**Washington County Land Use Authority Meeting**
**May 25, 2010**
**(Recording available)**

The Washington County Land Use Authority Meeting was held on Tuesday, May 25, 2010, at the Washington County Administration Building, 197 E. Tabernacle, St. George, Utah. The meeting was convened at 1:30 p.m. by Chairman Stucki. Commissioners present: Debora Christopher, Doug Wilson, Kim Ford, Rick Jones, Julie Cropper, and Dave Everett. Also present: Deon Goheen, Planning & Zoning Administrator; Rachelle Ehlert, Deputy Attorney; Kurt Gardner, Building Official; Todd Edwards, Public Works Engineer; John Willie, Senior Planner; Dean Cox, County Administrator and Darby Klungervik, Planning Secretary.

Excused: Joann Balen

Audience attendance: Bernie Keane, Cathleen Keane, Gordon Poppitt, Bruce Bissell, L. Karen Platt, Lyman Platt, Travis Ficklin and Enessy Ficklin.

Chairman Stucki led the audience in the Pledge of Allegiance and explained meeting protocol.

**Item #1. *SPECIAL MEETING:*** **STAFF COMMENTS.** Review staff comments for each item listed below. Staff initiated.

**Item #2. CONDITIONAL USE PERMIT** Request permission to hold the annual Founder's Day Celebration at Old Fort Harmony, approximately 3 miles east of New Harmony. L Karen Platt, applicant.

The Planner said the Fort Harmony Historical Society representative is asking for review of a use that was withdrawn several years ago. This event had been held for several years within New Harmony Town, then in 2006 the pageant was held at the Old Fort Harmony site, and in 2007 they changed the format to have just scheduled pioneer events. These types of events are conditionally approved. This event is known as "Fort Harmony Days" scheduled for Saturday, June 19, 2010, to have pioneer events to celebrate the founding of Harmony Valley. Parking will be available along Old Hwy 144 and the newly improved 2900 East (Schmutz Lane).Visitors will be able to utilize the library restrooms. Tables will probably be set up on the library parking lot for the barbeque. The applicant is here to provide an update.

Karen Platt, Chairperson for the Fort Harmony Historical Society, said the placement may be a bit different this year; they will be having events inside the fort this year. They will also have use of the library this year and she showed the location for the lunch on a site map. In response to the commission, she said they are concerned about fire safety and the west side of the library is bare, they have kept the weeds down inside the fort and they will have the grass to the side cut down.

**Motion was made by Commissioner Cropper to approve the Conditional Use Permit to hold the Founder's Day Celebration at Old Fort Harmony. Commissioner Ford seconded the motion, with all six (6) commissioners voting aye.**

**Item #3. CONDITIONAL USE PERMIT** Request permission to move a manufactured home onto a parcel of land within the Blackridge Subdivision, Lot 55, for a 2nd dwelling for a family member. Enessy Ficklin, applicant

The Planner informed the commission that the applicant has already complied with the county code regarding moving dwellings which reads:

***10-13-16 County Code: MOVING DWELLINGS: Any dwelling proposed to be moved onto any parcel of land in the county shall meet the following requirements:***

***A. All dwellings moved onto sites in the county shall first be granted a conditional use permit as required by chapter 18 of this title.***

***B. A dwelling proposed to be moved onto a site in the county shall be less than fifteen (15) years of age at the time of moving unless otherwise approved by the planning commission.***

***C. A manufactured home shall be identifiable by the manufacturer's data plat bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying that the home was manufactured to HUD standards. (Ord. 2001-815-O, 12-17-2001, eff. 12-17-2001)***

Planning staff approved this conditional use permit on April 6, 2010, complying with item A. This unit was built in September of 2006, so it is less than 15 years old, meeting item B. The applicant has provided verification of the HUD tag number as required in item C. Photos have been submitted for your review and staff recommends approval for the moving permit, based on above criteria being met. Once again, this is an administrative action item and the applicant is present for questions.

Enessy Ficklin, applicant, said the home is currently located just south of Kanarraville, the previous owner is deceased and he has the option to buy it pending the approval of the planning commission. He showed the location of his current home and the proposed location of the new home on a site map. He said this project has taken him about ten (10) months, six (6) of which were spent attending meetings of the Ash Creek Special Serves District to receive their approval. He now plans on installing an AIRR sewer treatment system, so the sewer coming out of the septic will be irrigation pure. Mr. Ficklin will be using the home for his son when he comes up to visit.

**Motion was made by Commissioner Everett to approve the transport of this structure. Commissioner Christopher seconded the motion. All six (6) commissioners voted aye.**

**Item #4. MINUTES** Consider approval of the minutes of the regular planning commission meetings held on April 13 & 27 and May 11, 2010.

**Motion was made by Commissioner Cropper to accept the minutes as written from April 13, 2010. Commissioner Ford seconded the motion, with all six (6) commissioners voting aye.**

**Motion was made by Commissioner Wilson to approve the minutes from April 27, 2010. Commissioner Ford seconded the motion, with all six (6) commissioners voting aye.**

**Motion was made by Commissioner Everett to approve the minutes from May 11, 2010. Commissioner Christopher seconded the motion, with all six (6) commissioners voting aye.**

**Item #5. *WORK MEETING:* DISCUSSION ITEM/CONDITIONAL USE PERMIT**
Request permission for an exception to the height requirement on two (2) poles for amateur radio facilities in Dixie Deer Estates on Rex Layne Dr in Central. Bruce Bissell and David Jensen, applicants.

The Planner noted that the commission reviewed this item at length previously and it was suggested that we review this as a discussion item prior to our meeting in June. Since our last meeting, we have received a letter from another property owner and further information from Mr. Poppitt regarding the poles installed. As previously reported, both applicants are amateur HAM Radio operators, who installed two poles within the setback area of their properties in Central. The adjacent neighbor, Evan and Bridget Jones, have written a letter indicating they have no problem with the pole erected near their property line. The staff attorney has reviewed the Memorandum Opinion and Order before the Federal Communications Commission on Federal preemption of state and local regulations pertaining to Amateur radio facilities. This is being reviewed conditionally on exceptions to height limitations; the maximum height regulation is 35 feet without a conditional use permit. The planner also showed a site plan and said that although the property lines are not accurate, Mr. Jensen's pole is likely on Forest Service property, therefore if this use is approved it would need to be subject to approval from the Forest Service.

Kurt Gardner, Building Official, showed the poles on a map and said Mr. Bissell's pole is about three feet from his property line and if it were to fall to the north or south it would probably stay within his property, but if it fell east or west it would probably land on a home. Brian Vorwaller, the district manager of Sturgeon Electric, who installed the pole, provided Mr. Gardner with the following information on Mr. Bissell's pole: it came from Milford, it was being used as a guard structure and it is about a year and a half old, it has not been cut off, it has been treated and it is a class one pole. These poles are rated one thru ten, with one being the best. The depth was verified using the stamp on the pole, which is about sixteen feet from the base of the pole. The pole has sixty nine and a half feet (69 ½) above ground making ten and a half feet (10 ½) below ground. On Mr. Jensen's property the forty (40) foot pole is on his property, but if it were to fall to the west it would probably fall into the state road right of way; this pole has probably been cut off and is not treated. Mr. Jensen's thirty (30) foot pole is the pole that is on the Forest Service property and has had some minimal fire damage. The tags are not visible on the poles Mr. Jensen installed, but Mr. Gardner concluded they are likely the same as the other poles (not erected) on the property. Photos of the transmission line recently approved in Diamond Valley were included and it was noted that the fall zone would affect surrounding homes and the practice of burying the poles ten (10) percent plus two (2) feet is the standard.

The commission stated the fall zone is not generally a consideration when approving utilities.

The commission and staff discussed treated wood versus untreated wood and the different types of wood, noting this pole is Douglas fir.

Dean Cox, County Administrator, stated during his research he found that twenty five (25) states other than Utah have affirmed the FCC's guidelines. He found an interesting piece put out by the Vermont League of Cities and Towns that validates the process in which the planning commission is engaged. He included that although this was written for Vermont, it is applicable because it is driven by the guidelines of the federal government and it says, "The zoning authority should also request technical information the antenna height required to operate at the licensed frequency at the specific site, and the applicant should note whether a retractable antenna will be used." Mr. Cox noted that the physical height of the antenna is impacted by the short wave frequency being operated on; therefore, the commission would need to determine what frequency the applicant wants to operate on and is licensed to operate on. He read the following summary from the Vermont League of Cities and Towns: 1) A zoning ordinance cannot impose a universal height limitation on ham radio antennas, without making provisions for exceptions.2) A zoning ordinance may impose/apply a height limitation to radio antennas, if a procedure is established for an individual to apply for an exception, variance or conditional permit.3) When the zoning authority considers such an application, it should attempt to reasonably accommodate the radio operator's interests with those of zoning. It should also ensure that this consideration is well documented. 4) The zoning authority may attempt an accommodation by requiring retractable antennas, limiting hours of operation, and restricting height to that shown to be technically necessary for the type of amateur radio station licensed by the FCC.5) If an applicant refuses to compromise with the municipality, the application may be denied. The partial federal preemption does not entitle amateur radio operators to erect whatever antenna they desire. He added that the commission was taking a thoughtful approach in dealing with this and as an amateur radio operator with an extra class, which is the highest license given by the FCC, and as a license holder of forty years he would be happy to answer any technical questions the commission may have. In response to the commission, he said he has not yet heard what frequency the applicant is operating at, but given that information there is a formula to calculate the optimal height of the antenna. However, UHF and VHF antennas need to be high enough to look over obstructions because they are a line of site type of signal; it should be a quarter of a wavelength above the surface of the earth and houses, trees, etc will degrade the efficiency of the antenna.

There was some discussion about different types of radio operating licenses and the chairman asked to use Mr. Bissell's license as an example. Mr. Cox explained that Mr. Bissell has a general class license and he has operating privileges in the short wave frequency, as well as all the higher line of site frequencies. Considering Mr. Bissell typically operates at eighty (80) meters, Mr. Cox determined his optimal operating height to be seventy (70) feet.

Commissioner Cropper inquired about the need for guy wires and Mr. Cox stated that engineering should be required to ensure the safe installation of any proposed antenna.

Mr. Cox said the commission was doing exactly what the FCC intended for them to do and he read the following from the Federal Register:

"Few matters coming before us present such a clear dichotomy of viewpoint....The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances, or covenants oriented towards the health, safety and general welfare of those they regulate. At the opposite poles are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides." (PRB-1, 50 Federal Register 38, 815, September 25, 1985)

Mr. Cox added that the FCC recognizes the national need for amateur radio in the event of an emergency and the zoning commission has the legitimate need to balance the safety and welfare of the citizens of the county. Therefore, he believes the vagueness of the language the FCC used is intentional to lead the board to ask the probing questions they need to in order to satisfy themselves that reasonable accommodations have been made in the specific, unique instances that can arise. He agreed to develop a checklist of questions for the commission, including the formulas necessary for determining optimal height.

Bruce Bissell, applicant, said he operates mostly on eighty (80) meters, but has operated on ten (10), twenty (20), and forty (40) meters as well. He stated he did not know he needed a permit for a pole. His current antenna is only 23 ½ feet above ground and he has talked to people in Mexico City, Hawaii, and Wisconsin. He said Mr. Jensen is an advanced class license holder, which is above the general class and below the extra class. In response to the commission, he said it is better to have your antenna near your equipment. He included his intentions are first to use it as a hobby; as a veteran with post traumatic stress it really helps him cope with stress. Secondly, is to provide service to the county in the event of an emergency.

Gordon Poppitt, resident, provided more information to the commission and stated each Conditional Use Permit should be reviewed on individual merit.

Mr. Cox informed the commission that the FCC prohibits them from considering interference with radio frequency because amateur radio is designed to operate on a specific frequency and a well made television should not receive interference. The deputy attorney added the commission is also prohibited by the FCC from evaluating the possible danger of RF emissions.

The commission engaged in further discussion about the location of the pole and the required building standards. They discussed whether the Conditional Use Permit would be issued to the land or the amateur license holder themselves, whereas a Conditional Use Permit generally stays with the land. The option of using state law and FCC guidelines versus having a county ordinance was addressed and staff indicated having an ordinance gives future applicants set guidelines to follow. The effect lot size would have on the type of pole and/or pole size was

noted. The importance of creating a happy medium between the health, safety and welfare of the residents and reasonably accommodating amateur radio was addressed. Finally, the commission discussed the importance of having the poles maintained and removed if not in use.

Mr. Poppitt reminded the commission they are setting a precedent for other counties and that the FCC describes a tower as a structure and said it was important for the county to define a structure.

Bruce Bissell and the commission discussed operating hours and decided limiting the operating hours was not a good idea.

**Item # 6. DISCUSSION ITEM/ORDINANCE AMENDMENT** Review possible changes to Chapter 18 Conditional Use issues on advertising, posting property to notify adjacent property owners. County initiated.

The planner explained that this ordinance amendment is in keeping with suggestions from the commission at our previous work meeting. There may need to be changes to the notification process in areas where certain types of conditional uses are requested to make the local citizens aware of what is coming to or being requested in the neighborhood, such as, cellular towers or other types of uses. It has been suggested by staff that the commission may want to consider listing types of uses "permitted" without notification. A packet will be provided to the applicant as to the standards & procedures of notification. If the commission agrees, staff felt these changes could be reviewed by going directly to the advertising process for a hearing on the 8th of June.

The commission and staff discussed the size of the sign and whether it should be created by staff or the applicant and it was decided it should be created by the applicant, at the applicant's expense, but staff would provide them a template to follow. The commission said the notice should be posted seven (7) to ten (10) days prior to the meeting date and the applicant shall provide a picture of the posting to staff. It was noted that additional notice is not required and other communities are not providing additional notification for Conditional Use Permits; however, the county would have the properties posted as a courtesy to the residents.

Gordon Poppitt, Washington County resident, said visibility and information are the most important issues and suggested using florescent paper. He also thought the applicant should bare the cost.

This item will be advertised for a public hearing to take place June 8, 2010.

**Item #7. DISCUSSION ITEM/ORDINANCE AMENDMENT** Review possible changes to Chapter 8D-3.B. deletion of requirements for petition for public notice on Bed & Breakfast's. County initiated.

The Planner said this particular ordinance amendment is a "housekeeping" item in an effort to make the ordinance consistent with what is required in other chapters of the zoning ordinance and State Code. This change deletes the advertising process for Bed and Breakfast within the RE zones, which was added to the county code approximately twenty (20) years ago. The staff agreed that this change could be reviewed by going directly to the advertising process for a hearing on the 8th of June.

The staff explained that this was added some time ago because of a bed and breakfast in the Pine Valley area and staff no longer thought it was necessary to provide this type of notification on a conditional use. The commission agreed and this item will be advertised for a public hearing on June 8, 2010.

**Item #8. DISCUSSION ITEM/ORDINANCE AMENDMENT** Review possible changes to Chapter 9, Section 10-9-6: PDR Planned Residential development district: C. Conditional Uses: 2. Cemeteries. County initiated.

The Planner noted this amendment is in keeping with suggestions from the commission previously regarding cemeteries after reviewing a Conditional Use Permit at the November 10th, 2009 meeting for Mr. Staples. This change is as simple as listing cemeteries as a conditional use, referencing the State Code and renumbering following uses. This change will allow for Mr. Staples to return with an amended PD zone to facilitate the cemetery and changes he has already made in property lines. Cemeteries should be conditionally approved in the PD zone and this change to the zone will be in keeping with the mixed uses and sustainable communities. The commission agreed with staff that this change could be reviewed by going directly to the advertising process for a hearing on the 8th of June.

Rachelle Ehlert, Deputy Attorney, said cemeteries are not as regulated as you would think and in fact nobody is reviewing them for health, safety, flood zones, water contamination, or cause of death. She added all this change does is make an allowance for cemeteries in PD zones.

**Item #9 DISCUSSION ITEM/ORDINANCE AMENDMENT** Review possible changes to Title 10, Chapter 4-1: Definitions on Accessory Building and Accessory Dwelling Unit. County initiated.

Staff has recommended some changes to the language in the definitions for Accessory Buildings and Accessory Dwelling Units. There needs to be language on habitable space and occupiable space as defined in the building codes and delete some of the structures defined. Presently, the ordinance does not allow for an accessory building unless there is a primary residential building on the lot before a permit is issued. In the past, staff has issued permits together, so they can be built simultaneously, allowing for their equipment and materials to be stored in a workshop/garage/barn type facility. Staff wanted to know if the commission wanted this sentence modified.

Kurt Gardner, Building Official, said staff was interested in clarifying the difference between an accessory building and an accessory dwelling. Staff ran into problems with the differences in the zoning code and the building code and this change essentially allows an applicant put a toilet, and a sink in a garage without needing a Conditional Use Permit, but adding a shower and/or kitchen would still require one. He informed the commission that the way the code is written, an applicant must build their home prior to receiving a permit for a detached garage or an accessory dwelling. He recommended the commission review this and possibly allow permits for main dwellings and accessory buildings to be issued simultaneously, while still requiring the main dwelling to be complete prior to issuing a permit on an accessory dwelling. In response to the commission, he said they deleted the words guesthouse, apartment and casita because they didn't want people to have the idea that they could use it as a rental; a deed restriction saying it won't be used as a rental must be filed on the property and the language in the ordinance is confusing.

The commission agreed with the changes and suggested writing it to say that accessory buildings can be built concurrent with main dwellings.

**Item #10. DISCUSSION ITEM/GENERAL PLAN AMENDMENT** Review Introduction to the General Plan. County initiated.

The Planner stated for the past year John Willie has been working on the General Plan and he is ready to start review of several sections in draft form. He has presented a short introduction of the Bureau of Land Management, National Forest, National Park, Institutional and Trust Lands Administration. If time permits, the commission may be ready to make comments on what was presented.

John Willie, Senior Planner, said it was a little late in the day to discuss the general plan, but he would like the commission to take the time to go through each section and see if they have comments or concerns. He added that the maps are not yet ready, but the commission will be provided a copy when they are. In reply to Commissioner Ford, he informed the commission that there are two ways to adopt the general plan; it can be adopted as a guideline or an ordinance. If it is adopted as an ordinance and a use comes forth that is incongruent with the plan, the general plan must first be amended. Therefore, it is generally adopted as a guideline and hopefully the commission will still use it as a reference.

Commissioner Ford noted that the numbers on page 55 didn't match the information in the table.

The commission wanted more time to read the general plan and decided to review it at the next meeting.

**Item #11. STAFF DECISIONS.** Review of decisions from the Land Use Authority Staff Meeting held on May 18, 2010. County initiated.

The staff meeting convened at 9:30 a.m. Staff Members Present: Deon Goheen, Planning & Zoning Administrator; Kurt Gardner, Building Official; Todd Edwards, County Engineer;

Rachelle Ehlert, Deputy Civil Attorney; Darwin Hall, Ash Creek Special Service District Director; Tina Esplin, Washington County Water Conservancy District; and Robert Beers, Southwest Utah Public Health Department; Steve Jenkins, District Public Health Director; and Paul Wright, Department of Environmental Quality

Excused: Ron Whitehead, Public Works Director

**CONDITIONAL USE PERMIT EXTENSION:**

A. Request permission for a single family dwelling within the A-20 zone, Enterprise Ranchos Subdivision northeast of Enterprise. Dallin and Stephanie Robinson, applicants

This is an automatic annual review and the planner advised that this unit was inspected for final occupancy on December 17 2008; it was not reported at the May 19, 2009 meeting that the project was complete. The log sheet for Permit No. 5877 was not current at that time, so now, the planner suggested that this should be approved on a permanent basis. Previously, the applicant met the requirements for a Conditional Use Permit by submitting a site plan, deeds of ownership, septic permit from the Southwest Utah Public Health Department, and the quantity and quality of water from a private well. Single family dwellings are conditionally approved within the A-20 zone, with the property containing 2.5 acres being non conforming within that zoning district, Enterprise Ranchos. The property is accessed from Hwy 18, to Bench Road at 2716 E. 1200 North, generally located northeast of Enterprise. **The staff felt there would be no problem in granting this Conditional Use Permit based on permanent status.**

**Item #12. COUNTY COMMISSION ACTION REVIEW** Review of action taken by the County Commission on Planning Items. County initiated.

The Planner reviewed the action taken on Planning Items by the Washington County Commission on May 18, 2010, beginning at 4:00 p.m. :(a) Conditional use extension to operate an aggregate processing plant and crushing operation in an existing grand fathered pit, containing 22.39 acres, a portion of Section 32, T39S, R16W, SLB&M, generally located east of Veyo... Sunroc Corporation/Russell Leslie and Dana Truman, applicants; (b) Conditional use extension to build a Fire Station/Office, adding another station in the Diamond Valley area, with the building being located at the southwesterly end of the valley, Lot D, Diamond Valley Acres - Phase 2 - Plat A... Derald Terry, agent; and (c) Conditional use to locate a temporary batch plant and job site trailers within the OSC-20 zone, for the expansion the Red Butte Substation on Forest Service land near Central. Schmidt Construction, applicant.

**The Planner noted that all the above Conditional Use Permits were approved by the County Commission, based on the recommendations of the Planning Commission.**

**Item #13. COMMISSION & STAFF REPORTS:** General reporting on various topics. County initiated.

The chairman requested staff to inspect the gravel pit located below the Black Ridge to make sure they are on the land that was approved.

The commission noted that they do not issue Conditional Use Permits on third party applications without the permission of the landowner.

There being no further business at 4:17 p.m., Chairman Stucki adjourned the meeting.

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Darby Klungervik, Planning Secretary