

Minutes of the Western Weber County Planning Commission held May 12, 2015, in the Weber County Commission Chambers, commencing at 5:00 p.m., 2380 Washington Blvd., 1st Floor, Ogden, UT

Present: Jannette Borklund, Chair; Andrew Favero; Wayne Andreotti; Roger Heslop, Ryan Judkins

Excused/Absent: Mark Whaley, John Parke

Staff Present: Jim Gentry, Principal Planner, Charles Ewert, Principal Planner; Christopher Crockett, Legal Counsel

- *Pledge of Allegiance*
- *Roll Call*

1. Minute Approval: Approval of the March 10, 2015 and April 14, 2015 meeting minutes

Chair Borklund declared the March 10, 2015 and the April 14, 2015 meeting minutes approved as presented.

2. Administrative Item(s):

- 2.1 CUP 2015-21: Consideration and action on a request to amend an existing Conditional Use Permit Site Plan by installing a 7,500 square foot crystallizer building, a 20,088 square foot compaction building, a 3,024 electrical building, and a new binder plant located at approximately 765 North and 10500 West; Compass Minerals International, Applicant; Gordon Hyde Authorized Agent**

Jim Gentry indicated that in the pre-meeting he indicated that this Conditional Use Permit is an effort of Compass Minerals International to modernize their facilities. What is proposed fits the scale of what already exists on the site. There is no one in attendance at this meeting to oppose the application and it could have been a consent agenda item. Chair Borklund indicated that they need that any detrimental effects can be mitigated; if there is any impact that they created to any neighboring property owners, and there are no property owners out there.

MOTION: Commissioner Heslop moved to approve CUP 2015-21, a request amend an existing Conditional Use Permit Site Plan by installing a 7,500 square foot crystallizer building, a 20,088 square foot compaction building, a 3,024 electrical building, and a new binder plant located at approximately 765 North and 10500 West; Compass Minerals International, Applicant; Gordon Hyde Authorized Agent. The motion was seconded. A vote was taken and Chair Borklund indicated that the motion carried by a unanimous vote.

3. Public Comment for Items not on the Agenda - None

4. Remarks from Planning Commissioners - None

5. Planning Director Report – None

6. Remarks from Legal Counsel – Chris Crockett indicated that in other jurisdictions he has been in, the Planning Commissions have approved the minutes by motion. Chair Borklund indicated that they used to do that, but when Rob Scott was the Planning Director, they changed the procedure so that if there are no objections or corrections to the minutes, the Chair declares them approved.

Chair Borklund indicated that she would like the Planning Commissioners to state their reasons why or state the findings of fact as to why they approve or deny something. Chris Crockett indicated that stating their reasons why they voted for or against something is important when the record is presented to a court. The courts only have the information in the minutes to go by.

7. Adjourn

Adjourn to a Work Session

WS1. Weber County Land Use Code Revision Process: Conditional Use Revisions Discussion

Charles Ewert indicated that the underlines in blue means the new language that is being added, red strikeout means that he is eliminating language, black text is existing text. Any green highlights reflect the language that is being moved from one location to another.

It is imperative that the Planning Commission reviews the proposal with the understanding that conditional uses are allowed, provided they comply with applicable standards. There can be a lot of subjectivity in a conditional use permit determination. Stick to the facts, and be objective. Try not to be tempted to deny a permit because it does not comply with your interpretation of what is “attractive” or “incompatible with adjacent uses.” Try not to use standards to require the overdesign of a proposal so much that it is cost prohibitive. Instead, find reasonable ways to help the proposal fit in better.

All too often a Planning Commission may feel they are tasked with providing the community with projects that are designed with the community benefit in mind. This is not the case. The private property owner gets to design the project. The Planning Commission’s role is to verify that the community detriment of a project, if any, is made less severe. Remember that the word “mitigate” means “to cause to become less harsh or hostile” or “to make less severe or painful.” If they wouldn’t otherwise receive a benefit without the project, they shouldn’t try and get that benefit from the developer.

Charles Ewert indicated that he rewrote the ordinance purpose and intent. There are several changes that he inserted to help the ordinance flow, and to make some sections better compliment the new additions.

Commissioner Favero indicated that he would like to know how the word “capricious” affects what they do. Chris Crockett, Legal Counsel, indicated that he will look up the state code definition.

In crafting the standards, I generally kept to standards that have measurable outcomes. Even though the actual outcomes for a specific CUP will not be known until well after its approval, the point is that review agencies can use the standards to review the project through the lenses of best management practices and emerging trends – and predict the detrimental effects of the proposal given the outcomes of similar uses and similar situations. This helps the Planning Commission in two ways. First, it will provide for you the reasonably *anticipated* detrimental effects of the proposal. Remember, state code requires that only the reasonably anticipated detrimental effects can be considered. This is explicitly written to remind Planning Commissions to not get caught in the trap of conditions based on speculation, but rather to base all decisions on objective facts. Second, it provides you with your professional’s opinions about what standards should be applied (with specific recommendations for conditions), and by inference, which standards are irrelevant. You will want to exercise caution when applying standards or adding conditions that your professionals have not recommended. If they have evaluated the project completely there is a reason they have not included the standard in their review and recommendation.

Commissioner Favero indicated that if the Fire District has given their recommendations, they should not contradict them. If they cannot base their reasons for approving a conditional use on code, then they need to base it on some other expertise.

Charles Ewert indicated that it is important for the Planning Commission to note that not all of the listed standards will be applicable to all conditional uses. When considering enforceability, remember that only those standards that the Planning Commission applies to a CUP via relevant conditions of approval are enforceable. The record you make when deliberating is important for this, but not so much as the motion that is made. Their motions should have all relevant conditions, and all relevant findings for those conditions.

Chris Crockett indicated that he believes the new code amendments are user friendly. It explains the conditional use process more and step by step. They need to keep in mind that the conditions made have to be reasonable. There is not a solid definition of what “reasonable” is; usually it is what you determine and feel is reasonable. Sometimes reasonable is not determined until a judge or jury tells you what is reasonable so it is flexible, depending on any given application and the facts that are presented to you. It will have to be done on a case-by-case basis. They should support their decisions with findings of

fact and a judge would not find it arbitrary and capricious. The courts know that the Planning Commissions are the experts and have the training. This is how the court would review an appeal: The court will presume that the decision is valid, and determines only whether the decision, ordinance, regulation is arbitrary, capricious or illegal by looking at the factual records. There will be no further discovery, only what you say. The court determines whether the decision is arbitrary, capricious or illegal based upon the factual evidence. Facts could consist of staff reports, reports from other agencies, plans, studies and analysis from the applicant or affected land owner, or personal testimonies. Some examples of the things that would not be considered factual evidence would be public opinion, clamor or discontent or speculation. The legal definition from Black's Law Dictionary of capricious is characterized by or guided by an unpredictable or impulsive behavior, likely to change ones' mind suddenly, or to behave in unexpected ways contrary to the evidence or established rules or law. The legal definition of arbitrary is depending upon the individual discretion of, relating to, or involving a determination made without consideration of or regard of facts or circumstances, fixed rules or procedures founded on prejudice or preference rather than non-reason or fact.

Chair Borklund indicated that you have to listen to them and you have to let them know that you have heard what they said and that the decision was not made ahead of time. The decision has to be based on facts.

A discussion followed regarding mitigation of complaints in conditional uses; the Ogden Dog Food plant was given as an example of how they did not envision the odor problems that came up after the conditional use was approved. The Ogden City Planning Commission required scrubbers and other things to mitigate the odor problem, but there are still complaints of the smell.

Chris Crockett indicated that there are different ways to go about revoking a conditional use such as the zoning code enforcement process. Abandonment of a use was also discussed.

Staff can help the Planning Commission make the findings if asked.

WS2. Weber County Land Use Code Revision Process: Land Use Table – Agricultural Uses Discussion

Charles Ewert indicated that they are continuing their efforts to update the County codes by adding a Land Use Table with all allowed uses in all zones in one comparative table, and removing the land use lists in their individual zones. This will be done in several steps. We will forward complete use categories (i.e. agricultural, commercial, recreational, residential, etc.) to the Planning Commission as they are ready for review. The topic of this discussion is about agricultural uses.

The objective of this phase of code changes is to make minimal changes to the application of the existing code whilst modifying the framework in a matter that enables more efficient future changes. Later we will discuss changing uses in each zone.

The Planning Commission can archive (or recycle) the tables previously disseminated, or keep them for comparative analysis. The exhibits will replace them moving forward. Most of the changes you will find are a result of the comments or questions that were in the cell title "Notes" (temporary column) in those older tables.

The orange text, explained as "recommended changes for future land use table update" is intended to emphasize considerations that are not relevant now, but will merit attention when they come back to make use changes. One of their primary goals of this framework restructuring is to make it clear what uses are subject to site design and architectural standards.

Commissioner Andreotti indicated that the problem he is getting into is when Mom and Pop was here and operated the dairy farm. Now Mom and Pop is gone and the children are now into an industrial dairy farm. He wants to see farms being operated, but having the dairy in the neighborhood; it is not residential any more. Is the use of a poop-cannon allowed in an A-1 or A-2 Zone, and who is going to protect the neighbors and the environment of that poop cannon? How are they going to address the other situation?

The land use table was reviewed and discussed at this time. A few changes were recommended as the use table was reviewed.

Under Agri-tourism there are different things that you can do and the code is more specific. Commissioner Heslop indicated that the property owner will have to make a living; he will have to diversify to make ends meet. Commissioner Andreotti indicated that the question he has is if someone has five acres and wants to have a cheese outlet, how many cows will he have on that five acres and what will that do? Chair Wilkinson indicated that the county does not regulate how many cows someone could have on that property. A few years ago, the government bought out the dairy cows, and all of the dairy farmers ended up buying them and they ended up growing exponentially. The dairy farmer is limited by the size of the facility that he has on that farm to be able to milk the cows and the feed lots being able to feed them and the amount of feed to be able to produce to give to them is the limiting factor. Commissioner Andreotti indicated that the limiting factor to him is going to be what will be doing with all the waste.

Chair Borklund asked if the greenhouse as referred to would be required to be a permanent building. Director Wilkinson indicated that it would depend on the size of the structure. If the building is less than 200 sq. ft., then the inspector would not look at the building, but typically the building inspectors look at the buildings. Fruit and vegetable stands are now exempt from building permits as of a couple of years ago.

Chair Borklund indicated that she likes the ordinance is laid out and the way the use table is laid out.

Adjournment: The meeting was adjourned.

Respectfully Submitted,

Sherril Sillitoe
Weber County Planning Commission