look at other locations, they were too rocky and the excavation for the pits would be extensive, but to meet the requirements this was the only location they could purchase. Mr. Garner also stated El Paso will be digging approximately 10 feet down, to reduce the possibility of bank or dike breaching. El Paso's intent is to have a minimal area of the pits above ground.

Chairperson Fabrizio asked Mr. Hudson how much property does he own?

Mr. Hudson replied he owns 80 acres to the east and 40 acres to the south in the same section, and will be surrounded by this facility. Mr. Hudson also stated that there is growth in this area and El Paso should look at some other sites since this is one of the few areas in Duchesne County that can grow residentially.

Chairperson Fabrizio stated the commission has no control over the water purification system or the trees. Commissioner Peatross stated if there is an odor complaint, the

planning commission would have a hearing, to address that issue if it arises. Chairperson Fabrizio stated that odor control is a criteria in the permit approval process.

Commissioner Jorgensen stated that Mr. Hudson's concern about birds and wild life is a condition that will be taken care of before the permit is issued. Mr. Hudson asked that if the conditional use permit is issued, if the area continues to grow and develop and there are complaints brought before the commission will those complaints be addressed? Chairperson Fabrizio stated each complaint will need to be addressed at that time.

Justin Traver asked that he can make a correction, on Mr. Banks residence that was approved by Duchesne County Health Department, I have the site assessment plan, a filing from the State of Utah for a residential well permit, I have a picture of the trailer with the electric meter on the property, Commissioner Sweat stated the difference between permitting a residence to be established and putting a trailer on the property and calling that a residence. In Duchesne County, trailer's do not constitute a residence, you need a permanent building. Mr. Traver stated I have electricity, septic system, a well, and a county road with county specifications to the property, the commission does not consider that a residence? Mr. Hyde stated if it was a stick built home, or a manufactured home on a permanent foundation that would be a residence. An RV does not constitute a residence. Commissioner Peatross stated it is legal to get utilities on your property without a residence.

Commissioner Peatross stated that Mr. Traver has a valid complaint about the setbacks, setbacks are applied to a dwelling, just because you don't have a permanent dwelling does not mean you do not have valid concerns. Commissioner Peatross also stated as the ordinance is written at the present time, other property owners fall back to unduly detrimental portions, because the improvements that you have, the commission can not automatically disqualify on the setbacks, I also think because there are property owners that have definite plans and have stated their concerns those issues do have to be looked at.

Chairperson Fabrizio asked if there were any other questions or comments.

Commissioner Mair asked Mr. Garner if El Paso owned any other property around this area? Mr. Garner replied, El Paso purchased this land for this facility, they do own several other parcels through out the county, but they do not meet the setback requirements for this permit.

Roger Chapman, President of RN Industries testified next. They do have a commercial disposal pit on the Bluebell Road and are at 85% capacity right now. He states that due to the setback requirements that are in place at this time it is impossible to expand their facility. Manufactured homes and trailer's have moved to the area, thus leaving RNI with no room to expand with the current setback requirements. Finding it almost impossible to find enough private land to meet the requirements for the zoning. Mr.

Chapman reiterated the importance of having these facilities with the oil industry running at full capacity right now.

Mr. Hyde stated the commission has been provided a letter from Alpine Partners who purchased approximately 7000 acres in the Granita Park area, just east and south of the proposed site. They are requesting that the commission table El Paso's request for a conditional use permit at this time. Alpine partners have many concerns about this permit Mr. Hyde read the letter to the commission and a copy is on file.

Chairperson Fabrizio asked Mr. Garner if El Paso has considered buying more property around this area? Mr. Garner replied El Paso is always looking for property. He feels like the odor is a major issue. Again, as I have stated, we will inject the produced water in to the ground and if there is an odor problem, El Paso will promptly get it taken care of. El Paso inherited some problems when they acquired the company and has taken the initiative to correct all of their problems and in a timely manner.

Mr. Hyde asked Mr. Garner if the Planning commission did approve this request, and something happened to El Paso's injection services or pipeline system, and you needed to dispose of some produced water, would you be open to disposing that water in another commercial site rather than on Blue Bench? Mr. Garner states once again that if they do dispose of some produced water and there is an odor problem, El Paso will take care of it.

Chairperson Fabrizio asked if there are any other questions.

Commissioner Sweat wanted the planning commission to consider Mr. Hyde's proposal to add another condition to El Paso's request. That produced water does not get disposed into these ponds even if it is on a minimal basis.

Commissioner Sweat was concerned that El Paso's request for 3 active ponds and 15 total is to make sure that either the zoning ordinances do not change in the future or that the area involved does not develop to prevent the future expansion of this project, so El Paso cannot expand if they need to. Maybe approve 3 or 6 ponds for now and see what happens in the future.

Chairperson Fabrizio stated the reason for requesting permits for all 15 ponds is to guarantee that they will be able to expand in the future, without having to reapply to the commission again.

Commissioner Peatross stated that he is not comfortable to approve all 15 ponds at this time. Commissioner Mair is concerned about the same issue, weather the property on each side will be a buffer for El Paso, weather the property owners choose to build or not to develop their land and put up with the operation around their property.

Chairperson Fabrizio stated the property owners around this facility will still be able to build in the future, without recourse to El Paso's operation. Commissioner Peatross

stated that there is a difference between the water going into these ponds and the water that goes into the other commercial ponds in the area. Commissioner Mair stated that there is a need for these ponds, but is not comfortable approving all 15 at this time either. Mr. Hyde stated that if the applicant will compromise just the first phase of 6.88 acres of ponds being approved and cut back on the future plans until they need to expand, they will not need to re-apply. There is some discussion with the commission about building and future growth of the area.

Mr. Garner clarified their plan shows fifteen ponds. They would develop the first one and excavate for the second but not install the pit liner at this time. At such time when it is full, we will install the second liner and use that pond, never to have more one pond in use at the same time. Commissioner Peatross stated if the commission made a condition that no more than three of the 15 ponds would be in use at any one time, would El Paso be in agreement with that? Mr. Garner stated that would be fine. There is some discussion about the right of ways and easements to allow El Paso to continue with their plans, the buffer zone and the setbacks for future expansion.

Mike Angus, a producer with El Paso stated that El Paso and other companies have actually had to shut in producing wells because there is not any place to dispose of this water, which is a loss of revenue to the basin. We need to think about the future and plan ahead for their drilling programs. Remember again this will be fresh water not produced water therefore will limit the odor if there is any. He felt that we need to plan for the future benefit of Duchesne County and oil industries in the area.

Chairperson Fabrizio closed the public hearing and asked for discussion or a motion.

Commissioner Peatross stated the commission should clarify the proposed condition that no more the three ponds will be in use at any one time. This will allow the surrounding property owners and future buyers, information about this facility and what to expect in the future. Also weather to limit production water from being disposed in these ponds or to rely on their proposal as a condition.

Commissioner Peatross motioned that the Planning Commission approve the conditional use permit as requested by El Paso Exploration and Production, with the conditions outlined and add a fourth as the commission discussed:

1. Prior the start of construction, the applicants shall submit to the county a copy of their DOGM permit and evidence of coordination and authorization from the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.
2. Prior to the start of facility operation, the applicants shall construct the required fencing, post the required bonding and obtain a county business license for the facility. Additional bonding and fencing will be required if the facility expands beyond the first phase.

3. After operations begin, the applicants agree to take prompt action to control and eliminate odors if the county receives any complaints.
4. The applicant will not have any more than three ponds of the 15 ponds operating at any one time.

Commissioner Olsen seconded that motion with four in favor (Commissioners Fabrizio, Peatross, Olsen, Jorgensen, one against (Mair) and one abstain (Sweat). Commissioner Burton did not participate in the hearing.

New Business

A. Discuss potential amendments to the zoning ordinance regarding wastewater evaporation ponds.

Mr. Hyde stated that this item is not a public hearing, but there are some people here who want to speak to this issue. After we talk about potential amendments, we will schedule a public hearing and recommend possible changes to the county commissioners. Dealing with some of the recent issues in Pleasant Valley, the Rasmussen's requested that we make some changes to the ordinance.

1. Notifying people by mail a distance of 300 feet that be adjusted to 1320 feet.
2. Also requested the one mile setback from residential use be increased to 5 miles
3. Changing the density of the ponds (for example, limited to ten acres of pond surface area per 1 mile spacing).

Mr. Hyde has notified some interested parties, copies of their responses are in your agenda, I will also give you a copy of Mr. Garner's response, representing El Paso.

Mr. Hyde outlined some draft amendments to the zoning ordinance, and also included in your agenda some of the State and SITLA (State Institutional Trust Lands) bonding requirements.

Mr. Hyde stated that one of the recommendations is to change the setbacks from 1 mile to 5 miles. Rasmussen's have suggested that 1 mile is not enough and some people in the oil industry have suggested that 5 miles is too much. One of the other topics to discuss is the density maximum. The Rasmussen's had suggested that there be no more than 10 acres of pond within a 1 mile radius. Comments from the industry are it would be economically unfeasible, it would be better to have one large pond instead of many smaller ponds scattered around the county.

Mr. Hyde also stated we need to address item no. 7 on the draft amendment, which would make sure prior to operation that the applicant is in compliance with the Army

Corps of Engineers standards and the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service.

Mr. Hyde stated that to increase the mail notice to ¼ mile would be acceptable. There was some discussion with the commission, whether that would be on all conditional use permits or just for produced water permits, Mr. Hyde referred to item no. 8 of the draft amendments which would make produced water permits an exception to this ordinance.

Mr. Hyde stated the other issue to discuss is the bonding. Currently the Division of Oil Gas and Mining, requires bonding which is to treat or remove waste from the site and secure the facility to prevent future contamination should the facility owner default on clean up responsibilities. Also Duchesne County requires a \$25,000.00 per acre bond to guarantee reclamation, making sure the site is not only secured but to make sure the berms are taken down and the ground is reclaimed, so the site can be used in the future. Some comments from industry are that reclamation should be between the landowners and the companies involved. Commissioner Peatross stated the purpose of reclamation is to clean up for the surrounding property owners and the public, not to leave the land scared.

Mr. Hyde asked if there were any comments or questions.

Dale Rasmussen stated the ordinance needs to be updated to protect nearby property owners and the overall public. Mr. Rasmussen feels that their proposed requirements are a fair proposal. In the last 30 days the planning commission has approved a lot of new ponds, (Tod Bro, RNI and El Paso), which he agrees we do need the ponds to help with the oil industry. Mr. Rasmussen hopes with the requirements they have proposed, that we can retain the quality of life that we have in Duchesne County and also protect the landowners. Mr. Rasmussen also stated maybe the oil companies could look into leasing the SILTA lands, they do encourage the use of school trust lands depending on the topography. SILTA does charge a 12% fee in the monies you take and in return those monies go back into public school funds.

Commissioner Peatross asked Mr. Rasmussen how he arrived at the ten acre density limit, and stated that it was not a cost effective system with only 10 acres? Mr. Rasmussen replied that Mr. Bro's ponds at 750,000 barrels covers 15 acres with 6-21/2 acre ponds and the new location being more rocky – he needed to do shallower ponds which covered more acres. The planning commission had some discussion about the odors, volume and density issues.

Mr. Hyde stated that the 10 acre limit and 5 mile setbacks are just a starting point. Chairperson Fabrizio stated the commission does need some kind of ordinance in place for these issues. Commissioner Peatross stated that we might need two different ordinances? Propose a larger setback depending on the size of the project. Also the commission needs to have an ordinance in place to protect the property owner that does not have any structures on their land, thinking their land is less valuable because there are not any structures.

Mr. Hyde stated we need to consider the type of water, whether it is just drilling and completion water vs. the produced water. Maybe you could allow different quantities, depending on the water type?

Mr. Garner stated it is difficult to find properties now with the restrictions that are in place at this time and with the growth of the oil industry in the area, the five mile criteria would be almost impossible to meet. It would almost make production impossible to keep up with the trucking. Production would have to be shut in. El Paso is fortunate because they do have an injection program and can dispose of their water. El Paso is very concerned about the five mile amendment. Mr. Garner thinks it should be on a case by case basis. Mr. Garner stated he will check on the produced water regulations in other states to see how they regulate their produced water and what their setback ordinances are.

Roger Chapman, RN Industries stated that to increase the notification to one mile, he is in agreement with. In regard to the five mile setbacks, he stated this is too far. Economically, you cannot truck this water to areas where you could secure an area to meet those zoning requirements. Mr. Chapman stated if the planning commission requires the five mile setbacks that would eliminate 99% of the possible locations available and severely hurt the disposal industry. He also feels that it is better to have one larger pond than many smaller ponds due to the aeration and total volume of water disposed at these facilities. Mr. Chapman also stated that the existing ponds are lined, and checked on a regular basis. RNI works in three states, Duchesne County is the only county that requires bonding at this level. Colorado requires a small fee per barrel that goes to the state to pay for regulation costs. The State of Utah and Duchesne County have the highest bonding requirements than any other state RNI works in. The setback requirements in Rio Blanco County, CO., basically zero, Mesa County setback requirements are 500 feet, both counties rely on the State of Colorado for the bonding. Mr. Chapman is not sure what the bonding and setbacks are in Wyoming, but there is one required, he feels that the state bond is sufficient enough to reclaim the land.

Mr. Hyde asked Mr. Chapman about the State bond. Isn't it to treat, remove the waste, take out the liner and the contents? Does the State of Utah require the berms to be pushed in as part of their bond? Mr. Chapman replied they do require the berms to be rounded off and pushed back in the hole. Chairperson Fabrizio asked what does Duchesne County use their bond for? Mr. Hyde stated Duchesne County's bond is to handle the reclamation above and beyond what the state requires, Duchesne County's bond is to reseed, level it off and reclaim back to the natural state for future development. Mr. Hyde stated that if DOGM requires the berms to be pushed in, that goes a long way to restructure the site, SITLA also requires their lands to be reclaimed so they can lease their properties again.

Commissioner Sweat commented on the five mile radius. He stated that it will be impossible to find any property with those setback requirements.

There is some discussion from Becky Rasmussen and her concerns about having 19 pits around her home, that one mile is not enough. There is a distinct odor that they will deal with on a daily basis. The Planning Commission will take the recommendations of tonight's meeting under advisement and revisit the subject at the next meeting.

Minutes: Approval of July 2 and August 6, 2008

Chairperson Fabrizio moved to approve the minutes of July 2, 2008 meeting, Commissioner Mair seconded the motion and passed unanimously. Commissioner Sweat moved to approve the minutes of August 6, 2008, Commissioner Mair seconded the motion and it passed unanimously.

Commission Comments and Staff Information Items

None.

Adjournment:

Meeting adjourned at 7:20 p.m.