

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
May 5, 2010 - 5:00 p.m.**

In Attendance were:

Randy Mair, Planning Commission – Chairperson
John Jorgensen, Planning Commission
Shelly Fabrizio, Planning Commission
Edward Roberts, Planning Commission
Mike Hyde, Community Development Administrator
CoraLee Sanchez, Planning Secretary

Visitors:

Dale Rasmussen	ITL Ponds
Becky Rasmussen	ITL Ponds
Beth Morris	Chapman Rezone
Brad Lyle	Gravel Pit-CUP
Jason Douby	Gravel Pit-CUP
Dave Nelson	Gravel Pit-CUP
Todd Bro	ITL Ponds
Jonathan Stearmer	Gravel Pit-CUP
Glen Murphy	Gravel Pit-CUP
Bob Ballou	ITL Ponds
Jason McKenna	Chapman Rezone

Commissioner Mair opened the meeting at 5:00 P.M.

Commissioner Mair asked if any of the Planning Commissioner's had any ex-parte contacts or conflicts of interest associated with either item on the agenda. There were none so the hearing proceeded.

PUBLIC HEARINGS:

- A. Request by the Duchesne County Road Department for a Conditional Use Permit to extract earth products from 3.4 acres of a 320-acre parcel owned by Millstream Properties LLC located in Section 27, Township 1 South, Range 4 West, on the west side of the existing county gravel pit, west of the Altamont rodeo grounds.

Mr. Hyde stated the Duchesne County Road Department operates a gravel pit on lands just

west of the Altamont Rodeo Grounds, west of Altamont. The county has entered into a lease agreement with Millstream Properties, the owners of lands to the west of the existing pit, allowing the county to extract earth products from about 3.4 acres of land. Rock crushing would occur within the confines of the existing county pit, where rock crushing has been occurring for many years. The expansion of the gravel pit requires a Conditional Use Permit in the Agricultural-Residential (A-5) zone.

A conditional use permit may be granted if during the hearing the commission finds the following:

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 typically the extraction of earth products can be detrimental in terms of noise and dust during operations. Rock crushing and surface disturbance creates noise from operation of equipment, windblown dust and dust from equipment movement. However, if the applicant complies with dust and noise standards, the proposal will not be injurious to public health, safety or welfare. Detrimental impacts can also occur if the pit is not reclaimed properly. The county has “material pit finishing” standards that should prevent the applicant from leaving eyesore or hazardous conditions when mining is completed. The lease agreement with the property owner also requires reclamation. According to maps prepared by the Utah Division of Drinking Water, the property does not lie within any drinking water source protection zones. The applicant will need to contact the Utah DEQ to determine if a storm water permit is required to ensure that the excavation does not result in erosion of sediment into the Lake Fork River to the west.

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 excavation of earth products and rock crushing will support road construction and maintenance, which is a very important service offered by the county.

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 proposed mining will take place on approximately 3.4 acres of the

320-acre parcel owned by Millstream Properties. If standard conditions are imposed and followed regarding noise control, dust control and site reclamation, the proposed use should be acceptable at this location.

There are some special minimum conditions for extraction of earth products they are as follows:

1. Must be maintained in a near dust-free condition. A dust control plan shall be provided 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 a dust control plan must be presented by the applicant to the TriCounty Health Department for review and approval. The plan will need to indicate what equipment will be available to control dust at the pit and document a source of water for dust suppression. Health Department approval of the dust control plan must be provided to the County prior the start of operations. In addition, the applicant must demonstrate that the crusher has a valid DEQ air quality permit.

2. A bond shall be issued in the amount of one 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 is a county department, so there is no need for one agency of the county to provide bonding to another agency of the county. The lease agreement with the property owner will ensure that reclamation occurs to the standard specified by the owner.

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 “Material Pit Finishing Standards” included in the agenda are used by the County to determine how reconditioning is to be accomplished. The applicant shall be subject to these standards and the terms of the lease agreement.

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 applicant plans to crush rock within the confines of the existing gravel pit, where crushing is a historic, “grandfathered” use. Some homes have been built in the past few years less than a quarter mile from the existing pit; but they were constructed with knowledge of the type of operation the county has on the subject

property.

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 applicant must comply with these time limits. The Road Department does not work on weekends and holidays.

Mr. Hyde recommends that the Planning Commission approve the Conditional Use Permit requested by the Duchesne County Road Department, subject to the following conditions:

1. Applicant shall control dust and noise so neither becomes a nuisance.
 - a. A dust control plan, approved by the TriCounty Health Department, shall be submitted to the County Planning Department before crushing begins and shall be implemented throughout the course of the operations.
 - b. Applicant shall comply with the construction activity noise time limits of the Nuisance Ordinance.
 - c. Applicant shall ensure that the crusher operates under a valid DEQ air quality permit.
2. Applicant shall reclaim the property at the conclusion of mining operations in accordance with the county's "Material Pit Finishing Standards" and the terms of the lease agreement.
3. Applicant shall contact the Utah DEQ to determine if a storm water permit is required prior to starting excavation work.

Mr. Hyde stated in your packets there were some photos of the site and invited Glen Murphy, Supervisor, Duchesne County Road Department to speak.

Mr. Murphy explained the need for expanding the existing gravel pit and the agreement the county has entered in with Millstream Properties. The county plans to put a barrier along the edge, place signs in the area and place a drain if they need to.

Brad Lyle, Millstream Properties stated expanding the pit will benefit both the county and Millstream Properties and they are in favor of the Conditional Use Permit being approved.

Commissioner Mair asked if there were any other questions or comments. There were none.

Commissioner Fabrizio motioned that the Planning Commission approve the Conditional Use Permit requested by the Duchesne County Road Department, subject

to the conditions stated in the staff report. Commissioner Jorgensen seconded the motion and it passed unanimously.

- B. Request by Iowa Tanklines, d.b.a. Water Recovery LLC, for a Conditional Use Permit to expand their produced water evaporation facility from three ponds to four ponds. The facility is located at 8500 West BLM Fence Road in Section 30, Township 4 South, Range 2 West, just west of the Wells Draw Road.

Mr. Hyde stated Iowa Tanklines, d.b.a. Water Recovery LLC, received a conditional use permit on August 6, 2008 to operate a produced water evaporation facility on the north side of the BLM Fence Road, just west of the Wells Draw Road. The facility originally was proposed to have ten ponds; however, the approved plan contained three evaporation ponds in phase one with a 4th pond in phase 2 and a secondary containment pond. This proposed expansion would add the 4th evaporation pond.

The planning commission may grant a conditional use permit in compliance with this ordinance if, from the application and the facts presented at the public hearing, it finds:

- 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 Utah Division of Oil, Gas and Mining (DOG M) regulates produced water evaporation facilities to address issues of environmental health. Before the proposed pond is put into operation, an operating permit must be received from DOGM. The major public health, safety and welfare issue is odor control, which is mandatory with such facilities. This operator has a track record of controlling odors using water circulation and treatment with biological agents. Such odor control must continue if the facility is expanded.

- 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 expansion of this produced water evaporation facility will help serve the water disposal needs of the Monument Butte oilfield area, which is seeing increased drilling activity.

- 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 if the odors continue to be controlled the proposed use will not be detrimental to adjoining and surrounding properties.

There are some additional criteria to be met for produced water facilities.

The site must be fenced to sustain safety, and prevent access by livestock, wildlife, and unauthorized personnel.

Mr. Hyde stated the proposed pond lies within an area that has already been fenced by the applicant to prevent access to the existing facilities.

Mandatory compliance with State of Utah Division of Oil, Gas and Mining (DOG M) General Rules, including submittal of the DOGM application and DOGM approval to the County prior to the receipt of water.

Mr. Hyde stated the County must receive a copy of the DOGM operating permit for this proposed pond prior to any produced water being placed in it. Produced water may not be used to hold down the liner in advance of DOGM approval.

Mandatory odor control.

Mr. Hyde stated the applicant shall take prompt action to control and eliminate odors from this pond just as the applicant has done for the three existing ponds.

Must be located a minimum of two miles from any state or federal highway, city, town, or primary residential use (as determined by the Duchesne County tax rolls) and at least one mile from the property line of a parcel containing a primary residential use, unless written consent to locate closer is obtained from the owner of the property containing the primary residential use.

Mr. Hyde stated a search of the county tax rolls found no primary residential uses within two miles of the boundaries of the subject property. According to aerial photos, the nearest residential uses are located to the northeast, about 2.7 miles away from the proposed pond. The nearest property line of a parcel containing a primary residential use is located 2.3 miles away to the northeast. This standard is met.

Produced water disposal ponds shall be limited by number, on each Conditional Use Permit to the number of ponds that would be under construction within eighteen months and completed within three years of permit approval, 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 the applicant received a conditional use permit on August 6, 2008 for three ponds (see Ponds 1, 2 and 3 on Wood Engineering Drawing C1.1). Pond 4 was designated for “future construction” on the 2008 plans.

Mandatory bonding or other assurance shall be furnished to the county, prior to the receipt of water, in the amount of 125% of a contractor’s estimate to remove buildings and tanks, reclaim roads and driving surfaces, remove fencing and re-vegetate the site to a standard agreed to by the property owner and the County. The contractor’s estimate and bond amount shall be re-calculated every five years. This is in addition to Utah Division of Oil, Gas and Mining General Rules (R649-9-9), which require bonding to treat or remove waste from the site and secure the site to prevent future contamination.

Mr. Hyde stated with the proposed expansion of this facility to include an additional pond, the contractor’s estimate for reclamation will need to be updated now rather than waiting for five years after the initial permit.

Prior to receipt of water, the applicant must provide Duchesne County with evidence of compliance with the Section 404 permit process administered by the U.S. Army Corps of Engineers and the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service.

Mr. Hyde stated prior to the receipt of water, the applicant must submit evidence that these federal requirements have been met. The Section 404 process is not likely to apply as no surface water courses are proposed to be altered. Evidence of consultation with the US Fish and Wildlife Service must be submitted to the county prior to the receipt of water.

Notwithstanding the notification requirements of Section 17.52.030, mailed notice of the public hearing shall be given to all property owners within two miles of the parcel proposed for the use.

Mr. Hyde stated the required notice has been given by mail in this case.

An operator shall be on site at all times for monitoring of the site during receiving operations. The facility shall be secured against entry when an operator is not present.

Mr. Hyde stated the applicant has indicated the employees are on site during water receiving operations and that the gates are closed when the site is not manned.

Mr. Hyde recommends that the Planning Commission approve the Conditional Use Permit requested by Iowa Tanklines, d.b.a. Water Recovery LLC, for Pond #4, subject

to the following conditions:

1. Before the proposed pond is put into operation, an operating permit must be received from DOGM.
2. The County must receive a copy of the DOGM operating permit for this proposed pond prior to any produced water being placed in it. Produced water may not be used to hold down the liner in advance of DOGM approval.
3. Applicant shall take prompt action to control and eliminate odors from this pond just as applicant has done for the three existing ponds.
4. Prior to the receipt of produced water in Pond #4, the contractor's estimate for reclamation must be updated.
5. Prior to the receipt of water, the applicant must submit evidence that federal requirements (Section 404 and the Migratory Bird Act) have been met for Pond #4 through consultation with the US Fish and Wildlife Service and the U.S. Army Corps of Engineers.

Mr. Hyde referred the commission to the photos in their packets and asked if there were any questions of the staff report. There were none, so the hearing proceeded. There was not a representative from Iowa Tanklines present, so the hearing was opened to the public.

Dale Rasmussen, a Pleasant Valley resident, stated he is in a neutral position as long as Duchesne County continues to enforce the rules and conditions of the ITL conditional use permit. Mr. Rasmussen also expressed his concerns about the saturation of the ponds in the area and the long term effects of the soil contamination and air quality. Mr. Rasmussen offered thanks to the commission for their efforts and ITL for the prompt action and willingness to reduce odors, hoping they will continue to do so if the 4th pond is approved.

There was some discussion between the commission and Mr. Rasmussen about the concerns they have with the water and the odors it brings and the possibility of injecting it back into the ground one day.

Becky Rasmussen, a Pleasant Valley resident, stated she is opposed to the approval of another pond in the area and does not want anymore permitted ponds, but knows the reality of the situation. Mrs. Rasmussen also thanked the commission for changing the ordinances, having the spring tour and quick response in getting the odors controlled and ITL for their efforts to keep the odors under control.

There was some discussion on changing the code to limit the number of ponds that can be permitted in any given area and the treatment of the produced water and the possibility of reusing it.

At this time Mr. Bro was invited to speak.

Todd Bro, Manager of Iowa Tanklines and Water Recovery LLC, explained the photos of the spring tour and the construction progress as to the 4th pond in the commission packets. Mr. Bro stated they are pleased with their efforts to control the odors, keep the liners in place because of the temperature changes and will continue to do so. Mr. Bro stated the water they are receiving this year is much cleaner and their equipment is better than last, making the odors less invasive.

Commissioner Jorgensen and Mr. Bro had some discussion about the ITL, RNI and the Indian pond locations and the increasing number of them and the potential plans and future advances for this industry.

Commissioner Jorgensen asked Mr. Bro about the *nasty* water that is delivered to the ponds and whether they know or can refuse extremely odorous water at the time of delivery. Mr. Bro stated they do not know what kind of water, good or bad, until it is unloaded and that there would be different treatments for different types of water.

Mr. Hyde asked Mr. Bro if he had read the staff report and asked if he has any concerns with the conditions. Mr. Bro stated he did not have any concerns and ITL will comply with the staff recommendations.

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

Bob Ballou, a consulting geologist had a few comments on the need for having water in the ponds to hold the liners in place.

There was some discussion with Mr. Bro, Mr. Hyde and Mr. Ballou about DOGM and their requirements as to the different permits and the times the companies are allowed to construct and receive produced water.

Commissioner Jorgensen motioned to approve the Conditional Use Permit requested by Iowa Tanklines, d.b.a. Water Recovery LLC, for Pond #4, subject to the conditions outlined in the staff report changing to condition #2 to state "*The County must receive a copy of the DOGM construction permit for this proposed pond prior to any produced water being placed in it. Untreated water may not be used to hold down the liner in advance of DOGM approval*". Commissioner Fabrizio seconded the motion and it passed unanimously.

- C. Recommendation to the County Commissioners regarding a request by R. Chapman Construction to rezone two 40-acre parcels owned by A and R Development Company, located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, Township 2 South, Range 1 West, on the Harmston Bench north of Roosevelt, from A-2.5 to A-5.

Mr. Hyde stated the applicants own 80 acres of land on the Harmston Bench, north of Roosevelt. It abuts sand and gravel operations owned by Duchesne County and Burdick Paving (now Staker and Parson). The current zoning (A2.5) does not allow for sand and gravel operations (the existing gravel pits predate the current zoning). If the rezone is approved, the applicant intends to apply for a Conditional Use Permit to establish a gravel pit on the subject property.

There are some criteria for approval of zoning ordinance and map or amendments they are as follows:

1. The overall community benefit of the proposed amendment.

Mr. Hyde stated gravel pits provide needed products to support the construction and oil/gas industries, which are very important to the community and local economy.

2. Consistency with the goals and policies of the general plan.

Mr. Hyde stated the General Plan contains the following statements regarding private land use. "Duchesne County feels that residential, commercial, and industrial development on private land should be allowed to continue in a responsible manner and in locations that contribute to the economic and social well-being of County residents. The County will continually review and amend its existing ordinances as necessary to accurately and adequately reflect the land-use preferences of Duchesne County residents."

The rezoning criteria of Section 17.16.030 of the zoning ordinance are established to aid the Planning Commission in determining which land use districts are appropriate in specific areas of the county. If those criteria are met, it can be presumed that the proposal will be consistent with the general plan.

3. Compatibility with the neighborhood.

Mr. Hyde referred the commission to the photos in their packets that show the neighborhood consists of existing gravel pits and vacant land. The nearest homes are located over ¼ mile away, in the vicinity of the Neola Highway to the west and the North Crescent Road to the east.

4. What changes have occurred in the neighborhood since the zoning ordinance & map or latest amendment was enacted.

Mr. Hyde stated since the A-2.5 zone was established in this section, some residential development has occurred along the Neola Highway and the North Crescent Road. Uses on the Harmston Bench have been limited to communication facilities, oil and gas development and gravel pits,

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

Mr. Hyde stated the proposed rezone would potentially lead to an increase the acreage of the Harmston Bench being utilized for the extraction of earth products. Adjoining lands are vacant due to lack of access and utility services and would be largely unaffected by this change.

6. Consider the interest of the applicant.

Mr. Hyde stated the applicants would like to rezone the property to enable them to apply for a Conditional Use Permit to site a gravel pit on the parcels.

Mr. Hyde recommends the Planning Commission adopt the findings and conclusions herein and recommend to the County Commissioners the approval of this rezone, requested by R. Chapman Construction, from A-2.5 to A-5.

Mr. Hyde asked if there were any questions of the staff report. There were none so the applicant was invited to speak.

Jason McKenna, representative of R. Chapman Construction explained the photos and the intentions of R. Chapman Construction if the rezone is approved. There are 2 other gravel pits nearby so the rezone should be in line with the adjoining property owners.

Commissioner Mair asked if there were any other questions.

Beth Morris, adjoining property owner, stated she is in favor of the rezone and the future gravel pit Chapman Construction is applying for.

Commissioner Jorgensen motioned that the Planning Commission adopt the findings and conclusions herein and recommend to the County Commissioners the approval of this rezone, requested by R. Chapman Construction, from A-2.5 to A-5. Commissioner Roberts seconded the motion and it passed unanimously.

NEW BUSINESS: None

Minutes: Approval of April 7, 2010

Commissioner Jorgensen moved to approve the minutes of April 7, 2010. Commissioner Fabrizio seconded the motion and it passed unanimously.

Commission Comments and Staff Information Items

Mr. Hyde stated there will be another land use training seminar in Vernal on May 26th and in Price on June 2nd and is hoping Mr. Roberts can attend one of them. Commissioner Mair and Mr. Hyde attended the Utah County Insurance Pool's Planning and Zoning Conference training in Provo on April 29th. Commissioner Mair stated he thought it was helpful and informing. Mr. Hyde told the commission there are 2 possible items for the June agenda, the Chapman gravel pit and a proposed chain saw carving business.

Adjournment: Meeting adjourned at 6:37 p.m.