

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
April 3, 2013 - 5:00 p.m.**

In Attendance were:

Randy Mair, Planning Commission – Chairman
Kent Olsen, Planning Commission
Edward Roberts, Planning Commission
Ken Moon, Planning Commission
Mike Hyde, Community Development Administrator
CoraLee Sanchez, Planning Secretary

Visitors:

Nate Robinson	IWM-CUP
Allen Rydman	IWM-CUP
Bert Pilling	
Bruce and Mary Christoffersen	Shop-CUP
Robert and Kathy Meeks	IWM-CUP
Neil Wilkerson	Wells-Appeal
Brad Hill-DOGM	
Dan Jarvis-DOGM	
Ammon McDonald-DOGM	
Paul and Jone Wells	Wells-Appeal
Dick Timothy	Shop/IWM-CUP
Scott Hacking-DEQ	
Brad Wells	Wells-Appeal
Kent Wilkerson	Wells-Appeal

Chairman Mair opened the meeting at 5:00 P.M. and read the Rules of Order and asked if any of the Planning Commission members had any ex-parte contacts or conflicts of interest associated with any item on the agenda. Commissioner Mair stated he has had some phone conversations about the Wells appeal, but does not feel that has created any bias. Mr. Hyde asked if any one in the audience objected to Commissioner Mair participating in the Wells hearing. There were none, so the planning commission proceeded with the agenda.

PUBLIC HEARINGS:

- A. Continuation of public hearing to determine if Integrated Water Management is complying with the odor control terms of the conditional use permit for their commercial produced water disposal facility located at 20250 W 2000 South, near the Blue Bench landfill, north of Duchesne.

Mr. Hyde highlighted the history of events from November 1983 when the facility was first permitted by the State of Utah, including the approval of the conditional use permit that was granted to Triple R Water on December 3, 2008 with the following conditions:

1. *Prior to start of construction, the applicants shall submit to the county a copy of their approved DOGM permit.*
2. *Prior to start of facility operation, the applicants shall construct the required fencing, post the required bonding, obtain a county business license for the facility and demonstrate compliance with Section 404 of the Clean Water Act and the Migratory Bird Treaty Act.*
3. *After operations begin, applicants agree to take prompt action to control and eliminate odors if the county receives complaints. Applicants shall seek to establish an injection well and inject water most likely to cause odor problems.*

On June 8th 2011, the first complaint was received along with numerous ones since then. Therefore IWM was asked to provide the planning office with a written odor control plan stating what measures are being taken presently to control and eliminate odor and what measures they plan to implement in the future and provide this office with a plan and timeline for the drilling and operation of an injection well at the site.

Mr. Hyde stated after continuing complaints, a public hearing was scheduled. Site visits were conducted. On September 5, 2012 at the conclusion of the hearing, the Planning Commission passed the following motion:

That the public hearing be recessed to October 3, 2012 at 5:00 PM. The applicant shall immediately provide the county with an updated odor treatment plan outlining the treatment methods and steps that will be taken to control and eliminate odors. When the public hearing is re-opened, if the applicant has not provided an updated odor treatment plan, no new produced water may be received at the facility. When the public hearing is re-opened, progress shall be evaluated based on the complaint log and any test results available. If progress is being made toward odor elimination, the Planning Commission may grant an additional 30-day period for odor control measures to fully take effect, in lieu of an order to cease receipt of water.

On October 3, 2012, the public hearing was re-opened and an updated odor treatment plan was presented to the County. Integrated Water Management requested a recess of the public hearing on the grounds that Duchesne County had not ensured due process due to the lack of decorum at the September 5, 2012 meeting that caused witnesses to be intimidated and due to the fact that the County has not adopted rules of order and procedure for public meetings in accordance with HB 267 (2011 Utah Legislature) as codified in Chapter 17-27a of the Utah Code. The request was granted and the public hearing was recessed to December 5, 2012 to allow the county to address HB 267.

On October 11 and 12, 2012, the County received two emails from Larry Skow at BioResources, Inc.; the company that helped Todd Bro solve the odor problems at the Iowa Tanklines BLM Fence Road evaporation and water treatment facility. The emails indicate that BioResources had offered to clean up the IWM ponds in June 2011. At that time, IWM did buy two air jammers from BioResources; however they have not been set up properly according to Mr. Skow. Mr. Skow noted that IWM elected not to utilize their services.

Mr. Hyde stated, on November 7th, the Planning Commission conducted a public and made a recommendation to the County Commissioners to pass Ordinance #12-305 establishing Planning Commission rules of order. On November 19th the County Commission public hearing was held and Ordinance #12-305 was passed and published in the Uintah Basin Standard on November 27th. On December 5th the public hearing was re-opened and recessed to January 2nd 2013 since the effective date for Ordinance #12-305 was not until December 12th 2012.

On December 19, 2012, Integrated Water Management submitted an updated odor control plan. The updated plan indicates that the evaporation ponds are being drained and the sediments removed. The operators have completed negotiations to purchase another nearby well. They plan to take control of this well, located southwest of their facility, in February 2013. They plan to pour a concrete casing to enable this well to be converted to an injection well, with DOGM permission. These plans enable IWM to increase their water injection pressure and volume; speeding the process to empty the evaporation ponds.

On January 2, 2013, The Public hearing was continued. The Planning Commission received an updated odor control plan from Integrated Water Management dated January 2, 2013. This plan called for the draining and decommissioning of ponds #2 and #3 and the testing of a floating cover for pond #1. The plan also called for increased injection capabilities due to the acquisition of a nearby well and lands west of Starvation Reservoir for a new injection well. The Planning Commission recessed the public hearing to April 3, 2012, at which time, the status of odor control plan implementation would be reviewed. On April 3, 2013 the planning commission re-opened the public hearing.

Commissioner Mair invited the applicant to speak.

Nate Robinson, an Integrated Water representative, thanked Mr. Hyde and the commission for all their efforts. Mr. Robinson read a statement to the commission stating they recognize the problems and have tried and feel they have been successful in reducing the odor problem. They have established an injection well. Pond three is drained with just enough water to protect the liner. Pond two is at an eight percent capacity and pond one is the only one that is full. Right now the facility is at ten percent water storage capacity and in September 2012 they were at seventy five percent capacity, so the water only stays in the ponds a few days while being circulated. IWM is working on some future plans including purchasing 2 other properties for injection

purposes to completely reduce the amount of water received at our current location and hope to use them in another venture. Mr. Robinson stated it is Integrated Water's hope the commission will make a decision so they can move on with their plans.

Mr. Hyde informed the commission they are currently in the process of having this location rezoned to industrial so IWM can go from a produced water facility to a landfill facility with no water evaporation.

Commissioner Moon asked Mr. Robinson why pond one is full. Mr. Robinson replied they are testing a HTEP liner with floating devices that will take the gases to a flare but this is still in the testing process.

Mr. Hyde asked if the flare will need to be approved by DOGM. Mr. Robinson stated he did not think so but would check into that.

Bert Pilling stated his concerns with the gases and toxic materials in the air. (Mr. Pilling was talking about the Pro Water Blue Bench facility rather than the IWM facility.) Mr. Hyde referred Mr. Pilling to DOGM and Tri-County Health if he has health issues and complaints.

Allen Rydman, a property owner stated there has not been any odors since mid-December. He wonders why, all of a sudden, there are no odors and what is IWM going to do to keep them from returning.

There was some discussion about the weather, the spring rolling of ponds, that IWM is not misting and the water is not allowed to get stagnant because of their increased injection.

Mr. Robinson in response to Mr. Rydman's concerns stated the weather definitely has been a factor. The reduced volume in ponds two and three and the move toward the injection only, with water in pond one with the cover for a few days is illuminating most of the odor problems.

Commissioner Olsen asked if IWM is injecting all of the water they are receiving. Mr. Robinson stated there are slow days and busier days but they want to inject as much as they can and keep ponds two and three empty.

Mr. Rydman asked if they could permit the landfill, the Christman Bland location or the location west of Duchesne on the same permit as IWM has for the ponds. Mr. Hyde replied they will need new permits for each location with different requirements and approval from DOGM, or the Utah DEQ Solid and Hazardous Waste Division.

Commissioner Moon asked Mr. Hyde what are the commission's options. Mr. Hyde stated closing the hearing stating IWM is in compliance with their CUP, or recessing the hearing for 2-3 months and revisit if need be to monitor their progress. Mr. Hyde stated

the applicant would like to see the hearing closed so they can proceed with their other ventures.

Commissioner Moon motioned to close the hearing as IWM is in compliance with their Conditional Use Permit based on the testimony heard at the hearing. Commissioner Roberts seconded the motion and it passed unanimously.

B. Request by Bruce Christofferson for a Conditional Use permit to locate a welding shop on a parcel located at 4727 S Highway 87 on the Blue Bench north of Duchesne

Mr. Hyde referred the commission to their packets and some photos of the location and stated the applicant is proposing to construct a welding shop on the Blue Bench north of Duchesne. Christofferson Welding, Inc. currently has a shop in the Vernal area and would like to expand to a Duchesne County location. Commercial uses such as this are a conditionally-permitted use in the agricultural-residential zones. Criteria to be considered 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 proposed use has the potential to be detrimental to public health, safety and general welfare and detrimental to owners of property and improvements in the vicinity if conditions are not imposed regarding noise and dust control, landscaping and signage. The applicant will need to obtain an access permit from UDOT-Region 3 prior to the issuance of a building permit for the project and prior to any driveway work being commenced. The applicant will need to receive a wastewater permit from Tri County Health Department and any stormwater permits as required by DEQ. The property is also located near the flight path into the Duchesne Municipal Airport. The applicant should design the proposed shop to avoid conflict with the Duchesne Airport Master Plan.

- 2. The proposed use will be located and conducted in compliance with the goals and policies of the county general plan and the purposes of this title.**

Mr. Hyde stated the Duchesne County General Plan states that future growth and development decisions should be made with sensitivity to rural residential and agricultural interests. The plan indicates that the county wishes to encourage business activity and support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses.

Mr. Hyde highlighted some additional criteria for approval including lot size and the noise and dust concerns for the residents. Landscaping that will be suitably maintained to protect property and preserve and/or enhance the appearance and character of the area. Parking facilities, water, sewer and fire protection which includes an access permit from UDOT, a water connection from East Duchesne Water and a wastewater

permit from Tri County Health. The applicant will need to work with the Fire & Emergency Management Director on the fire hydrant placement. There are some conditions including business signs, any nuisances associated with increased truck and equipment movement and operating hours. The applicant has indicated that the operating hours would be from 7 AM to 7 PM. These hours comply with the nuisance ordinance for weekday operations.

Mr. Hyde recommends the Planning Commission approve the Conditional Use Permit requested by Bruce Christofferson, subject to the following conditions:

1. Before beginning site excavation and grading, the applicant shall provide the county with evidence of compliance with Utah DEQ Construction Stormwater permit requirements.
2. Prior to opening for business, the applicant shall construct the parking and vehicle movement areas with adequate base rock and gravel top course to prevent rutting of the surface.
3. Applicant shall obtain an access permit from Region 3 UDOT before improving the highway access point and take steps, as approved by UDOT, to minimize the tracking of rock and mud onto Highway 87. The entrance gate shall be set back from the highway to at least the minimum distance required by UDOT.
4. On-premise advertising should be limited to 32 square feet in size. The applicant shall consult with the Building Official to determine if a building permit is required before erecting signage.
5. The applicant shall restrict operating hours to those permitted by the Noise Disturbance section of the Duchesne County Nuisance Ordinance. Should noise complaints be received, the applicant shall construct earthen berms, plant vegetative buffers or enact other mitigation measures to reduce noise.
6. The applicant shall make sufficient applications of water or other dust inhibitors during dry and windy periods to prevent dust from becoming a nuisance.
7. Before opening the business, the applicant shall provide a fire hydrant to serve the fire protection needs of the facility at a location approved by the East Duchesne Water District and the Fire & Emergency Management Director.
8. The applicant shall obtain an assurance from Duchesne City that the building plans do not conflict the provisions of the Duchesne Municipal Airport Master Plan.
9. The applicant is encouraged to provide xeriscape landscaping on the site to enhance the appearance of the facility.

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

Bruce Christofferson, applicant and owner of Christofferson Welding stated his company does a lot of oil field work on the west side of Duchesne County. Due to those economics, he feels it would be feasible to build a shop in Duchesne, offer some jobs to the residents of Duchesne County and save a little money.

Commissioner Moon asked how big of shop would he like to build. Mr. Christofferson thought it would be 60x80.

Commissioner Mair asked Mr. Christofferson if he was okay with the conditions stated in the staff report. Mr. Christofferson replied he did not see a problem with any of them.

Commissioner Mair asked if there was any one else to speak in favor of the request. There

were none, so any one opposed to the request was invited to speak.

Dick Timothy, an adjoining property owner, stated he is not opposed to the welding shop but is concerned about the increased traffic and dust issues.

Mr. Christofferson stated they were only going to disturb the frontage along the highway and he is okay with laying gravel to control the dust if they do expand to the back of the lot.

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

Commissioner Olsen motioned to approve the Conditional Use Permit requested by Bruce Christofferson, subject to the conditions stated in the staff report. Commissioner Roberts seconded the motion and it passed unanimously.

C. Request by Neil Wilkerson to appeal a Hearings Officer decision to grant minor subdivision approval to Paul & Jone Wells to divide Lot 4 of the Gardenbrook Subdivision into three one-acre lots. The property is located on the east side of 2250 West, between the North Cove Road and 1125 North, in the Roosevelt area.

Mr. Hyde referred the commission to their packets and some photos of the location and reviewed the history of events from the application on February 13, 2013 thru the hearing on April 3, 2012 and explained the applicants are proposing to divide a 3-acre parcel (Lot 4 of the Gardenbrook Subdivision) into three one-acre parcels. All three parcels are proposed building lots. The Duchesne County Community Development Director is the land use authority for such minor subdivision plat amendments. However, in this case, the staff decision has been appealed to the Planning Commission after an administrative hearing was held on March 7, 2013.

Requirements for a Minor Subdivision include the following:

1. A minor subdivision survey is prepared by a professional land surveyor for review and a decision by the land use authority after the required public notice.

Mr. Hyde stated there has been a minor subdivision plat amendment survey prepared by Dan Knowlden Jr., Outlaw Engineering, Inc.

2. Minimum lot size and other land use standards are met (or a variance granted).

Mr. Hyde explained the zoning in this area is A-2.5, Agricultural-Residential, which has a 2.5 acre minimum lot size. This minimum lot size is required for parcels that do not have a culinary water connection to provide for adequate spacing between private water wells and septic system drain fields. However, the zoning ordinance allows parcels down to one acre in size with a culinary water connection and has since the passage of Ordinance #01-193 by the County Commissioners on November 5, 2001. The parcels in this case are .9948, .9935 and .9932 acre in size and Roosevelt City culinary water connections have been provided. During the administrative hearing, concerns were raised that the proposed parcels do not meet the minimum one-acre lot size. However, Section 8-5-1(E) of the

Duchesne County zoning ordinance states that lot size rounding is acceptable due to the irregular size of surveyed land sections in the County. Parcels are considered acceptable if they are within 98.75% of the standard. In other words, parcels down to .9875 acre in size are treated as a full acre. All three parcels fall within this rounding threshold. Concern has also been expressed in the appeal application about “administrative re-subdivision of existing subdivided lots.” Section 17-27a-608 (2) of the Utah Code allows for the land use authority to grant such a plat amendment without a public hearing unless the local land use ordinance provides otherwise. The Duchesne County Subdivision Ordinance [Section 9-3-3] designates the Community Development Director as the land use authority for such plat amendments and an opportunity is given for a public meeting and appeals to the Planning Commission and County Commission by aggrieved parties.

3. Written approval has been received from the sanitary sewer authority.

Mr. Hyde stated the sanitary sewer authority in Duchesne, Daggett and Uintah Counties is the Tri-County Health Department. The health department approved the proposed minor subdivision by letter dated June 19, 2012. The approval is subject to the applicant keeping any portion of the wastewater system serving proposed Lot 4A at least 100 feet away from the private well on the Wilkerson property to the south. A private well on the Alexander property is located more than 100 feet south of the Gardenbrook Subdivision and was not required by the health department to have a protection zone extending into the Gardenbrook Subdivision).

4. All parcels have public right of way access and no additional right of way is required to be dedicated from the applicant’s property pursuant to the Official Map or county standards.

Mr. Hyde stated during the administrative hearing, concerns were expressed that there is inadequate street access to the proposed parcels. However, the access standards for minor subdivisions are less than the standards for regular subdivisions. Minor subdivisions, such as this plat amendment, are only required to have legal access to a public road and have sufficient right of way width abutting their property. In this case, the proposed parcels have legal access to county roads known as 2250 West and 1125 North. These roads have been established as public roads by public use for many years or by dedication of right of way on the Gardenbrook Subdivision plat. 2250 West is designated as a Class B Road on the official county road map and it has been improved with pavement. 1125 North is a County Class D Road, which provides legal access along the north side of Lot 4. The legal standard of public right of way access is met. Both 2250 West and 1125 North have 66 foot wide rights of way abutting the subject parcel according to the Gardenbrook Subdivision plat, which meets county standards. No additional right of way is required along this property frontage.

5. Has a water source, approved in writing by the culinary water authority.

The proposed parcels do have culinary water service from Roosevelt City.

6. No further division by minor subdivision shall be allowed within one (1) year. Further division within one (1) year shall be accomplished by the standard subdivision process or by an amendment to a previous minor *subdivision survey*.

Mr. Hyde stated no further minor subdivisions could occur on this property until March 8, 2014 unless by amendment of this minor subdivision. No further division could occur unless a piped sanitary sewer system is provided in this area since one acre is the minimum lot size allowed with culinary water and private wastewater disposal.

7. Divisions requiring the construction of public roads, public water lines or public sewer lines are not eligible for the minor subdivision process

There is no public road or public utility line construction required. Roosevelt City had extended the water line in 2012.

8. The minor subdivision plat amendment survey map is recorded in the County Recorder's Office and filed with the County Surveyor.

Mr. Hyde stated after the minor subdivision is approved and the County Treasurer has signed the survey, [after any property taxes due have been paid] the survey map will need to be recorded at the County Recorder's Office along with the associated deeds, establishing ownership of the newly-described parcels. The surveyor will need to file a Mylar copy of the survey with the County Surveyor's Office. If the property is mortgaged, it is the responsibility of the property owners to contact their lender for approval of the division.

Mr. Hyde recommends the Planning Commission adopt the above findings of fact and conclusions of law and uphold the decision of the Duchesne County Hearings Officer to grant the minor subdivision plat amendment requested by Paul and Jone Wells and deny the appeal by Neil Wilkerson.

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

Mr. Neil Wilkerson, appellant and adjoining property owner, stated this request by the Well's was withdrawn a year ago because it was not in compliance with the County's ordinances. There is a petition signed a year ago from the residents within 300 feet against the request. There is not sufficient right of way to the property and is not within the 1 acre minimum requirements according to the Duchesne County general plan. Mr. Wilkerson thinks this land is to be used for farm land not to build 3 duplexes on 3 acres of land. Residential zoning according to Mr. Wilkerson has been simplified by Mr. Hyde to suit his needs. Mr. Wilkerson also stated his concerns about the safety issues with the road width and the increased traffic the residents of these dwellings will add to an already busy intersection. In Mr. Wilkerson's opinion, Mr. Wells has paid off Mr. Hyde while finding a loop hole in the laws to get what he wants. Mr. Wilkerson stated Mr. Hyde should not be able to approve minor subdivisions while making ordinance and zoning changes.

Mr. Kent Wilkerson, Mr. Neil Wilkerson's son, stated his concerns about Duchesne County Ordinances and the fact our codes are problematic without any recourse for the residents or neighbors. Mr. Wilkerson talked about grandfathering lots, rezoning and changing ordinances and the aspects of having administrative hearings to change any rule are against the laws and the Wells application should be denied based on the safety issues and the way the code changes were handled. Mr. Wells withdrew their first application when they realized it was against code to build the duplexes.

Commissioner Olsen asked if the problems have always been there or is the Wells application causing the problem. Mr. Hyde stated it was an existing problem.

There was some discussion about the 300 foot notification process, the petition from 2012, if there were any objections to this application and the county's code issues.

Mr. Hyde reviewed the events of the appeal with the County Commissioners for the planning commission to help understand the need for the minor changes that were made to the zoning ordinances based on the findings. Mr. Hyde explained HB 1001 for farmers with 100 acres or more of continuous land to create an individual 1 acre lot, the 20 foot access private driveway serving a few lots and the flexibility for rounding the lot size. Mr. Hyde reminded the Planning Commission that their decision must be based what the legislative body has adopted as code.

Commissioner Mair asked if there were any other questions. There were none so the applicants were invited to speak.

Jone Wells, applicant stated the petition Mr. Wilkerson is using is from the first application. There is no petition for this new application and this is not agriculture land or high density housing unlike the Royal Stewart Subdivision across the street. The Wells did not tear down a horse barn it was a shed that could not be used. The first application was withdrawn so the zoning ordinances could be clarified not because the Wells were in cahoots with Mr. Hyde. He is the Planning Administrator doing his job. Mrs. Wells feels there are safety and right of way issues throughout the whole county not just this corner or Mr. Wilkerson's lot. Mrs. Wells stated they are following the rules and codes of Duchesne County and feels there are already existing issues we have not created any new ones and their request should be approved.

Paul Wells, applicant, is very offended at Mr. Wilkerson's remarks. Mr. Hyde has done nothing but be professional, above board and is definitely not on the take but an asset to the county. The neighbors are not against the duplexes being there. They see them to be an asset instead of a liability or an eyesore in the community. Mr. Wells stated they want to work with the county and the surrounding neighbors doing what needs to be done and follow the rules.

Mr. Wilkerson stated in rebuttal to Mr. and Mrs. Wells comments there is not a vendetta against the county or Mr. Hyde, the rules were changed by Mr. Hyde for the Wells as

stated in the last appeal with the county commissioners. Three duplexes are not single family homes and he wants to keep the problem from getting worse. These are not decent size lots for 6 families and the increased traffic. The petition is a valid document and the people who signed it have not changed their minds. Nobody wants these homes in our neighborhood whether it be today or ten years ago. Mr. Wilkerson still feels that Mr. Hyde has made the changes to benefit the Wells. Mr. Wilkerson has very strong opinions on the County Zoning Ordinances, Mr. Hyde, the Wells and the legal manoeuvres that have happened to push this application through.

Mrs. Wells commented that Mr. Wilkerson should speak for himself, not others in the neighborhood.

Commissioner Olsen asked Mr. Hyde if we were changing the ordinances at this hearing. Mr. Hyde explained from the Findings of Fact, the ordinance regarding zoning based on culinary water have been in place for 12 years. The ordinances clarifying the issue raised during the last Wells application were passed by the County Commissioners in 2012.

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

Commissioner Olsen asked if the Wells have met the standards. Mr. Hyde replied they do meet the standards as stated in the Finding of Fact from staff. Mr. Hyde stated if they did not meet those standards as outlined in the zoning and subdivision ordinances of Duchesne County, the hearings officer would not have approved the request.

Commissioner Olsen motioned to uphold the decision of the Duchesne County Hearings Officer, deny the appeal and grant the minor subdivision plat amendment as requested by Paul and Jone Wells. Commissioner Roberts seconded the motion and it passed unanimously.

Mr. Hyde reminded the audience if anyone disagrees with the Planning Commission's decision, it can be appealed to the Duchesne County Commissioners within 10 days.

NEW BUSINESS:

None

Minutes: Approval of the March 6, 2013 minutes.

Commissioner Moon moved to approve the minutes of March 6, 2013. Commissioner Olsen seconded the motion and it passed unanimously.

Commission Comments and Staff Information Items

Mr. Hyde updated the commission on the Hagman CUP, the oil and gas ordinance #12-308 and the possible agenda items for the May 1st meeting.

Adjournment:

The meeting adjourned at 7:00 p.m.