

BOX ELDER COUNTY PLANNING COMMISSION MINUTES FEBRUARY 18, 2010

The Board of Planning Commissioners of Box Elder County, Utah met in the Box Elder County Commission Chambers at 7:00 p.m. The following members were present constituting a quorum:

Richard Day	Chairman	<i>the following Staff was present:</i>	
Chad Munns	Member		
Desiray Larsen	Member		
David Tea	Member	Elizabeth Ryan	Secretary
Jay Hardy	Excused	Tamara Wright	Planner
Jay Christensen	Excused	Steve Hadfield	Co. Attorney
Laurie Munns	Member	Andre Pommier	Fire Inspector

Chairman Richard Day called the Planning Commission meeting to order at 7:02 p.m. The Minutes of the January 21, 2010 meeting were made available to the Planning Commissioners prior to this meeting and upon review Commissioner David Tea made a Motion to approve the Minutes as written; seconded by Commissioner Desiray Larsen and passed unanimously.

The following citizens were present:

Bob Hansen/Mt. Green	Scott Grover/Garland
Scott Morrill/Logan	Jeff Hansen/Wellsville
Jan Rasmussen/Corinne	Dennis Rasmussen/Corinne
Susan Stevenson	Jerry Stevenson

PUBLIC HEARINGS

Chairman Richard Day stated that item 5.c. [County Surplus Property] had been taken off of the agenda. The meeting then proceeded with the public hearings and Chairman Richard Day informed those present that each one would be handled as separate items, and that the time for the hearings was to allow the public the opportunity to voice any concerns and the Commissioners would listen to the comments and concerns, but this was not a questions/answer time.

CHANGES TO ARTICLE 6, SUBDIVISIONS OF THE BEDLUM&DC. SECTIONS: 6-1-030, 050, 060, 120, 130, 140, 160, 170, 200, 220, 230, 240, AND 250. THE PROPOSED CHANGES WILL IMPLEMENT RECOMMENDATIONS FROM THE COUNTY ENGINEER, COUNTY ROAD DEPARTMENT AND COUNTY FIRE MARSHALL FOR BEST ENGINEERED PRACTICES WITH SUBDIVISION REQUIREMENTS.

ADMINISTRATIVE APPROVAL FOR SUBDIVISIONS WITH LESS THAN TWO LOTS ON AN EXISTING COUNTY ROAD THAT DOES NOT REQUIRE IMPROVEMENTS.

The Planning Staff had requested changes to the Box Elder County Land Use Management & Development Code in order to bring the County Code up to date with recommendations from the County Engineer, County Road Department and County Fire Marshall. There was also a new item being added to this Article regarding Administrative Approval for one-lot subdivision which met certain criteria set forth as outlined. No comments were received during the public hearing and a Motion was made by **Commissioner David Tea** to close the hearing; seconded by **Commissioner Laurie Munns** and was unanimous.

RASMUSSEN 1-LOT SUBDIVISION (WITH REMAINDER PARCEL), SS08-022; LOCATED AT APPROXIMATELY 1949 NORTH 6400 WEST IN THE WEST CORINNE AREA.

Staff explained that this one-lot subdivision had received approval on October 16, 2008 but due to a death in the family had not been recorded as per Section 6-1-130E of the County Code. There is an existing home located on the 55 acres and the petitioner is asking that the home, along with a two acre parcel, be separated off. No comments were received and a Motion was made by **Commissioner Desiray Larsen** to close the hearing; seconded by **Commissioner Chad Munns** and was unanimous.

UNFINISHED BUSINESS

MICHAEL MUNSEE STORAGE UNITS RE-ZONE, Z09-005; LOCATED AT APPROXIMATELY 8823 SOUTH HIGHWAY 89 IN THE SOUTH WILLARD AREA.

This application was before the Planning Commission and tabled at their December 17, 2009 meeting in order for Staff to receive a new site plan and a letter of approval from UDOT for the access. These are existing storage units that were built in the fall of 1983 before the current R-1-20 zone was adopted in March 14, 1986. Staff referred to *Section 2-3-020* and *Section 2-3-050* of the BECLUM&DC stating that a non-conforming use may be continued only to the extent it was lawfully created and by the present or a future property owner; the site plan that has been received show the structures are non-conforming in regards to setback requirements. Presently these storage units are a legal, non-conforming use in the zone and the petitioner is requesting a rezone of the property to allow for expansion of the use. There are currently three buildings housing storage units, with a cement slab where the petitioner is proposing the addition of seven more storage units. Staff informed the Commissioners that the cement slab does not meet the setback requirements at this time. The approval standards for a rezone were then outlined by Staff as follows:

1. *Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan*
 - a. *Commercial development is encouraged to take place within or adjacent to existing communities or service areas, and along major thoroughfares and in unincorporated communities as long as adequate services can be provided.*
2. *Whether the proposed amendment is harmonious with the overall character of the existing development in the vicinity of the subject property;*
 - a. *This property is directly across and adjacent to other commercial zones [Price Containers is directly across from them]*
3. *The extent to which the proposed amendment may adversely affect adjacent property; and*
4. *The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and waste water and refuse collection.*

- a. *As the use of this property is storage units, there is no need for waste water and refuse collection services, or water supply.*
- b. *Approval from UDOT is required as the property fronts Highway 89.*
- c. *A fire hydrant is in close proximity to the units.*

Commissioner David Tea commented on the submitted site plan and that it could not meet the current setback requirements, therefore was a discussion even warranted at this time until a new plan was submitted. **Mr. Bob Hansen** approached the Commissioners representing **Michael Munsee** and said that as far as the current site plan and proposed building were concerned, it was a moot subject. The cement slab was on the property when **Mr. Munsee** purchased the storage units and also said that **Mr. Munsee** was not asking for a variance, but for a re-zone in order to allow for seven additional storage units in the area. If the existing cement slab needs to be taken out, the petitioner is willing to conform to the requirements of the County Code. There was some discussion regarding the South Willard Community Plan and if this use was one that would be allowed in that plan. **Commissioner David Tea** was also concerned that rezoning this small acreage would be spot zoning, but was told that spot zoning is allowed [per State Code] at this time and the County does not have an ordinance that addresses spot zoning. Staff then told the Commissioners that the Commercial Enterprise Zone is the only zone that allows for storage units at this time. **Commissioner Chad Munns** felt that it would behoove the Commission to consult with the members of the South Willard Community Committee to receive their input regarding this use in the area and if it would be harmonious with the adopted plan of the area.

Phillip Davis of South Willard said that he had used one of these storage units in the past and that there was some trouble with theft and there was not adequate security or a timely response from the county sheriff's department because of the location, but it was noted by the Commission that this is also the case in other outlying areas of the County. **Mr. Davis** then asked if the lack of adequate services should [or would] be taken into consideration for the rezone of the property. **Mr. Hansen** said that **Mr. Munsee** was considering installing a fence around the facility and was also willing to submit a new site plan with the necessary setbacks for the additional building. Staff told the Commissioners that the property directly across from these units is zoned as Commercial Enterprise with the other surrounding property zoned as R-1-20. Because the storage units already existed, and have been since 1983, the Commission did not feel that it would be necessary to consult with the South Willard Committee members at this time. Again, Staff said that the zone that would allow for storage units would be Commercial Enterprise if the Commissioners felt that this use could continue and expand.

MOTION: A Motion was made by **Commissioner Desiray Larsen** to forward a recommendation to the County Commission to rezone the Michael Munsee property of approximately 1.5 acres [with storage units] from the current R-1-20 zone to CE Zone (Commercial Enterprise) as these storage units are an existing structure in the area, along with any conditions set forth by Staff. Motion seconded by **Commissioner David Tea** and passed unanimously.

Conditions for Approval:

1. The CE zone will allow for "Personal Storage Facilities" by conditional use permit only, thereby making the storage bays a legal use.
 - a. You will need to submit a conditional use permit application to be compliant with the Commercial Enterprise Zone. (This application can be made after the rezone becomes effective).
2. The Front Yard setback is 25'.
 - a. The Side Yard setback is 10.
 - i. Except as determined by conditional use permit.

- ii. A separate conditional use permit is required for this determination.
3. The existing three storage bays are classified as legal, non-conforming structures. Pursuant to §2-3-060, entitled Non-complying structure of the Box Elder County Land Use Management & Development Code Book states a non-complying structure may be continued so long as no additions or enlargements are made thereto and no structural alterations are made therein.

RIVERSIDE FARMS SUBDIVISION, SS08-005/ LOCATED AT APPROXIMATELY 18460 NORTH 5200 WEST IN THE RIVERSIDE AREA.

Staff explained that this is a variance request and referred the Commissioners to the letter that was in the planning packets from Mr. Scott Morrill the Engineer for this project. It was then suggested that the petitioners present their request to the Commission. Scott Morrill and Jerry Stevenson both appeared before the Planning Commission.

Mr. Scott Morrill said, *“We left the last planning meeting with direction to deal with the engineer, and we did that; he sent us a letter with maybe twelve items on it and we went down through the items and when we felt like we needed to have some clarification, we held a meeting over here in the council room with the County Engineer, Jones & Associates, and in that meeting we discussed the need for a secondary access for fire and emergency vehicles and we showed on our plan . . . we could provide an adequate all service road . . . it is actually an existing road . . . it’s been used in the past . . . and we left that meeting with the feeling that that was going to be acceptable. Well, after that meeting we received a letter from the fire department that said two things, one was that the second access needed to be ½ the diagonal distance of the entire property away from our main access. Well, that posed a problem to us and that’s why we’ve asked for this variance. In my letter I quoted a section of the . . . it’s the section of the Code that says if you have topography or other problems you can ask for a variance.*

Staff said that this could be found in *Section 6-1-090* entitled **Variance**; *“Where the size of the tract to be subdivided, its topography, its condition or nature of adjoining areas or the existence of other unusual physical conditions, strict compliance with the provisions of this Code would cause an unusual and unnecessary hardship on the subdivider, the County Commission, after receiving a recommendation from the Planning Commission, may vary such requirements and require such conditions as will secure, insofar as practicable, the objectives of the requirement varied. Any variance shall be based on a problem with the land, in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the Planning Commission may not find an unreasonable hardship if the hardship is self-imposed or economic. Any variance authorized shall be entered in the minutes of the County Commission.”*

Mr. Morrill then said that they weren’t saying that they didn’t want to have a second access, and in fact were planning on having a second access, but the topography along with other constraints of the canal on the east and north boundaries of this project and the river on the south and UDOT requiring a minimum of 660 feet separation between any access. The access has already been pushed south due to the bridge in the area making it impossible to get another access point that meets the ½ the diagonal distance of the property that would meet with this criteria.

Commissioner Chad Munns asked that **Mr. Andre Pommier** (fire inspector) come forth and discuss this fire issue with the petitioners and the Commission in regards to the ½ of the diagonal distance, and the requested variance.

Mr. Andre Pommier said, *“That came out of the Appendix Chapter of the Code and it is Section D. 104.3 on the International Fire Code. That is the language that is in that section of the Code. Again, let me back up, that is out of the Appendix Chapter which is strictly advisory.”*

There was a discussion regarding the property and surrounding property that may be developed in the future. The proposed cul-de-sacs or dead-ends in the Riverside Farms Subdivision could open into that area creating other accesses (in the future). **Commissioner David Tea** questioned whether

or not the hardship had been created by the petitioners and if the project were re-configured would it eliminate the cul-de-sacs, but **Mr. Morrill** said again that they had to deal with UDOT on the access points for the subdivision. **Mr. Morrill** then asked if they were able to reach an agreement with the canal company to use their service road would that be acceptable to the Commission. **Chairman Richard Day** did not think that would be an option as the canal road would then need to be maintained and it was not something that the County would likely want to do.

Mr. Morrill then said that they were relying on the language of the Code in regards to ½ of the diagonal distance in requesting this variance and that they were not proposing eliminating the second access, but they could not meet the required distance of 660 feet. Having the two accesses was not the problem.

Commissioner Chad Munns asked what the County Ordinance said in regards to the number of homes that could be built on a cul-de-sac, but Staff responded saying that the Ordinance does not address the number, rather the length of the cul-de-sac.

Commissioner David Tea voiced concern in regards to the canal in the area and if it were to breach what would happen to the homes. The petitioners said that issue had been resolved. For this variance the Commission was relying on the interpretation of the Code by the fire marshal and the concerns that the fire marshal had regarding this subdivision and did not think that those concerns could be ignored by the Planning Commission.

Mr. Morrill then said, *“We met with Greg Martz and Andy on a couple of issues and we didn’t reach a meeting of the minds, but they told us ‘we are strictly advisory and you guys (indicating the Planning Commission) make the decision’ and they said you come and give us . . . your concept and they would give their concept, but it would basically set in your lap. I think that we meet the test with some topography issues for a variance.”*

Andy Pommier said, *“My biggest heartburn is we get to that bottleneck, even if you had your exits/accesses. . . I mean the whole idea of the ½ the diagonal distance is you’re going to come in one direction or the other direction and be able . . . essentially this, if we split it we are bringing it right back down to a bottleneck; and like I explained before if you had a fire, one or two lots up from that bottleneck and you lay a line in, lines don’t lie straight, they go all over the road and you can’t bring in other vehicles; ambulance, fire trucks, because as soon as you try to roll over those lines you’re going to break them because of the pressures and what they are made of . . . you just don’t have a good safe way of going over them. The only thing I can say is the Code, in an advisory part ‘cause it is coming out of the appendix chapter gave the limit of thirty (30); once you get the thirty you’re into a big enough thing that you better look at it as being a concern and so that is what I looked at. And that’s why I told them on this issue, it’s all I can say it’s advisory, we’ve got a problem, it’s going to make it very difficult for the fire departments to fight fires in there. They’ve already got other things going against them . . . there should be a little more effort in trying to figure out how are we going to get around all of these. I realize we are going to have a lot of dead-end cul-de-sacs . . .but . . . I’m just giving it to you as an advisory and there are these problems, if you think they need to work on them more than fine, if you think there’s no way around them that’s fine too, we’ll live with whatever because it isn’t an actual code that says I need this.”*

Mr. Morrill said that they would be able to meet the fire hydrant spacing requirement and there would probably be eight homes on a cul-de-sac. He then said that they had focused on the 660 distance required by UDOT and that was only one of the hurdles they were dealing with since the ordinance says that it has to be ½ the diagonal distance which would be thousands of feet and they would not be able to meet that distance because of the shape of the property. That is when the issue of topography comes into play. **Andy Pommier** then said that there is an exception to having an additional access and that would be to have the buildings (homes) equipped with [fire] sprinkling systems. **Mr. Morrill** said that they wanted to deal with that second issue, of having the homes equipped with sprinklers as a separate issue and not part of the variance issue.

However, **Commissioner David Tea** said that he was with the understanding that there wasn't a second option available, but that with this information regarding having the homes sprinkled that there was another option available to the petitioners that would eliminate the second access.

Mr. Morrill then said in regards to the sprinklers, *"that all sits with the opinion of the fire marshal. I was going to bring up the provisions of the Code that allow him to reduce the fire flow requirements and walk you through how that can be done. So in both cases it's advisory, it's an opinion, it doesn't have to be there. . . so I'd like the opportunity to walk you through that as well. Let me give you some thoughts about codes; typically codes are written one size fits all. If you want to use a prescriptive method and not go through an analysis you can go to a chart and a table and look up a number and you're done . . . that is always the most conservative approach. In other words, they'll build in so many safety factors, but there will be no questions. And I deal with conflicting codes all the time. I've got the AFCE code, I've got the International Building Code, I've got fire codes, I've got steel codes, I've got concrete codes, and they don't always agree and they rely upon judgment and analysis to do it. In my opinion, the fire marshal is simply looking at a table taking the absolute most conservative approach and saying we're done. Well, if we look here, this is Appendix B out of the 2006 International Fire Code I highlighted up at the very top, this is not mandatory, so we understand that, if you go down to Section B103 says that **'the fire chief is authorized to reduce the fire-flow requirements . . . for a groups of buildings in rural areas or small communities'** and that was one of the issues; we think we're being viewed as downtown Garland or Brigham, but we are, in our definition, I think without a stretch, a small community, so I think we fit this definition, **'where the development of full fire-flow requirements is impractical.'** Then if you drop down to 103.3 it says that **'the fire code official is authorized to utilize NFPA 1142.'** Well, this is a NFPA 1142. . . it is a standard on water supplies for suburban and rural fire fighting 2007 edition. **'This edition of the NFPA 1142 was prepared by the Technical Committee on Forest and Rural Fire Fighting Protection.'** Basically they have gone through and said what does it take to fight a fire, how much water do you need, what pressure do you need, what's the science behind picking numbers as opposed to. . . and this goes to what I said about analysis versus just going to a chart and there's a number. If you go over to the next page it says, **'Calculating Minimum Water Supplies, Chapter 4'**; and it says prior to calculating the minimum water supply you need to have the occupancy hazard, type of construction, structure dimensions and exposures, if any. Let's turn to the next page. **'4.1.5, For the purpose of calculating minimum water supply requirement, a structure shall be considered an exposure hazard under the following conditions: (1) it is 100 feet or larger in area and is within 50 feet of another structure.'** That just tells me my barn has to be at least fifty feet away from my house. So then we go down to the Structures Without Exposure Hazards and they give you this little formula which is the minimum water supply is equal to the structure divided by the occupant hazard classification multiplied by the construction classification number. Go to the second column it says, Table 4.6.1 Minimum Capability of Fire Department to Deliver Water. If you'll notice under total water supply required, if when you do this calculation, your number is between 2,500 and 9,999 you can deliver water at 500 gallons per minute. On the next to the last page we come to dwellings 5.2.5 Occupancy Hazard Classification Number 7, so that is what we would use in that equation because dwellings fall within that category. Then **'6.2.2 For dwellings, the maximum construction classification number shall be 1.0.'**" Then on the last page of his handout there were calculations for minimum water supply required for two dwellings, one with a basement and one without. (A copy of Appendix B is attached to these Minutes.)*

Mr. Morrill also said that they would like to have as much fire flow as possible, however, *"our problem, issue, reality at Riverside Farms is, is when they put in the water line from the water tank up above Nish's Pit, it's an eight inch line, that's all we've got. 330 gallons. . . we don't have a problem with the quality of the water it's just being able to get it through an eight inch pipe. Based upon using a balanced fire flow system, meaning if you're fighting a fire down the road I can still turn on my tap and cook dinner. Using a balanced system I can basically have 500 gallons a minute on what's available now. I think we meet the NFAP standard which is referenced in the 2006 International Fire Code, and with the analysis, I think we meet it. And so that is why we would like to present to you. . .*

where the fire marshal is saying we need 1800 gallons with no analysis, we can present a solid analysis with backup from an established code that says we can do it with 500 gallons a minute.”

Andy Pommier responded saying , “OK, first question on your calculations, so we will restrict all home to be single level? What I’m saying is one story with a basement. No two story homes. That’s what I’m saying. . . there will be a . . . something that limits on the thing that says you can’t go any bigger than this size home.” (There would be a note on the Mylar stating the size of home that could be built.)

Scott Morrill, “If I went beyond that, then I would look at this NFAP and say, well it kicks me up into needing to deliver water at a rate greater than I can get it.”

Andy Pommier, “And the only reason I’m asking that is because we used Stevenson’s Farms as a model and that’s where we came up with homes over 10,000 square feet fire area. . . that’s why we got the numbers. . . we took it from . . . what you guys told us to go to. We went back to the old prints and they are bigger than this and that’s why we came up with our number, because they told us to base it on. . . based on the square footage that they told us [these guys] (the developers) to use as a model”.

Scott Morrill, “. . .well, the difference gets to be whether or not there’s a requirement to sprinkle these homes without any threshold. . .”

Andy Pommier, “. . .well, that’s what I’m saying; if we’re going to limit it, fine, then we can limit it down and then that kicks them down on my numbers too and puts them into a different level. The one issue I have with this is he’s picking out modifications out of the appendix chapter which is not adopted. What I’m saying is the reason is not mandatory, is because it’s not adopted by ordinance. I can only live by the modifications that are stated in the body of the. . .”

Scott Morrill, “. . . actually it doesn’t say that. It says, ‘**the provisions contained in this appendix are not mandatory**’ . . . , ‘ doesn’t mean that they’re not part of the code . . .”

Andy Pommier, . . .but what I’m saying is I have to go by the part of the body of the code that talks about modification, and when you read that. . .”

Scott Morrill, “. . . I don’t read it that way. You can still use it, it’s just not mandatory that you use it.”

Andy Pommier, “. . . but I am mandatory to use this one. Because it’s in the body of the code . . .”

Scott Morrill, “. . . then the code’s got conflicting language within itself.”

Andy Pommier, . . .”and when there’s conflicting language then the most restrictive applies. So I’m just going with the body of the code that goes ahead and says, yes, you can grant modifications with the intent and purpose of this Code . . . I’ll read the whole thing.

‘Whenever there are practical difficulties involved in carrying out the provisions of this code, the fire code official shall have the authority to grant modifications for individual cases, provided the fire code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the files of the department of fire prevention.’

“That’s what I have to stick with. So, essentially what it’s telling me is if I’m going to grant a modification I’ve got to have tit for tat, so that I’m not lessening the requirement that it gave me, I can say, OK this is what the requirement is if you want to do this, I can see where it will balance out and we can grant that modification; that’s how I read it.”

Scott Morrill, “Andy, where did they come up with the numbers that you’re picking?”

Andy Pommier, “We picked out the numbers out of the appendix chapter . . . and the reason we did . . .”

Scott Morrill, “Is that a non-adopted appendix chapter?”

Andy Pommier, “. . .yes, and the reason we did is an approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed within its jurisdiction. . .oh wait a minute. . .fire flow requirements for building or portions of buildings and facilities shall be determined by an approved method. So what method we approved. . .we went to our chapter. . .now if somebody wants to come in with another design method, we’ll look at that. The problem with his modification thing is I read too, is

that it says too, NFPA 1142, and he picked that one, or the International Wildland-Urban Interface Code. Well we've adopted the Wildland-Urban Interface Code. We haven't adopted NFPA 1142.

Scott Morrill, "But it says that you are authorized . . ."

Andy Pommier, ". . . and I'm authorized; that's just it, I'm authorized to use either or, quite honestly I prefer to use the one the County has already adopted, so I went to the Wildland-Urban Interface Code and when I read it, it specifically talks on applicability **'402.1 Subdivision shall comply with Sections 402-1.1 and 402.1.2'** and that's where it talks about access and water supply and when you go down to water supply it says that we have to have a minimum of 1000 gallons per minute per single family dwelling. That's where I'm coming up with my thing. So I can bring it down to a thousand gallons a minute, but they're telling me that they can't get a thousand gallons a minute."

Scott Morrill, "Will you accept an analysis other than that. . . I don't know how they get to . . ."

Andy Pommier, "I would if you're going to restrict the size of the home I would accept that analysis. But that needs to be put on the plat that no home bigger than this can be built there. And how you determine that size."

Scott Morrill, ". . . well, that's what Andy and I . . . we can restrict the size to the volume that keeps you under the 9,999 or you must sprinkle."

Andy Pommier, "See, and that's just it. We're not trying to say you will sprinkle I'm just backing up and saying that is a modification that we would accept."

Commissioner David Tea then said, "here's my opinion. I'm not a water specialist. We leave that up to Andy, I would say that if Andy and these gentlemen can come to an agreement, and Andy makes a recommendation, then I'll agree with this, then I'm prepared to make a motion; until then I'm not going to sit here and run the calculations cause I rely on our experts for that."

There was some further discussion regarding the size of the water pipe and what could be delivered by that system. However **Mr. Morrill** pointed out that a variance could be based on the problem with the land and not with the issue of the amount of water that could be delivered. Clarification was also given that the County has adopted the *International Fire Code* and also the *International Wildland-Urban Interface Code*, but not the appendix chapter; however **Mr. Pommier** said that the appendix chapter is used for advisory purposes. No agreement could be reached regarding the petitioner's request for a variance at this time as **Mr. Morrill** said [again] that there was no way for them to meet the ½ of the diagonal distance with the layout of the land with the boundary restriction as were mentioned earlier (that of the canal and the river) so he felt that there was a huge topography issue involved here. **Mr. Pommier** agreed with that but also said that with the option of having sprinklers then the need for the second access would go away. Again, **Commissioner David Tea** said that he was not comfortable going against the recommendations of the county fire marshal, and that recommendation was that due to the proposed number of lots in this subdivision a second access into the subdivision from another direction was needed to alleviate the potential problem of a bottleneck occurring. And if you cannot meet what the code requires regarding that second access then the option of having the buildings sprinkled is available. **Mr. Morrill** then asked that in the future, would any subdivision that could not meet the ½ of the diagonal distance be required to have sprinklers installed in those homes and **Mr. Pommier** said that would again be his recommendation. **Commissioner David Tea** said that his interpretation of a variance was based on the fact that there was no other option available, but with this issue, there was another option available and that was to install sprinklers.

However, **Mr. Morrill** said that the ordinance says that **"any variance shall be based on a problem with the land . . . not a problem with the water pressure, not a problem with the recommendation, but based on an issue with the land."** And that was the issue that this petitioner was having. They were offering a second access, it just cannot be the ½ the diagonal distance. He also said that in regards to their proposed second access, a scenario could be proposed that would make it so that no access would work; therefore, why continue to come up with reasons why their second access

wouldn't work. They were still meeting the intent of providing for that second access just not at the ½ of the diagonal distance. They have to go north to get the second access as they can't get back onto UDOT at any other place. **Mr. Morrill** said that at the meeting they had attended, they thought that everything was agreed to and then things were changed when **Mr. Pommier** came and told them about the thirty (30) lot limit the triggered the necessity of having a second access, but it is not part of the [adopted] code. It is in the un-adopted part of the code but is being recommended.

To that **Mr. Pommier** responded and said that at that meeting, he did not have all of the information and it was after that meeting that he was able to do his review, not prior to the meeting. He was never presented with the NFPA 1142 showing the alternative way until at this meeting.

Scott Morrill, "Let me ask the Planning. . .does it matter that Andy is basing his requirement on an un-adopted part of the code that's not mandatory? Does that matter to anybody?"

Andy Pommier, "Well, if you want to get into semantics; who does the final approval . . . but I would accept it. NFPA is a recognized standard and I would . . ."

Scott Morrill, . . ."but we've jump off topic. The requirement to go to the second access only happens once you go beyond thirty. We go beyond thirty, but that scenario or that definition is in an un-adopted part of the code. In other words, if you have adopted, thirty doesn't matter. So you don't need a second because thirty doesn't exist because it's in the un-adopted. . . So my question is, does it matter that we're giving a thirty threshold, a bright line that we can't go across, because we go to thirty, therefore we need the second access in an un-adopted part of the code? If we're saying we're not going to use the adopted part of the code, then we don't need that second access. 'Cause it's not there."

Andy Pommier, "Like I said, all I'm giving you is a recommendation. I'm saying there's a problem that I see and going into the code and looking at it, they've given me some numbers that says at thirty. . ."

Scott Morrill, "When you say thirty, what part of the code?"

Andy Pommier, "The un-adopted, in the appendix chapter of the code . . ."

Scott Morrill, "The un-adopted part."

Andy Pommier, ". . . the un-adopted part, when I go in there to get some advice it says that good practice will tell you, you better watch out when you get above thirty you're going to need that second exit or second access."

Mr. Morrill then asked about the date of the application which was two year ago and what code were they being held to as far as requirements. Do they have to go with the code that is in place at the time they submit their final application? He then asked if perhaps was this a variance to an ordinance and if so, which ordinance were they being held to, as this came out of a letter based on a review by the fire marshal. Where was the recommendation from a fire marshal on the same gravity as a county ordinance? Do they even need a variance request?

Staff responded saying that approval for a one or two lot subdivision was different from that of a larger subdivision; however, there are different review processes for each level of approval [concept/preliminary/final] with large subdivisions. Certain items are addressed at each level of the review process and letters are received from the various [review] agencies at each level. So until it is completed and approval given by the County Commission "nothing is set in stone".

Mr. Morrill, "So back to my question, does a letter of recommendation rise to the level of an ordinance, therefore requiring a variance? Doesn't sound like it."

Staff said that by going through all of the review processes it helps to alleviate potential problems that might arise once a subdivision has been given final approval. "However, the County Commission gets to make the final decision. We are all advisory to the County Commission."

Mr. Morrill said that it felt like the fire marshal had the final trump card in the process. Further, he still wasn't sure if the second access was an issue for requiring a variance and was still unsure of the answer.

Commissioner Chad Munns suggested that the issue be looked into further to determine if a variance request such as this with reference to the un-adopted part of the code, it left the Commission with

questions as to what action should be taken. Was this really an issue? Staff agreed and said that they would look into it and write up a history to determine how things came about with this request and present it to the Planning Commission.

Mr. Morrill, "I filed it, let me tell you so just that you know, we had our meeting with Andy and Greg Martz and did not have an agreement and they said, listen, we are just advisor, go ahead and take it to planning. . . then I went from there and I talked to Tamara and I said what's our next step. We can't seem to get a . . . agreement. She said you can take it back to Planning as unfinished business [Kevin and Tamara] . . . bring it back as unfinished business, ask to do a variance request and that's how it will be put on the agenda. We had no special knowledge of how these things worked, other than how do we get back in front of planning in order to do this. To get it resolved. So we thought if variance is the avenue, fine. If variance is not the avenue and it's just unfinished business based upon recommendations in our position then fine."

At the conclusion of the discussion, Staff recommended that the petitioners propose what it is that they want for the final and it will be reviewed by Staff and other agencies and then bring it back to the Planning Commission for their final review and at that point if things have not been resolved enough with the fire department then that is fine and it will just be looked at that meeting. No decision could be made at this meeting as much of the discussion had centered around the unadopted part of the code.

MOTION: A Motion was made by **Commissioner Chad Munns** to Table this issue regarding a variance for the Riverside Farms Subdivision, seconded by **Commissioner Desiray Larsen** and passed unanimously.

NEW BUSINESS

CHANGES TO ARTICLE 6, SUBDIVISIONS OF THE BEDLUM&DC. SECTIONS: 6-1-030, 050, 060, 120, 130, 140, 160, 170, 200, 220, 230, 240, AND 250. THE PROPOSED CHANGES WILL IMPLEMENT RECOMMENDATIONS FROM THE COUNTY ENGINEER, COUNTY ROAD DEPARTMENT AND COUNTY FIRE MARSHALL FOR BEST ENGINEERED PRACTICES WITH SUBDIVISION REQUIREMENTS.

Administrative Approval For Subdivisions With Less Than Two Lots On An Existing County Road That Does Not Require Improvements.

MOTION: A Motion was made by **Commissioner Chad Munns** to Table action on the Changes to Article 6, Subdivisions. Motion seconded by **Commissioner Desiray Larsen** and passed unanimously.

RASMUSSEN 1-LOT SUBDIVISION (WITH REMAINDER PARCEL), SS08-022; LOCATED AT APPROXIMATELY 1949 NORTH 6400 WEST IN THE WEST CORINNE AREA.

Staff explained that this petitioner was requesting concept, preliminary and final approval at this time in order to subdivide an existing home from their 55 acre lot creating a two acre lot with the home. This petition had been given approval on October 16, 2008 but due to a death in the family had not been recorded in a timely manner. As this is an existing home, utilities have been established and a letter from the health department has been received. Approval was then recommended.

MOTION: A Motion was made by **Commissioner Chad Munns** to grant Concept/Preliminary/Final approval for the Rasmussen 1-Lot Subdivision with the

conditions as outlined by Staff. Motion was seconded by **Commissioner David Tea** and passed unanimously.

Conditions for Approval:

1. Conditions, requirements and recommendations of culinary water provider: Where no culinary water system is available the letter shall come from the state or local agency having jurisdiction to approve the new well or water system. The developer is required to comply with all the requirements and recommendations of the culinary water provider and/or state/local approving authority prior to the recording of the subdivision, unless a financial guarantee to cover the costs of installing the required and recommended improvements has been approved by the County Commission.
2. Conditions, requirements and recommendations of wastewater treatment provider: Where no wastewater treatment system is available the letter shall come from the state or local agency having jurisdiction to approve the new wastewater treatment system. The developer is required to comply with all the requirements and recommendations of the wastewater treatment provider and/or state/local approving authority prior to the recording of the subdivision, unless a financial guarantee to cover the costs of the required and recommended improvements has been approved by the County Commission.
 - a. Approval of the septic system is not approved as of 2/17/2010.
 - b. Applicant must do the following items for BRHD approval:
 - i. assess the treatment capacity of the existing system
 - ii. Apply for an alteration permit from the health department if adjustments to treatment capacity are needed to treat both black and gray water.
 - iii. Redirect gray water from the home into the septic system for treatment
 - iv. Have the septic tank pumped by a certified wastewater pumper if it has not been pumped in the last five years.
3. Conditions, requirements and recommendations of Box Elder County Fire Marshal: The developer is required to comply with all the requirements and recommendations of the county fire marshal prior to the recording of the subdivision, unless a financial guarantee to cover the costs of installing the required and recommended improvements has been approved by the County Commission. **The developer must have the fire department send the County Planner a letter specifying their recommendations and requirements have been met.**
4. Conditions, requirements and recommendations of the County's Engineer: The developer is required to comply with all the requirements and recommendations of the county's engineer prior to the recording of the subdivision, unless a financial guarantee to cover the costs of installing the required and recommended improvements has been approved by the County Commission. **The developer must have the County Engineer send the County Planner a letter specifying their recommendations and requirements have been met.**
5. Conditions, requirements and recommendations of the County Building Department: The developer is required to comply with all the requirements and recommendations of the county building department prior to the recording of the subdivision. **The developer must have the building department send the County Planner a letter specifying their recommendations and requirements have been met.**
6. Conditions, requirements and recommendations of the County Road Department: The developer is required to comply with all the requirements and recommendations of the county road department prior to the recording of the subdivision. **The developer must have the road department send the County Planner a letter specifying their recommendations and requirements have been met.**
7. Rural road/road improvement agreement.
8. Compliance with all state and county subdivision regulations for which a specific variance has not been granted.
9. Financial guarantee for all required improvements not installed prior to recording of the subdivision.

WORKING REPORTS

PLANNING COMMISSIONERS TERMS EXPIRE: CHAD MUNNS – MARCH 2010; LAURIE MUNNS – APRIL 2010; JAY CHRISTENSEN – APRIL 2010. REAPPOINTMENT BY COUNTY COMMISSIONERS.

Commissioner Chad Munns and Commissioner Laurie Munns both indicated that they would like to be reappointed to serve for another three year term on the Box Elder County Planning Commission. Commissioner Chad Munns appointment will be from March 2010 to March 2013; Commissioner Laurie Munns from April 2010 to April 2013. Reappointment is by the County Commissioners. Commissioner Jay Christensen was not present at this meeting and the matter will be placed on the Planning Commission agenda for March 2010.

FOLLOW-UP ON WORK SESSION REGARDING WIND TURBINES IN BOX ELDER COUNTY.

Staff said that they have been working on a draft ordinance for wind turbines in the County. The commissioners were each given a copy of the ordinance and asked to review it before the work session that was scheduled for Tuesday, March 9, 2010. The wind turbine ordinance and the subdivision ordinance will both be reviewed at that time.

PUBLIC COMMENTS – NONE

A **Motion** was made to adjourn at 9:15 p.m., unanimous.

Passed and adopted in regular session this 18th day of March 2010.

Richard Day, Chairman
Box Elder County
Planning Commission