

Grand County Planning Commission Minutes

July 8, 2009

A regular meeting of the Grand County Planning Commission convened on the above date at 6:00 PM at the Grand County Center, Conference Room #4.

Members Present: Chair Jean Binyon, Ed Bridges, D.L. Taylor, Mike Duncan, Dave Stolfa, Kalen Jones and Dave Cozzens.

Council liaison – Gene Ciarus.

Others Present: County staff Krissie Killoy, Mary Hoffine, and Mark Wright and other concerned citizens. Department of Environmental Quality representatives, Reginald Olsen, and Timothy Andrus.

The Chair called the meeting to order at 6:00 PM and requested that all cell phones be turned off.

The Chair asked the Commission if there were any conflicts of interest or ex parte communication that needed to be disclosed in regards to the agenda; there were none offered.

The Chair explained the process for the public hearings; staff will give their presentation, applicants will get 5 minutes to make a presentation and the public will have 3 minutes to speak on the subject.

WORKSHOP – Representatives Reginald Olsen and Timothy Andrus from Division of Air Quality, DEQ gave a presentation regarding evaporation ponds and fielded questions from the Commission.

The Chair stated that the Planning Commission had worked on six different versions of ordinance and council sent back for further amendment regarding the air pollutants. We will accept some questions from the audience. This is not a public hearing so we will limit comments and questions to the experts here to make their presentation.

The Chair introduced the DEQ representatives. Mr. Olsen stated that their division issues permits ranging from large source power plants and smelters to the smaller sources of pollutions, such as sand and gravel operations and things of that nature. A rule has been established of deminimus or lower level of emissions below which we don't typically get involved in permitting. Deminimus levels are established at 5 tons of criteria pollutants which are oxide of nitrogen, sulfur dioxide, ozone, carbon monoxide. If a source emits 5 tons annually of any one of those we get involved and need a permit, this is 5 tons annually.

Hazardous air pollutants (HAPs) and criteria pollutants are defined within the clean air act of 1990.

The information we have gathered on the pollutants, from the Danish Flats evaporation ponds, are deminimus, so they do not need to obtain a permit from us.

We are continuing monitoring and evaluating the evaporation pond operations to determine the levels of pollutants if they do get above the deminimus levels we will require a permit. That is our role as far as concerns on the evaporation ponds.

There are other departments, Department of Natural resources, DOGM, and Water Quality that may get involved with this information and should also be monitoring for pollutants.

Best available control technology, (BACT) is a term that is defined in the clean air act – a level of control based on several factors, cost for control, other environmental factors, and energy issues. These issues or concerns determine what would be applied to minimize the source and factor to find out if it applies, this is determined on a case by case situation. An exaggerated example is if a control technology costs a million

dollars we probably wouldn't require the control if it cost \$5,000. we would probably require the control. . It's really not as simple as that there are a lot of best available control technologies that are factored in.

We do have dust control requirements for permits, dust on roads need to be controlled, by chemical or frequent water control or depending on the operation we may require asphalt in some cases.

Mr. Olsen stated that he would address questions if there are any.

Jean Binyon asked what the difference was between hazardous emission and criteria elements.

The criteria elements are also called "criteria pollutants" that are off site level of standard concentrates in the air. The 1970 Clean Air Act directed that the criteria be established that is considered safe in the air, which was health based. In 1990 the regulations were amended and changed direction and developed MACT, maximum achievable control technology. Instead of targeting specific pollutants the industry provided standards to control the pollutants. The Federal Regulations names the pollutants and tells the EPA to identify the pollutants and set regulations for each industry.

The Chair asked about the hazardous air pollutants, HAPs – Mr. Olsen started listing some of the specific pollutants, (benzene, **toluene**, and cyclic organic compounds) the different HAPs and explained that the fair majority of the HAPs are also volatile organic compounds and not all VOC's are hazardous air pollutants.

The Chair inquired how testing will be used to determine emissions. Mr. Olsen stated that the EPA has established standards for criteria for national ambient air quality standards for each air pollutant. The tests vary from 3 hours to 3 days, which measures pollutants in the air and the data provides what is above or below the standard regulated by the Division of Air Quality, this monitoring occurs generally in the Salt Lake Valley where the air is "dirtier" than in the outer areas. The concentrations of pollutants are measured and depending on whether they are above or below the level of the line determined by the EPA to be within the standards the EPA has set. Below the line the air is considered clean – this is a very controversial to establish the value. Division of Air Quality does the monitoring and the sites are strategically located, but there are not monitoring stations in Grand County.

Other questions asked by the Commission and citizens were;

- Is there analysis of the evaporation ponds in Grand County? Mr. Olsen stated that the evaporation ponds are considered deminimus and are below the level of the standard.
- What is the tonnage of air pollutants in the County? Mr. Olsen stated that the air pollutants, in Grand County, are below the level of regulated limits.
- How is it determined that the evaporation ponds are deminimus? It is based on the sampling and monitoring, then the testing is compared to like operations. There are inspectors all over the state that evaluate the data and address the issues.
- What are the procedures for ozone measurement? Mr. Olsen explained that ozone is a mobile pollutant – it comes from outside the area and anything from cars to industry can contribute to the ozone. They do not anticipate the ozone to be a factor in Grand County.
- Radon concerns are beyond their scope – it would be Division of Radiation Control.

The Chair asked if the Mr. Wright the County Engineer would provide a summary and where we should go to the ordinance.

We have an error in the ordinance in that we included some HAPs in the 50 ton limit. Most HAPs have a **deminimus limit of 500 lbs per year**. If we use the same thought process this would cap HAPs at 2.5 tons for the entire County. Going forward staff will draft an amendment addressing the concerns of the Council. We will focus on addressing cumulative annual tonnage and propose to identify the method to calculate the tonnage cap, which will be proposed to be a mass balance methodology. Essentially how much water will evaporate in a given year, multiplied by the tested concentrations in the water of the criteria pollutants or HAPs.

The Chair closed the Workshop

Public Hearing – Rezone of property from Range Grazing, RG, to Heavy Industrial, HI

Staff read into the record the General Plan as amended to date, the Land Use Code as amended to date and staff report and all the supporting material.

This application is submitted by property owner representative Randy Day on behalf of the property owner, Spendrup & Associates (Applicant). The subject property is located south of I-70 and exit 214 adjacent to the Cisco town site. The parcels proposed for rezone are north of the Union Pacific railroad and Highway 6 & 50. The applicant is the owner of approximately 405 acres and is requesting a rezone of 295.5 of these acres from Range and Grazing (RG) to Heavy Industrial (HI).

Adjacent properties to the south are zoned Neighborhood Commercial (NC) and Heavy Industrial (HI); adjacent properties to the north, west, and east are zoned RG. Predominant uses in the vicinity include a small number of possible residences, a boat ramp facility, storage yards, and oil and gas development.

Staff explained that once the zone is approved the following are allowed as permitted uses (allowed by right) in the HI zone district which includes:

passenger terminal, utility use, auto repair garage, car wash, fuel service, railroad facilities, asphalt or concrete plant, food processing, power plant, woodworking and cabinet shops, freight / terminal parking lot, fuel product storage, manufacturing and production, truck stop, warehouses, stockpiling, junk yards/ salvage yards, public land fill, feed mill, winery, oil and gas drilling on public land, and ore refining / processing.

Examples of conditional uses (subject to conditions) in the HI zone district include:

utility substations and transmission facilities, adult entertainment, bar, hazardous / objectionable manufacturing, impound lot, waste transfer station, waste storage / treatment / disposal, waste transport, kennel, oil and gas drilling on private land, and all other resource extraction uses.

Issues for Consideration

The Grand County General Plan is the official guide to zoning and rezoning. The decision to rezone is discretionary to the County with the burden of proof on the applicant to demonstrate that the intended use is consistent with the standard rezoning criteria of the Land Use Code and the General Plan.

A. *Was the existing zone for the property adopted in error?*

The 295 acres proposed for rezone were zoned agriculture (present day RG) approximately twenty years ago. Initial zoning was based on then current uses. While historically industrial activity occurred in the area (as evidenced by the applicant's recollection of the Crystal Carbon property), the applicant has not provided information indicating such uses were occurring on the parcels proposed for rezoning at the time of zone designation.

B. *Has there been a change of character in the area (e.g. installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.)?*

In the past Cisco supported a small community, however, there is no evidence of new growth or investment in public services or facilities in this area.

C. *Is there a need for the proposed use(s) within the area or community?*

The applicant has stated there is some opportunity for rail yard development in the area. Staff requested that the applicant provide supporting information from Union Pacific Rail Road. No such information has been provided.

D. *Will there be benefits derived by the community or area by granting the proposed rezoning?*

The applicant has stated development of the land will build the County's tax base. Staff notes, however, that existing infrastructure in the area is limited and may negate the benefits derived from increased property value.

E. *Is the proposal in conformance with the policies, intents and requirements of the Grand County General Plan, specifically the Plan's zoning map amendment guidelines?*

"Grand County will take into consideration the effect of any proposed rezoning applications upon the character of established neighborhoods and quality of life".

No established neighborhoods exist in the area. Industrial equipment exists in the area most likely due to both historic and present day use, as well as storage yard use.

"The cost of providing infrastructure for new development should, to the extent possible, be borne by those who benefit: the developers, owners..."

No information is provided with the application regarding the capacity of roads and utilities in the area. Such services are limited in this area and adversely affect this rezoning request (see J. below).

F. *Should the development be annexed to a city?*

No. Not within the City's proposed annexation area / not applicable.

G. *Is the proposed density and intensity of use permitted in the proposed zoning district?*

Yes.

H. *Is the site suitable for rezoning based on consideration of environmental and scenic quality impacts?*

The applicant has stated the rezone could "reduce overall truck traffic into the N.E. part of Grand County by using the railway more and trucks less", however, no information has been provided indicating either support or feasibility from Union Pacific Rail Road.

I. *Are the proposed uses compatible with the surrounding area or uses; will there be adverse impacts; and/or can any adverse impacts be adequately mitigated?*

No information has been provided regarding the amount of traffic or service needs generated by the development.

J. *Are adequate public facilities and services available to serve development for the type and scope suggested by the proposed zone? If utilities are not available, could they be reasonably extended? Is the applicant willing to pay for the extension of public facilities and services necessary to serve the proposed development?*

No fire, water, or power services exist to serve this facility. Power for this area is currently at capacity and upgrade would require a heavy investment. The access roads to the subject property are in poor condition and the existing bridges are weight limited. Staff previously requested the applicant begin discussions with applicable service providers, however, no additional information has been provided

Staff requested additional information from the applicant, including a map of existing easements on the property (Union Pacific, Rocky Mountain Power, Utah Department of Transportation, etc.) as well as documentation suggesting support and/or feasibility from Union Pacific. No additional information has been submitted. It is the responsibility of local government to respond to applications as submitted. It would be premature to approve this application at this time.

The Chair asked the applicant if they would like to make a presentation – Randy Day is the agent for the property owner and spoke on his behalf.

Mr. Day stated that Union Pacific will not give any information or look at a proposal from them (Spendrup & Associates) until they have the required zoning from the County. Mr. Day doesn't anticipate needing to use the County roads only the rail lines. The proposed use on the property will provide the needed infrastructure including the cost to up-grade any of the County roads, water and sewer, but plans on bringing most of the water and power to the site with tanks and generators. The applicant is willing to cover the cost of his own infrastructure. Mr. Day stated that he believes the R-G zone was placed over the entire area as a default zone. There was no consideration given to the railway or historic use. Further stated; that the future of the oil

fields and other related industry would benefit from this rezone. The oil industry has expanded and is expected to grow even more; based on the water evaporation needs for the industry and feels the proposed use is a good tax base for the community. The County needs to look at the future and to create a viable well balanced economy. Mr. Day reported that the area has always been industrial and there are lots of old junk around, so the impact will be at a minimum.

Mr. Spendrup, the applicant, spoke to the proposal and explained that his plans for the train yard include a yard that will accommodate up to 100 train cars. The train yard will bring water to the evaporation ponds and will eliminate the need for many of the trucks that are currently driving to the evaporation ponds. This will reduce the dust on the roads and pollutions caused by trucking to the ponds.

Mr. Day thanked the Commission for the opportunity to speak and closed his presentation.

The Chair thanked Mr. Day and opened the public hearing;

Sarah Fields – a citizen of Moab City had concerns that rezoning to Heavy Industrial without a plan, anything allowed in HI could go onto the site by right. Ms. Fields also had concerns about the capacity of the projects without proper infrastructure expansion.

Mark Wright, County Engineer – explained that the EPA website revealed that Mr. Spendrup's operation was cited in 2008 for non-compliance with EPA regulations, one of these sites is a rail yard in Western Colorado. There appears to be three such citations for two different facilities, but the facilities are currently in compliance with the consent orders issued.

With no other citizen input the public hearing was closed and the Chair called for a motion.

Dave Stolfa moved to recommend to the Council a denial of the rezone from Range/Grazing to Heavy Industrial based on a lack of information demonstrating consistency with the General Plan and adequate infrastructure to support the proposed zoning. Mike Duncan seconded.

The Chair asked the Commission for further discussion on the item.

Mike Duncan stated that he is new to this and has many questions, but is sympathetic to the applicant's points of rezoning. The worst case situation is that if the project doesn't go through the County would have 295.5 acre of Heavy Industrial zoning that could be used for any of the permitted conditional uses in the Heavy Industrial zone district.

Dave Cozzens asked staff how much industrial zoning is currently available in Grand County. Staff explained that there is currently about 200 acres adjacent to the proposed rezone area and another small area in the valley. Also, that the Cisco area is not designated for upgrades to the infrastructure, but the area from Thompson to Crescent has been designated for HI. Mr. Day stated that a rail yard may not be what is put on the land – it could be any of the permitted uses in the zone district. Mr. Cozzens also stated that the RG zone is in error; this land would not sustain grazing and is in favor of the rezone.

Ed Bridges commented that he is not against any of the uses allowed in the HI zone district being applied in Cisco, but asked about making rail yards conditional in the **RG zone district**. The burden of providing infrastructure to a development is on the property owner and would like to make that a condition of the use. Mr. Bridges stated that he is in favor of the rail yard in Cisco.

Mark Wright stated that the applicant has not provided burden of proof that that is necessary for the rezone.

Mike Duncan amended the motion and added recommend denial "at this time", due to the lack of proof that the infrastructure is available, as necessary, for the rezone to HI and that the requested rezone area is not in compliance with the General Plan.

Dave Cozzens didn't feel like it could be rationalized due to the current industrial zone in the area.

The Chair called for a vote – Jean Binyon, Dave Stolfa, Mike Duncan, and Kalen Jones voted "aye" on the motion. D.L. Taylor, Dave Cozzens, and Ed Bridges voted "nay" – Motion carries.

Public Hearing - Affordable housing Plan Review of the County's General plan and Affordable Housing Section and process for Plan adoption. The Chair explained that the public hearing on the plan was heard at the last meeting and was continued until tonight's meeting. The Chair asked if there was any further comment; being none the Chair called for a motion.

Mike Duncan moved to direct staff to review the County General Plan Affordable Housing Section and draft a resolution that eliminates language that is duplicative or inconsistent with the task force's recommended plan, adopting the important elements of the plan (i.e. the goals, objectives, and action plan) and incorporating the rest of the plan by reference.

Kalen Jones seconded. The Chair asked staff if there were other comments. Staff explained the process for amending the General Plan and adopting the Affordable Housing Plan by reference in the General Plan.

Kalen Jones asked about making changes to the General Plan as it repeats itself, the Commission explained that would be better when the plan is brought to the Commission for major amendment.

The Chair called for the vote on the motion and all voted in favor.

Public Meeting - Sketch Plan for Navajo Vistas – This application is submitted by Tim Keogh, property owner representative, on behalf of the property owner Mike Kaeske and Dizzy Dog LLC (applicant). The applicant proposes a PUD subdivision of approximately 13.7 acres into 13 single-family lots, including common area and thirty percent open space. A Home Owners Association (HOA) will be formed to be responsible for maintenance of the private road, open space, and detention pond.

Currently, the property is "undisturbed" consisting of juniper, sage, and sandstone outcroppings. The property slopes from the east (highest elevation) to the west (lowest elevation).

As submitted, the sketch plan proposes steep slopes within individual lots and building envelopes. Staff notes that thirty percent slopes meeting the requirements of Section 6.11 will be required to be set aside as permanent open space. There may be enough constrained lands that it could reduce the proposed density, staff does not have enough information to make a determination, but will look at the situation when the preliminary plat is offered.

The Applicant proposes clustered lots ranging in size from 21,780 square feet to 29,000 square feet, however, no information has been provided as to why the existing configuration was chosen.

The development table stipulates thirty percent open space; however, it is unclear if physical acreage is more or less than this amount. Staff notes that the detention pond will need to be set aside as "common area" rather than "open space" per County LUC requirements.

Exterior connectivity is waived due to the unusual circumstance created by the presence of escarpments, on the north east and an existing subdivision on the southwest.

Internal connectivity needs to be decided as it is not addressed in the application. The sketch plan proposes private roads. Primary access to the property is proposed from Highland Drive (a County dedicated Public Lane) transitioning to a 56 foot private access easement. All internal roads including half of P-K Lane should be improved to Private Lane standards including a 56' right-of-way width. It is physically possible to connect the new internal road with P-K Lane and thus avoid another long cul-de-sac.

The County Engineer has stated that there are some drainage concerns and will work with the applicant to protect the drainage on the land.

Staff noted that the applicant has provided sufficient information for a sketch plan.

The Chair offered the applicant time for a presentation. Mr. Keogh, applicant's representative questions the road requirements for the property. Staff commented that he should stop in the office and discuss the issues with the County Engineer to make sure the roads and constrained lands will meet current code requirements.

The Commission and the applicant had a discussion regarding the road connections and grades and the drainage of the property. The applicant will meet with the staff engineer and work out details before the preliminary plat is presented.

Dave Cozzens asked to be excused at this time.

Ed Bridges moved to approve the sketch plan subject to compliance with all applicable requirements of the Land Use Code, including but not limited to the following stipulations:

1. Submission of the required Master Plan with the Preliminary Plat application;
2. Submission of the required Drainage Study with the Preliminary Plat application;
3. Establishment of common area for the roads and detention pond; open space for the balance of the property not identified as lots;
4. Dedication of easements for historic trail(s) through the property;
5. Street connectivity to the exterior are waived due to the unusual circumstance created by the presence of escarpments to the north east and existing subdivisions to the south west sides of the property, which make it impossible to provide such access;
6. Internal roads shall be redesigned as a connected loop road;
7. Submission of draft HOA documents demonstrating the formation of the entity and covenants per County LUC requirements, the HOA is be responsible for maintenance of private roads, open space, and detention pond;
8. Submission of evidence of roads and dedicated right-of-way meeting private lane standards in all cases;
9. Submission of a fire protection plan satisfactory to the Fire Chief;
10. Submission of letters with the Preliminary Plat application demonstrating the availability of water and sewer service, gas and electric service, and the adequacy of easements proposed; and
11. Review the 30% slopes and the density reduction requirements pursuant to Sec 5.4. 2. D.1 of the Land Use Code.

D.L. Taylor seconded and all voted in favor.

Approval of Minutes - The Commission accepted the June 10, minutes as written.

Community Development Updates – We will be going back to the Council Chambers for the next July meeting and the two meetings in August.

County Council Update – Gene Ciarus – gave an update to the carpet installation in the Courthouse and an update of the Council meeting of July 7th. Also an update to the Air and Water quality meetings that he has attended. The Council is back to meeting the Council Chambers also.

With no other items on the Agenda the Vice Chair called for adjournment.

Adjournment: The meeting was adjourned at 8:30 P.M.