

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
December 4, 2013 - 5:00 p.m.**

In Attendance were:

Kent Olsen, Planning Commission-Vice Chairman
John Jorgensen, Planning Commission
Ken Moon, Planning Commission
Kathy Giles, Planning Commission
Allen Lindsay, Planning Commission
Mike Hyde, Community Development Administrator
CoraLee Sanchez, Planning Secretary

Visitors:

Jason McKenna	Fitzgerald-CUP
Travis Duncan	Fitzgerald-CUP
Deb Lindsay	
Kirk Beecher	Crescent Lake-Vacation
Jimmy Brotherson	Oman-Vacation
Brent Fitzgerald	Fitzgerald-CUP
Ryan Fitzgerald	Fitzgerald-CUP
Richard Fitzgerald	Fitzgerald-CUP
Dirk Oman	Oman-Vacation
Walt and LouAnna Burdette	Fitzgerald-CUP

Vice-Chairman Olsen opened the meeting at 5:00 PM, read the rules of order and asked if any of the Planning Commission had any ex-parte contacts or conflicts of interest associated with any item on the agenda. There were none, so the meeting proceeded.

PUBLIC HEARINGS:

A. Recommendation to the County Commissioners regarding a request by the Central Utah Water Conservancy District to vacate the plat of Crescent Lake Estates, located at the Big Sand Wash Reservoir.

Mr. Hyde referred the commission to their packets and some site photos. He stated the lots located in this subdivision were mostly small recreational lots. The Central Utah Water Conservancy District has made application to vacate the Crescent Lake Estates subdivision; which was acquired by the District, via the eminent domain process, to enable the enlargement of the Big Sand Wash Reservoir to hold secondary water for irrigation in the basin that used to be stored at 13 lakes in the High Uintas Wilderness.

The Duchesne County Ordinance states in section 9-5-4, *proposals to vacate or change a subdivision plat, public street, right of way or easement shall be processed in accordance with Utah Code Annotated sections 17-27a-608 and 17-27a-609, and subsequent amendments thereto, with public notice of such actions to be given as provided by Utah Code Annotated section 17-27a-208, and subsequent amendments thereto.*

Mr. Hyde stated the required publishing, mailing and posting of the notice has occurred pursuant to state law. Notices have been provided to the following affected entities: Upper Country Water District, Moon Lake Electric, Strata Networks, Questar Gas and Moon Lake Water Users Association. The Central Utah Water Conservancy District owns all of the parcels within Crescent Lake Estates. Notice was posted at two locations in the vicinity on November 13, 2013. After clarifying some additional Utah State codes and requirements dealing with ownership, roads and access to the subdivision Mr. Hyde stated the findings.

Since the plat vacation includes dedicated, but undeveloped streets within Crescent Lake Estates, a public hearing is required in spite of the fact that no owners within the plat have objected to the request (The Central Utah Water Conservancy District owns all parcels in the subdivision). To vacate the subdivision, the County Commissioners, in passing an Ordinance, must find that good cause exists for the vacation and that the public interest will not be materially injured by the vacation. In this case, good cause exists as the enlargement of the Big Sand Wash Reservoir has resulted in all of the lots in this subdivision being partially under water or undevelopable due to their proximity to the reservoir. The public interest will not be materially injured by the vacation as the lots and roads in the subdivision are no longer useable due to the reservoir enlargement.

Mr. Hyde's recommendation is the Planning Commission recommend to the Duchesne County Commissioners the adoption of these findings and conclusions and that they vacate the plat of Crescent Lake Estates, as stated in proposed Ordinance #13-320.

Mr. Hyde asked if there were any questions of the staff report.

Commissioner Olsen asked Mr. Hyde if power had been provided to these lots. Mr. Hyde replied that he did not observe any utility poles in the area. With no other questions from the commission the applicant was invited to speak.

Kirk Beecher, project manager and representative for The Central Utah Water Conservancy District, thanked Mr. Hyde for his efforts in preparing the staff report and stated all utilities including power poles and 2 cabins have been removed from the property.

Commissioner Olsen asked if there were any other questions. There were none and with no one in the audience to speak either in favor or against the proposal, the public hearing was closed.

Commissioner Jorgensen motioned to recommend to the Duchesne County Commissioners the adoption of the findings and conclusions and that they vacate the

plat of Crescent Lake Estates, as stated in proposed Ordinance #13-320. Commissioner Moon seconded the motion and it passed unanimously.

B. Recommendation to the County Commissioners regarding a request by Hannah Oman and Joyce Burton for the vacation of ten feet of public right of way abutting the east side of Lot 4, Block 9 of the Boneta Townsite.

Mr. Hyde referred the planning commission to some site photos and a survey that show the porch slightly on the existing right of way with the garage completely in the right of way. He stated the applicants are seeking to vacate the westerly ten feet of the 82.5-foot wide right of way of that portion of Wallace Avenue abutting their property in the Boneta Townsite. By vacating the 10 foot strip, the porch and the home will be on the property but the garage will still be in the right of way.

Mr. Hyde stated, pursuant to state law, notices were mailed to the following affected entities on November 8, 2013: Moon Lake Electric, Upper Country Water, Strata Networks, Questar Gas and the Duchesne County Road Department. Notice was posted at the south end of the proposed vacation area on November 13, 2013. Notice was published in the Uintah Basin Standard on November 19 and 26, 2013. Notice also appeared in the Utah Public Notice Website and the Duchesne County website.

Mr. Hyde stated all property owners abutting the right of way proposed to be vacated (Hanna Oman and Joy Burton) have signed the consent to vacation form. Good cause exists for the vacation as demonstrated by site photos and the survey prepared by RNR Surveying, which indicate that the road has not been constructed and the right of way area is developed with private improvements, such as a porch, a garage, propane tanks and outbuildings.

No personal or public interests will be harmed by the proposed vacation as the abutting parcels retain legal access and the remaining right of way is 72.5 feet wide, which exceeds the 66 foot county standard width. As stated in the Utah Code, even if the county vacates its interest in the right of way, the vacation ordinance does not impair the easement rights of any owner or utility.

The staff recommendation is that the Planning Commission recommend to the County Commissioners the approval of Ordinance No. 12-321, vacating a portion of the right of way of Wallace Avenue in the Boneta Townsite as requested.

Mr. Hyde asked if there were any questions of the staff report.

Commissioner Olsen asked if there would be any money exchanged for the property. Mr. Hyde stated the county would not receive any money for vacating the right of way.

With no other questions or comments from the commission the applicant was invited to speak.

Dirk Oman, a family representative, stated the family home was built 25-30 years ago

and they were unaware that either the home or the garage was built in the right of way. Mrs. Oman is in a rest home and the family is trying to sell the home and liquidate her assets. After the survey was prepared, they realized there was a problem.

Commissioner Olsen asked if there were any other questions. There were none and with no one else to speak in favor of the request, anyone in opposition was invited to speak.

Jimmy Brotherson, an adjoining property owner, stated his concerns about the county giving property away and setting a precedent with the other property owners, stating maybe we all need an additional 10 or 12 feet. Mr. Brotherson stated he is not opposed to the vacation but hopes if he needs anything in the future the county will be willing to do the same for him.

There was some discussion about fence lines and the current useage of those right of ways within the townsite, the 66 foot width the county requires to maintain any roads and the utilities associated with the Boneta townsite.

Mr. Oman stated the county will still retain the required 66 foot right of way and they want to be good neighbors and Mr. Oman made sure Mr. Brotherson is ok with this proposal.

Commissioner Giles wanted to make sure the Oman's understand if need be the garage will need to be moved should the road need to be developed. Mr. Oman stated they are ok with that.

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

Commissioner Lindsay motioned to recommend to the County Commissioners the approval of Ordinance No. 12-321, vacating a portion of the right of way of Wallace Avenue in the Boneta Townsite as requested. Commissioner Jorgensen seconded the motion and it passed unanimously.

C. Request by R. Chapman Construction for a Conditional Use Permit to allow the extraction of earth products (gravel pit and rock crusher) from "Phase 2" of the lands owned by Richard & Vickie Fitzgerald (Myton View Farms) located on the west side of 4000 West, in Section 35, Township 3 South, Range 2 West.

Mr. Hyde reported that the applicants received Planning Commission approval on May 2, 2012 to locate a gravel pit and rock crusher on about 56 acres of a 290-acre parcel owned by Richard & Vickie Fitzgerald (Myton View Farms). The Planning Commission decision was appealed to the County Commissioners, who conducted a public hearing on June 11, 2012 and approved the Conditional Use Permit, subject to the following conditions:

1. Owners or their authorized agent(s) shall control dust and noise so neither becomes a nuisance.
 - a. The dust control plan approved by the TriCounty Health Department shall be implemented throughout the course of the operations by the owners or authorized agents. Dust control agents shall be applied at the gravel pit and on the private and public access roads between the pit and paved roads during periods of hauling. **Note: Work at this gravel pit started during the summer of 2013. As of November 25, 2013, the dust control plan approval has not been received by the County.**
 - b. A DEQ Air Quality permit shall be obtained and a copy provided to the County prior to the start of crushing operations. **Note: Crushing operations at this gravel pit started during the summer of 2013. As of November 25, 2013, a copy of the DEQ air quality permit for the crusher to operate at this location has not been received by the County.**
 - c. Owners and their authorized agents shall limit operating hours to 7:00 AM to 7:00 PM, Monday through Saturday. **Note: The County has received no noise complaints resulting from operations outside of these time limits.**
2. Before mining operations begin, owner(s) or their authorized agents shall provide surety bonding to the County in the amount of \$5,000 for the first acre and \$3,000 for each additional acre of surface disturbance; said bonding to be refunded or released only after reclamation occurs in accordance with the Material Pit Finishing Standards and any private agreement between the pit operator and the property owners. **Note: As of November 25, 2013, the County has not received the required bonding or a written release from the bonding requirement signed by the property owner.**
3. Owner(s) or their authorized agents shall reclaim the property in accordance with the county's "Material Pit Finishing Standards" and protect the public from any hazardous conditions on the site. **Note: An inspection of the site on November 14, 2013 revealed that the gate to the facility was open and some potentially hazardous conditions exist which could cause harm to trespassers.**
4. Owner(s) or their authorized agent(s) agrees to obtain an approach permit from the Duchesne County Road Department for the new or modified access road approach from the South Myton Road to the gravel pit. **Note: This permit was obtained from the County Road Department in April 2013 and the work was approved by the Public Works Director on July 25, 2013.**
5. Before excavation begins, owner(s) or their authorized agents shall obtain an industrial storm water permit from the Utah Department of Environmental Quality, Water Quality Division and comply with all regulations protecting wetlands. **Note: As of November 25, 2013, the county has received no documentation**

from the DEQ that the operators obtained approval of this permit or were exempted from these permit requirements.

6. Applicant shall receive clearance from Questar Pipeline before excavating near their pipeline(s) or driving heavy loads over their pipeline(s). A copy of such clearance shall be provided to the County. **Note: The location of this pipeline is outside of the gravel pit excavation area and is not being driven over.**
7. This land use authorization is limited to lands within Phase I of the project; as shown on the phasing map enclosed. Before any operations could be conducted within Phase II, a new conditional use permit must be received from the Planning Commission, based on the conditional use permit criteria in effect when the original application was made (April, 2012). **Note: On October 17, 2013, it was reported to the County that R. Chapman Construction had moved their gravel operation onto Phase II. Staff contacted the operator to remind them of condition #7. The operators admitted their error and discontinued operations within Phase II on October 23, 2013. An application for a conditional use permit for Phase II was received on November 6, 2013.** (Condition # 7 was added by the County Commissioners during the appeal.)

Mr. Hyde stated the applicant operated Phase I and moved onto Phase II without being in compliance with the conditions of approval. No authorization for Phase II should be granted until the applicant complies with the conditions for Phase 1.

Mr. Hyde recommended in the staff report that this conditional use permit hearing be recessed until February 4, 2014 to allow the applicant time to comply with the terms of the Phase 1 conditional use permit. However in talking with the applicant before the hearing, they feel they could be in compliance by having their permits approved by the January 8th meeting.

Mr. Hyde stated if the commission wants to move forward with the hearing there are some alternative findings in your packets. Mr. Hyde asked if there were any questions of the staff report.

There was some discussion about dust control and the lack thereof, whether to recess the hearing and stop production in both phases until the applicants are in compliance.

With no other questions the applicant was invited to speak.

Jason McKenna, representative for R Chapman Construction, took full responsibility for dropping the ball and not making sure the permits had been issued. The applications have been made and are in the process of being approved within a few days, he stated. Mr. McKenna stated part of the dust issues are because of the excessive winds for several days over 25-30 miles per hour and they have no control over that.

Commissioner Olsen asked if they were operating currently. Mr. McKenna stated all

production has stopped at this time but hopes when they are in compliance for Phase 1 and get approval for Phase II they will continue to produce and stockpile asphalt aggregate for next season.

Commissioner Lindsay asked what they were doing for dust control. Mr. McKenna stated they were using sprayers on the crusher and had a water truck on site but there were times when the truck was pulled off the location to other jobs, thus the complaints were made. Mr. McKenna feels they responded to the Burdette's in a timely manner to minimize the dust on site.

Commissioner Jorgensen has concerns about the continual operations from May until December without any permits. Mr. McKenna stated he does have e-mails from both Eric Larsen and Mike Hyde that will show they were working thru the process and he assumed the information passed on was what was needed to finish the permits.

Mr. Hyde asked Mr. McKenna if Chapman's will have their Tri County, DEQ and stormwater permits in hand and be ready for the January 8th meeting. Mr. McKenna replied, yes they would. Mr. Hyde also stated the importance of proactive dust control 100 % of the time without property owners needing to complain before corrective action is taken.

Travis Duncan, site manager for R. Chapman Construction, stated the dust is not coming from the crusher it is from the powdery material on the ground. Their intent is to have a full time water truck on site to pull water from the ponds but if the wind is blowing they have no control over that. They would shut down operations during high wind events.

Mr. Hyde stated it would be beneficial to have an employee full time for dust control and suggested they follow the CUP Material Finishing Standards.

Commissioner Olsen asked if there were any other questions. There were none so anyone opposed to the applicants request was invited to speak.

Walt Burdette, an adjoining property owner, stated when Chapman Construction applied for the first permit they had implied they would be proactive on the dust control and be good neighbors. In fact, the dust in on our house, in our house, on our clothes in the clean air returns, in the carpet, it is in the garage it is everywhere. They do not have the needed permits and have been operating phase 1 without them and then moved to phase II before they applied for this permit. Mr. Burdette feels his property values have diminished severely because of this pit and is completely opposed to the approval of a second permit.

Commissioner Olsen asked if there was anyone else to speak in opposition. There were none and with no one to speak on rebuttal the hearing was closed.

There was some discussion with the commission about their options for the hearing and

if Mr. Hyde needs to prepare findings to approve or deny the applicants request or use the findings to recess and continue the hearing until the January 8th meeting. Commissioner Moon stated, based on past history, the Chapman's are not doing so well and phase II will be worse.

Lou Anna Burdette, an adjoining property owner, stated she feels they can stay on top of the problem if they would water continually but they don't, Phase II will be worse. We are not home all the time to complain and we should not have to in order to keep the dust down. Mrs. Burdette stated you can see a dust ball above their home visible from Highway 40 on the North Myton Bench.

Mr. McKenna stated the dust flume is also from the other pits in the area not just their location. Commissioner Olsen asked who the other pit owners are. Mrs. Burdette replied Nielsens, Chapman and WW Clyde.

Commissioner Moon motioned to recess the hearing until January 8th until Chapmans get their operating permits for both phases.

Commissioner Jorgensen stated he would prefer no operations until all permits are acquired and the dust conditions are controlled.

Commissioner Moon motioned to recess the hearing until January 8th until all the required permits are acquired for both phases. Neither phase can operate until the permits are approved. Commissioner Lindsay seconded the motion. Motion passed unanimously.

NEW BUSINESS:

A. Proposed 2014 meeting schedule.

Mr. Hyde explained the schedule which includes a couple of exceptions from the standard first Wednesday of each month in January and March. Commissioner Moon motioned to accept the dates as listed. Commissioner Giles seconded the motion and it passed unanimously.

Minutes: Approval of October 2, 2013 minutes.

Commissioner Jorgensen moved to approve the minutes of October 2, 2013. Commissioner Giles seconded the motion and it passed unanimously. Commissioner Moon abstained from voting as he was absent.

Commission Comments and Staff Information Items

Mr. Hyde announced that Commissioner Roberts has agreed to serve another term representing the Fruitland area. Commissioner Mair has served 8 years and will be replaced by Brad Wells from the Roosevelt area. The January meeting will have the continued Chapman hearing and a trucking permit for LC Trucking in the Pleasant Valley area.

Adjournment:

Meeting adjourned at 6:10 p.m.