

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
March 4, 2009 - 5:00 p.m.**

In Attendance were:

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

Visitors:

Chance Fillingim	CD Trucking CUP
Dana Fillingim	CD Trucking CUP
Dale M. Rasmussen	Gravel Pit CUP
Becky T. Rasmussen	Gravel Pit CUP
Jeff Schnars	Source Protection
Bill Fausett	CD Trucking CUP
Louise Fausett	CD Trucking CUP
Richard Fitzgerald	CD Trucking CUP
Bert Jensen	CD Trucking CUP
Diana Jensen	CD Trucking CUP

Chairperson Mair opened the meeting at 5:00 PM.

Chairperson Mair asked if any of the Planning Commission had any involvement with either item on the agenda. There were none.

PUBLIC HEARINGS:

- A. Request by Dale and Becky Rasmussen for a Conditional Use Permit to establish a gravel pit and rock crusher in an Agricultural-Residential zone in Sections 16 and 17, Township 4 South, Range 2 West, between the Pariette and Wells Draw Roads, about 4 miles SW of Myton.**

Mr. Hyde stated the applicants are proposing to conduct gravel mining, screening and rock crushing operations on about 140 acres of land located about four miles southwest of Myton, east of the Wells Draw Road. About four acres of land would be mined and

reclaimed before moving to another four-acre area, some of the rock will not have to be crushed but will need to be screened. This activity requires a Conditional Use Permit in the Agricultural-Residential zone.

Mr. Hyde stated the criteria for a conditional use permit are as follows:

- 1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety or general welfare.**

Mr. Hyde stated the zoning code contains a ¼ mile (1,320 foot) separation distance from residential units to mitigate the public health, safety and welfare impacts of rock crushing operations. In this case, the closest dwelling unit (other than those owned by the applicants and their relatives Lorin C. Tonks, who has consented to the proposal in ½ mile away to the east of the subject property, as shown on the aerial photo (owned by Dorothy Scott). If the use complies with dust and noise standards, it will not be injurious to public health, safety or welfare.

- 2. The proposed use will be located and conducted in compliance with the goals and policies of the Duchesne County General Plan and the purposes of this ordinance.**

Mr. Hyde stated the Duchesne County General Plan contains the following statements with respect to mining activities: “Today, extractive-use industries: livestock, timber, mining, and oil; remain the backbone of the region's economy. The County continues to encourage and support these industries, acknowledging that industry patterns, fluctuating markets, and changing political winds predict periodic good times followed by lean.” In this case, the mining activity will support the construction and energy industries, which provide many jobs to county residents.

- 3. That 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 a manner that will not be materially detrimental to adjoining and surrounding properties.**

Mr. Hyde also stated the proposed mining will take place on about 140 acres of land, with about four acres being utilized at any one time. This parcel is large enough and situated remote from developed areas so that detrimental impacts on other properties will be minimized. The haul route is directed westerly, away from populated areas along 11350 South. If standard conditions are imposed regarding noise and dust control, the proposed use will be acceptable at this location.

Mr. Hyde stated there are some special conditions for extracting earth products.

- 1. Must be maintained in a near dust-free condition. A dust control plan shall be provided by the applicant to the county, the Tri-County Health**

Department and the Utah DEQ. Watering the site and street during times of operation is considered maintaining a near dust-free condition.

Mr. Hyde stated the applicants indicate that they will screen much of the rock, but will likely use a crusher on a portion of the lands. If a crusher is utilized, it will operate in accordance with Utah DEQ air quality standards, under a DEQ permit. Dust will be controlled using water or chemical dust suppression sprays on the crusher and water trucks, with water hauled from an approved source. This meets the requirements of a dust control plan.

- 2. A bond shall be issued in the amount of five thousand dollars (\$5,000.00) for the first acre and three thousand dollars (\$3,000.00) for each additional acre from which such material is taken as a guarantee of reconditioning. The number of acres must be specified on the Conditional Use Permit and cannot be enlarged or modified until the issue is re-presented to the Planning Commission for a new Conditional Use Permit and the enlargement or modification is approved.**

Mr. Hyde stated in this case, the applicant are using their own equipment on their own property and the applicant intends to slope the site once mining is completed so that it may be utilized for grazing in the long term. Under these circumstances, with no outside business operating on the property by lease, the bonding requirement may be waived.

- 3. Reconditioning in a manner agreed to by the County, the property owner and the applicant, to assure the surrounding property is protected along with the beauty of the landscape.**

Mr. Hyde stated the reconditioning must occur after the conclusion of mining operations on the site. Safe cut or fill slopes must be established and disturbed areas re-seeded with grasses suitable for the area. In this case, the applicant is also the property owner, which eliminates the need for a lease agreement that addresses reconditioning.

- 4. Rock crushing operations must be a minimum of one thousand three hundred twenty feet from any city, town or residential use.**

Mr. Hyde stated the 1,320-foot rule is met in this case, with the nearest residential uses being just under ½ mile east of the site. The county Nuisance Ordinance sets forth time limits during which noise is permitted (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays). If noise becomes an issue, these hours of operation will be enforced.

Mr. Hyde stated the Utah Division of Oil, Gas and Mining does not regulate this type of mining and also indicated the Duchesne County Road Department will require a permit for the proposed haul road to connect with the Wells Draw Road. It would be difficult to assess damage done to this county road by truck traffic associated with this gravel pit as the Wells Draw Road is heavily used by oilfield traffic. Rock generated from this operation

could be used in county road and oilfield projects in this area.

Mr. Hyde recommended the Planning Commission approve the Conditional Use Permit requested by Dale and Becky Rasmussen, subject to the 5 following conditions:

1. Applicant shall control dust and noise so neither becomes a nuisance. A dust control plan shall be implemented throughout the course of the operations.
2. Applicant agrees to reclaim (re-contour and re-seed) each 4-acre area in a manner acceptable to Duchesne County before moving onto additional portions of the property.
3. Applicant agrees to obtain a road approach permit from the Duchesne County Road Department prior to constructing their access road connecting to the Wells Draw Road.
4. Applicant shall obtain a Duchesne County business license for this location, prior to start of operations.
5. The requirements of the DEQ air quality permit issued for future rock crushing shall also be requirements of the Conditional Use permit.

Mr. Hyde asked if there are any questions at this time. There were none from the Planning Commission, so the applicant was asked to speak.

Mr. Dale Rasmussen stated he was in agreement with Mr. Hyde's report and feels like if they use the road to the west they can eliminate most of the impact on the neighborhood.

Chairperson Mair asked if there were any questions or additional testimony. There were none, so the hearing was closed.

Commissioner Fabrizio recommended the Planning Commission approve the applicants request for the Conditional Use Permit subject to the five conditions as stated in the staff report. Commissioner Burton seconded the motion and it passed unanimously.

B. Request by Chance and Dana Fillingim (CD Trucking) for a Conditional Use Permit to establish a commercial truck terminal and shop in an Agricultural-Residential zone at 5719 West 9000 South in Section 3, Township 4 South, Range 2 West, east of the Pariette Road, about 3 miles SW of Myton.

Mr. Hyde referred the planning commission to some aerial photos of the site and stated on August 29, 2007, the applicants received an electrical permit to supply power to a metal agricultural building at this site. Zoning approval was not required as the building was to be used for agricultural purposes. However, in the fall of 2008, the Planning Department received information that a trucking business was operating from this property. Mr. Hyde also stated the applicants were apparently misled by a building inspector regarding the need for a conditional use permit, because it was an oil-field related business. Such commercial uses are a conditionally permitted use in the Agricultural-Residential zone. The applicants were asked to apply for this permit to legalize an existing operation.

Mr. Hyde stated there are criteria for approving a conditional use permit. I have prepared 2 sets of findings 1) in favor of approving the permit and 2) denying the conditional use permit.

- 1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety or general welfare.**

Mr. Hyde stated the Pariette Road sees a lot of heavy truck traffic associated with the energy industry and agriculture. The proposed location is along 9000 South, which is a paved, dead-end road that serves five dwelling units. Until now, there has been very little heavy truck traffic on this road. The public hearing will reveal whether neighborhood property owners feel this increased truck traffic is deemed detrimental to public health, safety or general welfare. The Duchesne County Road Department has issued a letter dated February 23, 2009 indicating that the road will need to be widened from 20 to 24 feet, with three-foot shoulders and built up to handle heavy truck traffic if the use is to continue at this location.

- 2. The proposed use will be located and conducted in compliance with the goals and policies of the Duchesne County General Plan and the purposes of this ordinance.**

Mr. Hyde stated the Duchesne County General Plan states that future growth and development decisions should be made with sensitivity to rural residential/agricultural interests. The plan indicates that the county wishes to encourage business activity and that the county will support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses. In light of these plan policies, the Conditional Use request should be approved to support the creation of a new business site, knowing that conditions of approval will be imposed to protect rural residential and agricultural interests in the area.

- 3. That 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 a manner that will not be materially detrimental to adjoining and surrounding properties.**

Mr. Hyde stated the property is a 21-acre parcel, with the truck shop located on 3.4 acres, with a 6,000 square foot shop building. The size of the property allows space for employee and truck parking, with sufficient space for ingress and egress. The building is set back at least 100 feet from the property lines in all four directions. The size of the property in itself does not contribute to detrimental impacts on surrounding properties.

Mr. Hyde also stated there are other criteria for Conditional Use Permits that may include.

- 1. That the site will be suitably landscaped and maintained and that the design, setbacks, fences, walls and buffers of all building and other**

structures are adequate to protect property and preserve and/or enhance the appearance and character of the area.

Mr. Hyde stated the applicants have fenced off the business site with 6-foot chain link fencing. No landscaping is evident, which is typical of such facilities. It is understood that the site formerly contained eyesore conditions, which have been cleaned up as a result of this project, enhancing the appearance of the area.

2. Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.

Mr. Hyde stated a site visit revealed adequate space for employee parking along the North side of the site and adequate space for truck parking elsewhere on the property. The applicants have hauled in rock to create a durable driving surface; however, this may need to be maintained or upgraded in the future if dust or mud tracking onto 9000 South becomes an issue.

3. The provision of required street and highway dedication and improvements and adequate water supply, sewage disposal and fire protection.

Mr. Hyde stated Johnson Water supplies Water to this property with a four-inch service line. This line is too small for a fire hydrant. Thus, the applicant will need to work with the Duchesne County Fire and Emergency Management Director to determine an acceptable alternative for fire protection. There shall be no fuel storage on the property unless permitted by the Duchesne County Fire and Emergency Management Director. The shop does not have a restroom or septic system. Employees/drivers are instead provided with a portable toilet. When the County Surveyor prepared a Minor Subdivision survey for the applicants in Spring of 2008, he mapped the width of 9000 South at 40 feet between fence lines. This width is below the county standard right of way width of 66 feet. Since this business adds traffic to 9000 South and since this road may need to be widened to accommodate development at some time in the future, road right of way should be obtained from the applicant at this time. Again, the Duchesne County Road Department has issued a letter dated February 23, 2009 indicating that the road will need to be widened from 20 to 24 feet, with three-foot shoulders and built up to handle heavy truck traffic if the use is to continue at this location.

4. Regulation of signs.

Mr. Hyde stated the applicants indicate that they have no plans to erect business signage at this time. The County does not have a sign code that regulates sign size and height. Due to the agricultural-residential zoning, signage should be limited to 32 square feet in size. A sign of that size may be placed on the applicant's property (or on another owner's property only with a lease agreement).

5. The mitigation of nuisance factors such as noise, vibrations, smoke, dust, dirt, odors, gases, noxious matter, heat, glare, electro-magnetic disturbances and radiation.

Mr. Hyde stated the county Nuisance Ordinance sets forth time limits during which noise is permitted (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays). The operator will need to keep these time limits in mind to avoid creating noise disturbance. Also, if dust is created by the operation of the facility that disturbs other property owners or residents, the applicant will need to apply dust inhibitors, pave the driving surfaces or take other action as directed by the county.

6. The regulation of operating hours for activities affecting normal schedules and functions.

Mr. Hyde stated the applicant indicates that water trucks occasionally operate outside of the hours specified in the Nuisance Ordinance but that efforts are being made to restrict truck operating hours to the times allowed. If the County receives noise complaints, the hours specified in the Nuisance Ordinance will be strictly enforced.

Mr. Hyde recommended based on these findings for approval the Planning Commission approve the applicants request for a conditional use permit subject to the following 7 conditions.

1. Applicant shall control dust and noise so neither becomes a nuisance. Rock shall be applied to the driving surfaces as needed to minimize dust and minimize the tracking of mud onto 9000 South.
2. Prior to conducting business at this site, the applicant shall obtain a Duchesne County business license for this location.
3. Signage shall be limited to 32 square feet in size and be located on the applicant's private property or off-premises by written agreement with the property owner. Pole signs require a building permit.
4. There shall be no fuel storage at the site unless the Duchesne County Fire and Emergency Management Director approves a permit for such storage.
5. The applicant shall work with the Duchesne County Fire and Emergency Management Director to provide an acceptable means of fire protection at the facility.
6. The property owners shall sign a Dedication Deed providing 33 feet of the standard 66-foot right of way for the public road (9000 South) along their property frontage.
7. The property owners shall improve 9000 South (County Road #245) to a standard suitable for heavy truck traffic (24-foot wide pavement, with two three-foot shoulders and an adequate road design approved by the Road Department).

Mr. Hyde stated that after the public hearing if the Planning Commission is in favor of denying the applicants request for the Conditional Use permit, In the Findings to Deny the changes are as follows:

- 1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety or general welfare.**

Mr. Hyde stated there are likely detrimental effects from a business of this type such as accelerated road deterioration, noise, exhaust, vibration and dust.

- 2. That 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 a manner that will not be materially detrimental to adjoining and surrounding properties.**

Mr. Hyde stated the location is close to residences in the vicinity, which could be detrimentally impacted by the noise, dust, exhaust and vibrations associated with heavy truck traffic.

- 3. Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.**

Mr. Hyde stated the Pariette Road handles a tremendous amount of heavy truck traffic associated with the energy industry and agriculture; however, 9000 South is a dead end road that was not constructed to serve heavy trucks.

- 4. The regulation of operating hours for activities affecting normal schedules and functions.**

Mr. Hyde also stated the applicant indicated that water trucks occasionally operate outside of the hours specified in the Nuisance Ordinance but that efforts are being made to restrict truck operating hours to the times allowed. Due to the nature of the business, noise is expected to be a continuing issue.

Using these findings, the Planning Commission could deny the Conditional Use Permit requested by Chance and Dana Fillingim, CD Trucking, as it does not meet all of the criteria for approval (insufficient road access, proximity to residential uses and the likelihood of detrimental impacts, such as accelerated road deterioration, noise, exhaust, vibration and dust).

Mr. Hyde asked if there were any questions.

Commissioner Jorgensen asked if the applicant owns enough land to make the 66 foot right of way and if they have a business license. Mr. Hyde stated the commission can only ask the applicant for the extra footage on their side of the road and that the

improvements need to occur with in the 40 feet owned by the applicant. The applicant was unaware or misinformed about needing a business license but they have been operating for a few months.

Commissioner Sweat asked how long the applicant has been operating without a business license. Mr. Hyde stated the county found out in fall of 2008 and stated the applicants could better explain what happened and when they started.

Commissioner Burton asked who bears the cost of upgrading and improving the road and also how far is the Fausett residence from the entrance to the applicant's business. Mr. Hyde stated as per the road department the applicant will need to pay for the improvements and referred the commission to the aerial photos in their packets to see the location of the shop in relation to the Fausett property.

Chairperson Mair asked if there were any other questions. There were none so the applicant was invited to speak.

Chance Fillingim, manager of CD Trucking, stated in the beginning the company had two trucks and three drivers, they erected the agriculture building at that time. Mr. Anderson from the building department apparently during an inspection told the applicants they were oil field exempt because of the area they were in. As the business grew and became more successful, Western States offered to buy CD Trucking and lease the shop until they could find a more appropriate location. The Fillingim's accepted their offer. Mr. Fillingim stated, knowing the fall the economy is taking at this time, the applicant's have laid off 9-10 drivers and cut back to only 40 hours per week and is asking for some time to decide if it is feasible to continue with the operation or get out of the business. Mr. Fillingim stated he knows the extra traffic has taken a toll on the condition of the roads and after the weather breaks, they will make the improvements.

Commissioner Fabrizio asked at any time did the applicants apply for a business license. Mr. Fillingim stated no they have not.

Commissioner Olsen asked if the road in question (9000 South) is paved. Mr. Fillingim stated it is paved with recycled product from Highway 40.

Commissioner Jorgensen asked if the permit was approved can CD Trucking afford to make the improvements needed to the road. Mr. Fillingim stated he would need to get with Western States and see if it is feasible to stay at this location and make the improvements needed to be in compliance.

Commissioner Jorgensen asked where CD Trucking fuels the trucks. Mr. Fillingim stated they do have a fueling station at the site, it does have a fire hydrant and is contained but did not check with Duchesne County prior to installation.

There was some discussion about where the road improvements would begin and end.

Mr. Fillingim stated to improve the road in front of his property is not an issue, but to come from the turn off that would financially need to be looked at.

Commissioner Jorgensen stated the applicant might need to table this process until the improvements can be made or until they find another site.

Commissioner Burton asked if there was a sales agreement with Western States to purchase CD Trucking. Mr. Fillingim stated yes they do have a sales contract.

Chairperson Mair asked if there were any more questions. He invited any opposing parties to speak.

Bert Jensen, a resident near the CD Trucking site, passed a hand out to the Planning Commission and stated on page 2 there are some signatures opposing the approval of the conditional use permit. Mr. Jensen stated living where they live is a choice of lifestyle and feels that having a commercial trucking company of this size in the area defers from that life style. Mr. Jensen also stated the land is zoned for Agriculture-Residential use and states that it alters the use of the land. He also explained had the applicants applied for a business license this situation would have been avoided. Mr. Jensen had talked with the State of Utah – property rights division and stated if a company has developed illegally, that does not give them a legal right to remain at the site.

Mr. Jensen stated some of the concerns of the neighbors in the area should the Conditional Use permit be approved.

1. Living in the area looking for quiet setting, farming, and minimal neighbors.
2. If the Planning commission approves the Conditional Use permit, this allows a precedence to be set for future business.
3. The abuse the County road has taken because of the increased traffic.
4. Materials that have been spilled and the effects that will cause in the future.
5. The value of their land will depreciate because of the noise and traffic in the area.

Mr. Jensen stated how quiet the area was until CD Trucking has moved in and grown at the capacity that it has, and that the noise is heard all hours of the day and night. Mr. Jensen also stated there are neighbors that will not come forward as they don't want to cause any more problems. The Planning Commission has approved an Industrial area near Newfield and Mr. Jensen and the other residents feel like CD Trucking should move to that location and not in a residential area.

Commissioner Fabrizio asked Mr. Jensen if he or any neighbors have complained in the past. Mr. Jensen replied they were ignorant in the beginning about the first few trucks and it was not until Western States come into play in November of 2008 that Mr. Jensen called Mr. Hyde and stated their concerns about the noise and traffic at the applicant's site.

Commissioner Peatross asked Mr. Hyde if that was when Mr. Fillingim was notified? Mr. Hyde replied yes.

Commissioner Jorgensen asked if 9000 South used by any other trucking companies. Mr. Jensen replied there are trucks that haul hay in the summer.

Commissioner Olsen asked about Mr. Jensen's comment that they do not feel like they are in the oil field. Mr. Jensen replied no, the residents do not feel like they are in the middle of the oil field, they feel like there are industrial areas for commercial and trucking business and an agriculture-residential area is not the place for these types of business's.

Chairperson Mair asked if there were any other questions.

Bill Fausett, resident opposed to the Conditional Use Permit approval, has submitted a letter to the Planning Commission about the objections and concerns he has about the trucking company being based in the residential area. Mr. Fausett also stated his concerns about the condition of the road and how long it can sustain the heavy truck traffic.

Chairperson Mair asked if there were any questions.

Richard Fitzgerald, resident opposed to the Conditional Use Permit. Mr. Fitzgerald stated his concerns about the trucking company being based in an agriculture-residential area. Mr. Fitzgerald asked the Planning Commission to give Mr. Fillingim some time to adjust and find another location to run his business.

In rebuttal, Mr. Fillingim stated again he needs some time to see if it is feasible to do the improvements to be in compliance. Commissioner Jorgensen stated the commission could table the hearing for 30-60 days.

There was some discussion with the Planning Commission and Mr. Fillingim about how long it would take to get some figures and bids together. Mr. Fillingim stated he needs to get with Western States to see if they are willing to pay for the improvements.

Commissioner Peatross asked the applicant if he was acting as manager for Western States and what will happen to his lease if the permit is not approved. Mr. Fillingim stated that Western States has bought the business and are leasing the building for three more years.

Mr. Hyde stated the Planning Commission could recess the hearing until April 1, 2009.

Commissioners Peatross and Jorgensen stated we still have the issue of denying the request. Commissioner Peatross also stated the Planning Commission is not changing the zoning from AR-5 to Commercial.

Mr. Hyde stated the nearest commercial zone is by the Flying J fueling station and there is Industrial zone at Newfield. A conditional use permit allowed the Hollow Moon Café in an existing agriculture-residential zone.

Commissioner Sweat asked Mr. Fillingim if 30 days would give him sufficient time to get the information and make the decisions need for the improvements for approval. Mr. Fillingim stated 30 days would be fine.

Commissioner Sweat made a motion to table the hearing until April 1, 2009. Commissioner Peatross seconded the motion and it passed unanimously.

Mr. Hyde suggested to Mr. Fillingim during the recess that he check with the Duchesne County Fire Marshall for the fueling station, get the bids on the road work, check with Western States to see if the project is feasible and supply me with that information before the next meeting.

NEW BUSINESS:

None.

Minutes: Approval of March 4, 2009

Commissioner Sweat moved to approve the minutes of February 4, 2009. Commissioner Burton seconded the motion and it passed unanimously with Commissioner Peatross abstaining.

Commission Comments and Staff Information Items

Mr. Hyde stated the next meeting will be on April 1, 2009, at that time the Planning Commission will continue the CD Trucking hearing and also will be discussing the draft ordinance to be recommended to the County Commissioners on the proposed Duchesne County Drinking Water Source Protection Ordinance. Mr. Hyde stated this ordinance will help protect the public drinking water sources. The county drafted this ordinance along with the Utah DEQ, Duchesne County Water Conservancy District, Utah Division of Drinking Water, Utah Rural Water Association and The Tri-County Health Department.

There was some discussion about the David Stauffer property west of Roosevelt.

Adjournment:

Meeting adjourned at 6:24 p.m.