

**Planning & Zoning Commission Meeting
County Administrative Offices, Duchesne, Utah
February 11, 2015 - 5:00 p.m.**

In Attendance were:

Ken Moon, Planning Commission, Chairman
Kathy Giles, Planning Commission
John Jorgensen, Planning Commission
Edward Roberts, Planning Commission
Allen Lindsay, Planning Commission
Brad Wells, Planning Commission
Bobby Drake, Planning Commission
Mike Hyde, Community Development Administrator
CoraLee Sanchez, Planning Secretary

Visitors:

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| Darrin Brown, Tri County Health Department | |
| Debra Lindsay | All |
| Terry Nelson | Nelson-Appeal |
| DeAnn Nelson | Nelson-Appeal |
| Dale and Donna Rae Nelson | Nelson-Appeal |
| Dan and Jodie Crozier | Nelson-Appeal |
| Shelley Brennan, Duchesne County Recorder | |
| Jared Nelson | Nelson-Appeal |
| Dale and Kelari Winterton | JWD-Rezone |
| Dallas Murray | JWD-Rezone |
| Herb Gillespie | Nelson-Appeal |
| Dean Johnson, Roosevelt City | |
| Sheri Gurr | Ross-Rezone |
| Nichole Pettingill | Ross-Rezone |

Chairman Moon opened the meeting at 5:00 pm and read the rules of order. He asked if any of the Planning Commission had any ex-parte contacts or conflicts of interest associated with any item on the agenda. Commissioner Jorgensen will excuse himself from both the Nelson appeal and the Johnson Water rezone. He is the water master for the loka area and has had conflicts with Mr. Arnold in the past and serves as the director of the Johnson Water District. Commissioner Lindsay stated he attended a Roosevelt airport board meeting where the Ross rezone request was discussed, but does not feel that he is biased. Chairman Moon asked if anyone in the audience had any objections to Commissioner Lindsay participating in the hearings. There were no objections and with no other conflicts, so the meeting proceeded.

PUBLIC HEARINGS:

A. Consider an appeal by Lewis Arnold of a Hearings Officer decision to grant minor subdivision approval to Terry & DeAnn Nelson to divide an 8.101-acre parcel at 3358 South 5000 West into parcels 7.101 and 1.0 acres in size.

Mr. Hyde reviewed the timeline beginning on July 14, 2014 and referred the commission to their packets including some photos and the survey plat. He stated the applicants are proposing to divide an 8.101-acre parcel into parcels 7.101 and 1.0 acres in size. The 1.0-acre parcel contains an existing dwelling unit. The 7.101-acre parcel is a proposed building lot. The Duchesne County Community Development Director is the land use authority for such minor subdivisions. However, in this case, the staff decision has been appealed to the Planning Commission after an administrative hearing was held on January 6, 2015.

Mr. Hyde highlighted the Duchesne County Subdivision Code, and defines a "Minor Subdivision" which is the division of land into nine or fewer parcels provided that:

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.

A survey, dated December 4, 2014, was prepared by M&M Associates Surveying.

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

Mr. Hyde stated the zoning of this property is A-5, which is an agricultural-residential zone with a 5-acre minimum lot size. However, parcels down to 1.0 acre in size are allowed with a culinary water connection. The proposed division meets this standard.

3. Written approval has been received from the sanitary sewer authority; (The designated sanitary sewer authority for Duchesne County is the Tri-County Health Department. Health department approval of the revised minor subdivision proposal was received by letter dated December 10, 2014.

After receiving notice from Duchesne County that there are potential groundwater and agricultural run-off concerns in this area, the TriCounty Health Department required another assessment of soil conditions on proposed Lot 2. Eric Larsen, Licensed Environmental Health Scientist with TriCounty Health, stated at the administrative hearing that groundwater was encountered in the latest site assessment trench at about seven feet. He noted that evidence of historic higher groundwater 3 to 4 feet from the surface was noted. As a result, the site assessment report includes a requirement that a curtain drain be installed near the west property line of proposed Lot 2 to protect the future home and on-site wastewater system from water that could migrate under or across that property line. Mr. Larsen has assured Duchesne County that this curtain drain will be a requirement of the onsite wastewater disposal permit to be issued for Lot 2. The applicants indicated that they plan to construct such a drain as a preventative measure, to a depth of about 7 feet. The septic system drain field will then be installed at a depth at least two feet above the depth of this drain. Opponents of this request

presented, at the administrative hearing, results of groundwater monitoring conducted on the Arnold property near the northwest corner of proposed Lot 2. This monitoring, using a piezometer tube, produced results from July 2012 to October 2014. Opponents and proponents at the administrative hearing volunteered to provide Duchesne County and TriCounty Health with additional hydrological data from their expert witnesses associated with a pending lawsuit. Mr. Larsen indicated that the health department had enough information at this time to deem proposed Lot 2 to be a suitable home site.

Mr. Hyde stated additionally on February 6, 2015, the County received a letter from J. Craig Smith and Kathryn J. Steffey, Smith-Hartvigsen, Attorneys at Law. This letter contained a recommendation from Loughlin Water Associates LLC “that the minor subdivision request be postponed until such time that the applicant provides details of site conditions, locations and features of structures to be built, and the design of drain system. Site conditions should be investigated, and qualified person(s), such as a geotechnical engineer, should design the drainage system.”

This recommendation has been reviewed by the TriCounty Health Department. The health department stands by their determination, after two site assessments, that the proposed new parcel is a suitable building site. However, the health department has decided not to issue a wastewater permit for the actual septic system until such time as the applicants have had their proposed drain system designed by a licensed geotechnical engineer or hydrogeologist.

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;

Has a water source, approved in writing by the culinary water authority. The existing home and the proposed building site will obtain water from the Johnson Water District according to the health department letter).

5. 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 indicated no further minor subdivisions could occur on this property until January 7, 2016 unless by amendment of this minor subdivision.

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

No public road, public water line or public sewer line construction is required in this case.

7. That 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 requested by Terry and DeAnn Nelson

and deny the appeal by Lewis Arnold.

This action is taken with the understanding that the TriCounty Health Department will not issue a wastewater permit for the actual septic system serving the proposed home on Lot 2 until such time as the applicants have had their proposed drain system designed by a licensed geotechnical engineer or hydrogeologist.

Mr. Hyde stated based on the staff report, county standards have been met and the applicants request should be approved. Mr. Hyde asked if there were any questions of the staff report.

There were none so the applicant was invited to speak.

Terry Nelson, applicant and property owner thanked Mr. Hyde for all he has done during this process. Mr. Nelson stated they have complied with all of the Duchesne County and Tri County Health Department's requirements and feels, because of another lawsuit Mr. Arnold is involved in, the Nelson's are being punished and made an example of. Mr. Nelson asked Mr. Hyde if these additional requirements for an engineered land drain will be county policy or if these rules are just for this application. Mr. Nelson feels they have done everything they need to and Mr. Arnold has no grounds to appeal Mr. Hyde's decision. Mr. Nelson asked if the commission had any questions.

Commissioner Drake asked if they have had any problems with the current septic system. Mr. Nelson stated they have had renters in the home since 2008 and there have not been any issues.

With no other questions, Commissioner Moon asked if there was anyone else to speak in favor of the applicant's request. There were none so anyone in opposition was invited to speak.

Herb Gillespie, representing Mr. Arnold for this appeal stated this area is not an appropriate area for any basements. Mr. Gillespie stated Mr. Arnold does not want to prohibit Mr. Nelson from doing a Minor Subdivision and building a home but, with the irrigation of farm lands in the area and fluctuating water tables due to the weather, Mr. Gillespie feels that having a basement and septic systems along with farmers irrigating their lands are not a good mix. Mr. Gillespie approves of the requirement for engineering of the land drain but still feels like there should be a no basement clause to protect Mr. Arnold. When there is irrigation water on 3 sides of a piece of property there are bound to be water problems. Mr. Arnold's attorneys don't feel it is fair to him to have another law suit filed against him because the county allowed the Nelson's to build a home with a basement and a septic system that could fail.

There was some discussion between the Planning Commission, Darrin Brown from Tri County Health and Mr. Nelson about french drains, how septic systems are designed, installed, maintained and who is qualified to design a land drain.

In rebuttal, Mr. Nelson stated there are about 20 homes within a 1 mile radius of the proposed new home that have basements and there have not been any problems with them.

Dean Johnson commented that he knows of test holes from 4 years ago that at 18 inches had water, that are now dry. Water conditions will change over time.

Mr. Gillespie, in rebuttal, stated not to discount their letter if you live next to a farmer that irrigates his fields you better make sure the system can handle the water or don't build a basement that water will leak into.

With no other comments or questions either in support or against the applicant's request, Commissioner Moon closed the public hearing.

Commissioner Lindsay motioned to uphold the county hearings officer's decision and approve the minor subdivision, subject to the TriCounty Health Department not issuing a waste water permit for the septic system serving the proposed home on Lot #2 until such time as the applicants have had their proposed land drain system designed by a licensed geotechnical engineer, hydrogeologist or other individual deemed qualified by the TriCounty Health Department. Commissioner Roberts seconded the motion and it passed unanimously.

The Planning Commission heard the rezone for Johnson Water before the Ross hearing as there was no one present to represent the Ross application.

B. Request by the Johnson Water District for a zoning map amendment to provide Commercial zoning for the southerly 25.17 acres of their 78.24-acre parcel located on the NE side of the junction of Highway 40 and Highway 87 (Ioka Lane).

Mr. Hyde referred the commission to their packets and some site photos. He stated that the Johnson Water District owns a 78.24-acre parcel on the northeast side of the junction of Highway 40 and Highway 87 [Ioka Lane], west of Roosevelt. That portion of the property within 600 feet of the centerline of Highway 40 is already zoned commercial. The district would like to zone the balance of the southerly 25.17 acres of their parcel to commercial. The actual acreage proposed to be rezoned is approximately 8.3 acres.

The criteria for approval of zoning map amendments include the following.

1. The overall community benefit of the proposed amendment,

Mr. Hyde indicated the overall community benefit of the proposed amendment would be the creation of about 8.3 acres of additional commercial development area along the Highway 40 corridor in the Roosevelt area.

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

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 8-1-7 of the zoning ordinance are established to aid the Planning Commission and County Commissioners 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. The proposed map amendment has been requested to address the preference of the property owner, which was apparently not directly solicited when the zoning map was amended in the 1990s.

3. Compatibility with the neighborhood.

Mr. Hyde stated additional commercial zoning in this area would be compatible with the existing commercial development nearby, including, but not limited to: First Call Propane, Petroglyph, Nebeker Trucking, Pumpers, Agri-Service, Signs N Lines, Western Well Service, Four Star oilfield tools and Gary’s Insulation. Commercial uses are anticipated in the future in the island bounded by Highway 40, Highway 87 and 4000 West. There are a few residential uses mixed in with the commercial uses. County zoning allows such mixed use in an effort to reduce vehicle miles travelled between residential and commercial uses.

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

Since the 1990’s, commercial uses have been expanding along Highway 40 and Ioka Lane. Recent newcomers include Agri-Service, First Call Propane, the new Nebeker Trucking facility, Western Well Service and Distribution Now (formerly Wilson Supply).

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

Mr. Hyde stated the change of use of this property from agricultural-residential to commercial will not adversely affect the adjoining properties (First Call Propane to the west, Johnson Water District to the north and Gary’s Insulation to the east). Highway 40 provides the border on the south. Rezoning and dividing the property will create additional traffic on Ioka Lane and at the Highway 87-Highway 40 junction. The proposal has been reviewed by Region 3 UDOT and they will require the applicant to apply for a new highway access permit. Through that process, the Region 3 traffic engineer (or a Traffic Impact Analysis) will determine what highway improvements are needed to accommodate anticipated increases in traffic. A new access permit will need to be issued by UDOT before any building permits can be issued for any of the proposed new commercial lots.

6. Consider the interest of the applicant.

The interest of the applicants is to rezone the property to enable its sale for business purposes. When the zoning in this area was changed in the 1990's, the county failed to bring zoning boundaries to property lines. Instead, the county created a commercial strip about 600 feet wide on each side of Highway 40. This left many parcels with two zoning districts within their borders. The proposed zoning map amendment would extend the commercial zoning to a property line planned to be created by the applicant, through the minor subdivision process.

Mr. Hyde recommended that the Planning Commission adopt the findings and conclusions herein and recommend the County Commissioners' approval of this rezone, requested by the Johnson Water District, designating 25.17 acres of land for Commercial use. No building permits will be issued within the subject property until a new highway access permit is obtained from UDOT Region 3.

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

Dallas Murray, applicant and Chairman of Johnson Water District, thanked Mr. Hyde for his efforts and hard work on this project and stated they want to square up the property to the natural fence lines, build an office and possibly sell a couple of lots. Mr. Murray asked if any of the commission members had any questions. There were none.

Commissioner Moon asked if anyone in the audience wished to speak either in favor or against the applicant's request.

Commissioner Lindsay wanted to make the applicants aware of the airport flight patterns, height restrictions and metal roofs that could be a concern for potential builders.

Dean Johnson stated his concerns about being that close to the airport and the restrictions that the city airport has implemented. Mr. Johnson realized that the airport is a significant distance away.

With no other questions or comments Commissioner Moon closed the public hearing.

Commissioner Drake motioned to recommend the County Commissioners' approval of this rezone, requested by the Johnson Water District, designating 25.17 acres of land for Commercial use. No building permits will be issued within the subject property until a new highway access permit is obtained from UDOT Region 3. Commissioner Wells seconded the motion and it passed unanimously.

Commissioner Jorgensen returned.

C. Request by Leon Ross for a zoning map amendment to change Lots 26-43 of the Cove Estates Subdivision from Industrial to A-5, Agricultural.

Mr. Hyde referred the planning commission to their packets and some site and aerial photos. He stated that Leon Ross owns a majority of the Cove Estates Subdivision located north of the Roosevelt Municipal Airport. Much of this subdivision was zoned industrial by the County in the 1990's due to the proximity to the airport; however, mailed notice of the rezoning was apparently not given to each property owner at that time. The owner desires

to make 18 lots in this area available for residential use, which is not allowed in the current industrial zone.

Mr. Hyde stated the criteria for approval is the same as the JWD rezone hearing prior to this hearing. The applicant has indicated the rezone would initially to allow for placement of a dwelling unit to house a family member. Much of the subject property is currently in agricultural (grazing) use and there are no immediate plans for all of the subject lots to be developed.

The criteria for approval of zoning map amendments include the following.

1. The overall community benefit of the proposed amendment.

The overall community benefit of the proposed amendment would be the provision of 18 additional residential lots. The loss of these 18 industrial zoned lots is not critical since other industrial lands with better highway and utility access exists in the Roosevelt area.

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

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.”

Mr. Hyde stated the rezoning criteria of Section 8-1-7 of the zoning ordinance are established to aid the Planning Commission and County Commissioners 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. The proposed map amendment has been requested to address the preference of the property owner.

3. Compatibility with the neighborhood.

Mr. Hyde explained by returning the 18 lots to residential-agricultural use would be compatible with the neighborhood. Aerial photos indicate that most the surrounding area is vacant or agricultural, with scattered residential units. The nearest industrial development is about a mile to the east, near the Roosevelt Municipal Airport and 3000 West.

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

Mr. Hyde stated since this industrial zoning area was established in the 1990's, business growth has occurred in the Roosevelt Municipal Industrial Park area, along the Pole Line Road and along 3000 West. Industrial development in this portion of the Cove Estates Subdivision has not occurred as it is not as easily accessible and not well served with utilities.

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

uses of adjoining properties.

The change of use of this property from industrial to agricultural-residential would prevent the establishment of industrial uses in this area, which would have negative effects on the existing agricultural and residential uses nearby. Granting of the rezone request thus reduces the potential for adverse impacts on adjoining properties.

6. Consider the interest of the applicant.

Mr. Hyde stated the interest of the applicants is to rezone the property, initially to allow for placement of a dwelling unit to house a family member. Much of the subject property is currently in agricultural (grazing) use and there are no immediate plans for all of the subject lots to be developed.

Mr. Hyde recommends the Planning Commission adopt the findings and conclusions and recommend the County Commissioners' approval of this rezone, requested by Leon Ross, changing approximately 92.85 acres of land from Industrial to Agricultural-Residential (A-5).

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

Sheri Gurr, daughter of Leon Ross, thanked Mr. Hyde and stated the rezone is to allow her daughter to place a home in the same area. They did not realize it was an industrial area when she applied for her building permit.

Commissioner Moon asked if there were any questions.

Dean Johnson stated his concerns about living next to the airport and the rules and regulations that are in place. There are height restrictions, noise from the planes and industrial properties and businesses in the area. He is not against the rezone he just want the applicants to be aware.

Mr. Hyde asked Mrs. Gurr if they have any concerns with airport noise. Mrs. Gurr stated she lives there, has animals and doesn't have any problems.

With no one in the audience to speak against the applicant's request, Commissioner Moon closed the hearing.

Commissioner Jorgensen motioned to adopt the findings and conclusions and recommend the County Commissioners' approval of this rezone, requested by Leon Ross, changing approximately 92.85 acres of land from Industrial to Agricultural-Residential (A-5). Commissioner Drake seconded the motion and it passed unanimously.

NEW BUSINESS:

None

Minutes: Approval of January 7, 2015 minutes:

Commissioner Giles moved to approve the minutes of January 7, 2015.

Commissioner Jorgensen seconded the motion and it passed unanimously.

Commission Comments and Staff Information Items:

Mr. Hyde stated there is a proposed subdivision ordinance amendment for the next meeting, on March 4th to help prevent with some of the problems being experienced in Stonegate.

Adjournment:

Meeting adjourned at 6:19p.m.