

SUMMARY MINUTES
GEM COUNTY ZONING COMMISSION
GEM COUNTY COURTHOUSE
SEPTEMBER 14, 2009

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NOTE: AN AUDIO RECORDING OF THE FULL PROCEEDINGS IS AVAILABLE THROUGH THE DEVELOPMENT SERVICES DEPARTMENT.

MEMBERS PRESENT: Dale Reynolds, Don Wilkerson and Reisse Perin.

MEMBERS ABSENT WITH PRIOR NOTICE: Kirk Darnell and Fran Yett.

OTHERS PRESENT: Planning Director/Administrator - Brad Hawkins-Clark, Development Services Coordinator- Jennifer Kharrl and Deputy Prosecuting Attorney- Tim McNeese.

Chairman Reynolds opened the public hearing at 6:58:30 p.m. and welcomed everyone, then explained the public hearing process.

CONSENT AGENDA

1. APPROVAL OF THE MINUTES OF AUGUST 10, 2009:

Don Wilkerson made a motion to approve the minutes as submitted.

Reisse Perin seconded the motion.

Vote: Unanimous.

PUBLIC HEARING

1. A Special Use Permit (#SUP-09-004) request by Jeremy and Tina Myers to allow the operation of an auto repair and restoration shop from their residence. Located at 7425 Mustang Lane in T 06N, R 02W, Section 18:

Applicant/Representative Testimony:

Jeremy Myers – 7425 Mustang Lane.

Stated the reason for the request is to take care of the cars that are currently on the property. He stated that the Code Enforcement Officer came to see him and told him to apply for a Special Use Permit. There is a 6-foot fence that most of the cars are behind, but a few were visible. The request is for car repair and old car restoration. He stated that they mostly do sheet metal work and they are not a dismantler. Currently there are approximately 30 cars on the site and 50 % are operable and the market right now is making it tough to sell these quickly.

Staff Review: Brad Hawkins-Clark reviewed site photos and parcel maps on the power point presentation and discussed the staff report with the Commission.

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Public Testimony:

In Favor: None.

In Opposition: None.

Neutral: None.

Chairman Reynolds closed the public portion of the hearing.

Discussion by the Commission. The Commission discussed the Special Use Permit standards and site specific conditions of approval recommended by staff and raised concerns about the number of vehicles, storing of petroleum products, fencing, literal interpretation of the wrecking yard, reducing the number of vehicles and code enforcement of the property.

Chairman Reynolds re-opened the public portion of the hearing.

Jeremy Myers- Stated that he spoke with the Code Enforcement Officer about getting all the vehicles behind the fence. These vehicles are his livelihood and his only source of income. His goal is to get all the vehicles behind the fence except for the ones currently being worked on. The plan is to sell all the cars, but the market isn't good right now to sell the older cars.

Chairman Reynolds closed the public portion of the hearing.

Don Wilkerson made a motion to approve Special Use Permit #SUP-09-004 as it meets the standards as outlined in Chapter 7; Section 7-3 of the Gem County Zoning Ordinance with the site specific conditions of approval recommended in the staff report with the addition of the following:

- Add to item H of the staff report to have the Code Enforcement Officer inspect the property every six months for the first year to make sure the applicant is making progress and is in compliance with all the conditions.
- A minimum 6-foot high solid fence (wood, metal or chain link fence with slats) shall be built from the southwest boundary of the house to the west edge of the driveway to the corner of the existing fence at the shop in order to screen the vehicles from the cemetery. This fence shall be completed within one (1) year of the application approval date.
- The number of vehicles stored outside the shop shall be reduced to no more than 15 within one (1) year of the application approval date.

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Reisse Perin seconded the motion.
Vote: Unanimous.

2. A Special Use Permit (#SUP-09-007) request by Shawn Nickel to allow extraction of gravel on property owned by Anthony Loucks. Located at 1811 W Sales Yard Road in T 06N, R 02W, Section 25 & 26:

Applicant/Representative Testimony:

Shawn Nickel – Representative for Tony Loucks.

The request is for a gravel pit extraction operation on 162 acres located at 1811 Sales Yard Road which includes a rock crusher, concrete plant and asphalt plant. Staff indicated in the staff report that the Board of County Commissioners have not yet approved and recorded the zoning matrix amendment that would allow the asphalt and concrete plant. So, the staff report has two options - one is to postpone this meeting until the Board approves that amendment and the other is to withdraw that portion of our application. We would like to move forward tonight and withdraw that portion, but we'd like to keep it in the conversation and the testimony about the concrete and asphalt plant so if we do get approval we can keep the comments in mind and wouldn't be wasting everyone's time to come back and ask for approval of those uses when they are allowed (in the new ordinance).

Another issue that came up with staff's review is regarding the access and we will work with staff and the attorney to get those issues resolved and we understand that the application will be continued to get those issues resolved and we would like to move forward keeping that in mind.

The site plan shows the proposed uses, which will have four phases of the mining. The first phase is about 1-mile south of Sales Yard Road. The four pits that we are proposing will be approximately 30-feet deep with a 2:1 slope. We estimate a maximum of four to five truck trips per hour when the pit is operated at its maximum. The Road and Bridge Department has estimated the road impact fee based on the four to five truck trips per hour. There are existing gravel pits immediately north and to the east and an approved gravel pit immediately to the west of this property.

As the mining occurs, we plan to create recreational uses and are open to suggestions as how to reclaim the property. We will submit a reclamation plan to staff and the Idaho Department of Lands and we understand that we will have to bond for the reclamation of the site. The site plan shows that the south portion of the property below the lower ditch is being left out of the mining proposal to help be a buffer to the properties to the south. We are in agreement with all the conditions of approval including providing an all-weather driveway per the Fire District's standards and we will work with the Fire District to obtain their approval before operation of the pit can begin. We agree with the maintenance permit with the Road Department and the Idaho Department of Lands

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permit as it relates to groundwater. Staff is proposing that the hours of operation be 7:00 am to 7:00 pm Monday through Friday and we would like to also propose Saturday from 7:00 am to 1:00 pm and only allowing loading and operation of the scales. The rock crusher will be moved in phases to allow for additional buffering. The roads will be watered daily to keep the dust down and a safety fence will be built around all the pits.

Don Wilkerson- The staff report mentions that from Sales Yard Road to the property is approximately 1,250 feet with a 20-foot legal easement and also mentioned is that the road width varies from 13-feet to 18-feet. Does that leave the ability to pass when there are two trucks on that ¼ mile road?

Shawn Nickel- That concern was brought up by one of the neighbors at the neighborhood meeting and the road does vary in width and we plan on working with the Fire District to get approval of some turnouts if possible so vehicles have an area to pull over.

Don Wilkerson - Have you looked into any alternate access through the existing gravel pits?

Shawn Nickel- We have not looked into any other access at this point.

Don Wilkerson- Are you aware that the bridge across the drain will have to be rebuilt or reconstructed?

Shawn Nickel- We will work with the appropriate agencies to ensure that the bridge is adequate over the drain ditch.

Don Wilkerson –The staff report mentions that the proposed sign for the gravel extraction is not permitted as an off-premise sign. Also mentioned is that the fueling and servicing of the trucks will be off-site. Is that going to be hard to do?

Shawn Nickel- We are aware now that the sign is not allowed so we are withdrawing that request. The fueling and servicing is something that needs to be discussed because most of the machines will need to be serviced on-site.

Reisse Perin- Are any new structures being proposed?

Shawn Nickel- The existing house will become a caretaker's unit for the operation and there will be a temporary office for the scales. If the concrete plant is approved there will be a washing area and a storage bin for the cement.

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Reisse Perin – With the easement, are you going to have the opportunity to build a 20-foot road or not?

Shawn Nickel- Right now, we are going to work with the Fire District to see what they want for the surface and the width and if they will allow for turnouts along the road. If they want 20-feet the entire road then we will have to pipe one of those ditches.

Reisse Perin – My concern is that 20-feet is not that wide when you consider a pick-up load of gravel and a concrete truck passing at the same time.

Shawn Nickel- We need to work with staff on the easement issue because some of our documents show we have a 25-foot easement and some show we have a 20-foot easement. We will address that issue when we know exactly how wide the easement is.

Reisse Perin – The proposed ponds are going to be 30-feet deep with a 2:1 slope?

Shawn Nickel- That is what we are estimating. A lot of it will be determined by what we come away with from this meeting, including meeting the buffers and setbacks. Right now there are a lot of unknowns on how big the ponds will be. The site plan shows the maximum depth that the pond could be.

Reisse Perin – Once the pit is developed and completed, will it be allowed to be filled with water? How would the fencing provision work at that time?

Shawn Nickel- Yes, it will be filled with water. We haven't given much thought as far as the permanent fencing.

Reisse Perin – I am thinking of the safety aspect of a 30-foot deep pond with animals and children around.

Shawn Nickel- I imagine we would want conditions that would address the fencing around the completed pond and that it would be a part of the reclamation plan. We are in favor of working out that issue.

Reisse Perin – Once the water is there, what do plan on doing about mosquito abatement?

Shawn Nickel- It is my understanding that there are a lot of mosquitoes out there now because of the farmland and they are spraying it currently. With proper management of the pits and the deeper the pits are and once there are fish in the ponds and possibly aerating the pond will help with the mosquito abatement. We will commit to work with the Mosquito Abatement Department to make sure all measures are being met.

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Don Wilkerson – Once the pits are mined, is the intent to create residential uses?

Shawn Nickel- That is one option we have considered. We have also considered some recreational uses after working with staff, it sounds like because of the zoning and possibly the need for more recreational uses, it seems that they would be more beneficial to the community than a residential development. We are definitely open for other options.

Staff Review: Brad Hawkins-Clark reviewed the site photos on the power point presentation, staff report and the recommended conditions of approval with the Commission.

Brad Hawkins-Clark- Historically, Gem County has taken the position that if you have an existing easement and you are going to increase the use and intensity of that easement, then you need to get the permission of the grantor of that easement. The Prosecuting Attorney's Office may advise us differently because of the language of the actual easement. When you leave Sales Yard Road, this easement crosses three properties. Typically we ask that the applicant ask those property owners if they can increase their use of the easement from agriculture/residential use to an industrial use. If you could give us time to work this out with the Attorney it would be appreciated. The expansion of that width to 25-feet and beyond would require them to obtain more width. This is an important issue to figure out before you make any conclusion on the application. Another main concern was the large drain that goes across the north portion of the property and whether or not it is equipped to handle the proposed industrial traffic. The staff report recommends continuing the hearing tonight for the following reasons: clearing up the easement issue, the required findings about compatibility need to be found in the affirmative, the Gem County Drain crossing and we recommend that the applicant contact the Fire District and Drainage District.

Public Testimony:

In Favor: None.

In Opposition:

George Schenk – 1823 West Sales Yard Road.

I have the 20-acre parcel that you can see on the map that accesses the subject easement. I brought some photos I would like to show you of that road. Based on their number of 4 to 5 trips per hour, that would be about 100 trips down this road in a 10-hour day. When I tried to add another house to my property for my mother-in-law about four years ago I was told by Planning and Zoning that this road could not handle any additional traffic. I

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am concerned with my property value because I have a gravel pit in the front of me and to the side of me, and if you approve this it would make my property an island and absolutely un-sellable. I am concerned with the safety factor of the road, there are kids that go up and down that road to go to school, we ride horses up and down that road and it won't be safe to have semi trucks flying up and down that road. Where is the groundwater going to go once they start digging the pits? Are they going to pump it into the ditch like City Transfer does? Those ditches are already at capacity. I have to clean the culverts at least every other day so the water doesn't back up onto my driveway, they cannot handle any more water. What is this going to do to our wells? The smell of an asphalt plant is not pleasant. A 30-foot berm of weeds will affect my view. They still haven't said what they are going to with these giant pits when they are done with them. I think this is a very poor idea and it will ruin everything for me, I have my life savings into my 20-acre parcel and this will make it useless.

Ramona Sloan- 1714 West South Slope Road.

My concern is the environmental impact it would have and I don't know what this will do to the wells in the area. I have lived near a gravel pit before and the noise was very disturbing to me. I moved here for some quiet. As it is now, I can hear the trucks beeping at the Idaho Sand and Gravel from my home and that really bothers me. Another concern is the trucks tearing up the roads, are the taxpayers going to have to pay for the repairs? The gravel pit I used to live across from had rows of tall fir trees and berms and it did not help the noise at all. If these trucks are going to travel over the hill, it will increase how dangerous that highway is with a 65-mile an hour speed limit.

Shirley Brown – 1842 West South Slope Road.

I live directly behind where phase 1 is going to start. My first issue is health issues. We have allergies and acute sinus problems and we get plenty of dust from the existing gravel pits. The noise and smell from the asphalt and the exhaust from the trucks are a concern of mine along with mosquitoes. Water quality because we had to have our well replaced in July and we only have 12-feet of water now, I wonder if our well will dry up when he digs these four big holes and if we will be drinking his excess run-off water. The other issue is what will happen to our property value. The applicant mentioned that the southern portion of the property that is being left out of the property might be for recreational uses, is the access to that area going to be through the gravel pits and his operation?

Bob Payne – 3976 Ranch Road.

My property borders this property (to the south). I feel the same way George does. This will impact me and my property greatly. I submitted a petition of opposition for this application. I am concerned with the noise and dust and the quality of my well. That berm will be 30-feet off of my back door. This will destroy my property value. Nobody wants to buy a house next to a gravel pit. I think this should be settled tonight instead of

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stalling. There is no proposed plan to restore this property and there is no proposed amount of time this will take. This isn't going to benefit Emmett because the gravel will probably be sold to Boise and the drivers will probably come from Boise also. We all love where we live and we have a great community out there and a fantastic view. I would appreciate your consideration of our concerns.

Doug Eggers – 1550 West South Slope Road.

Are the letters that were submitted for comments going to be read aloud?

Chairman Reynolds – The letters are part of the record, but we aren't going to read them aloud tonight.

Michaela Schenk – 1823 West Sales Yard Road.

We are one of the families that will be driving up and down that road as 100 trucks a day drive on that road along with the City Transfer trucks. Not to mention, the trucks sitting on Sales Yard Road waiting to get on this road as all the school buses and everyone else is sitting behind them.

Don Wilkerson- Can you tell me what experiences you have had with the Idaho Sand and Gravel trucks?

Michaela Schenk – Not that much even when they are running full force - it is a one-way street. They come and tell us what they are doing and they also put up signs. They are only crossing one section. We are talking about the entire road that we use. I have had to slow down and stop for their trucks before.

John O'Leary – 1622 West South Slope Road.

I own the Country Club Café at the Golf Course and this is going to be near there. The smell of asphalt is not a good thing; they were paving the runway today at the airport and I lost a few customers who didn't want to smell the asphalt. If that smell is running all the time than I might as well shut my doors and this is my livelihood. I would like to know where the applicant lives, because I bet he wouldn't want to live at my house with smell of asphalt all the time. It is very unhealthy and I spoke with the captain of the fire department and he said the toxins that come from asphalt are very bad you. The deer in the orchards will leave and the apples out there are going to taste like asphalt. My way of life will be ruined and I think the lives of a lot of people in Gem County will be ruined. The entire town is going to stink; it's going to be like going over to Nampa. There are probably about 30 kids in our area under the age of 12 and one of the pits is just right over a ditch from my house and my 11 eleven year old could throw a rock from our property and make it to the pit. Kids are curious and even if we tell them not go over there they probably would anyway. Those kids will be playing in that thing even if there is a fence around it - boys will be boys.

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Neutral:

Doyle Fackler – Gem County Drainage District #1.

I do have concerns with the crossing of the ditch and where the water is going to end up. Before the Drainage District can approve this we will need to see how much water will be flowing into it and what they plan on doing with it. We would like to see a sediment pond so that the sand they pump out won't end up in the drain ditch. The drain ditch is only designed to handle so much water and any extra water is going to increase it that much more since we have three other gravel pits right there. These drain ditches are pretty darn close to 100% capacity right now and adding these gravel pits would increase that drastically. I believe the culvert definitely needs to be replaced to handle the heavy truck traffic.

Applicant Rebuttal:

Shawn Nickel- A lot of the questions will have be addressed when we come back, specifically regards to working with the ditch company and the Fire District as far as determining how we are going to do the road. I will address some of the questions that came up from the neighbors in no particular order.

We do understand that we will probably have to replace the culvert before operation can begin.

With regards to safety, that is definitely a concern for everyone and we can definitely provide fencing to help keep children out. This plan was drawn up and submitted prior to receiving input from the neighbors and there is room to modify some of the boundaries and increase some of the buffers if needed. Specifically, Mr. Payne's property being so close to the south boundary we can add an additional buffer area to provide a little more distance since he is probably the most affected going by distance. Staff wanted us to discuss how to condition this use to make it compatible and less detrimental to the public. The hours of operation will help, and it's up to you to decide whether or not we can operate on Saturdays and these are some of the things that will be reviewed annually. So if we do get approval, it doesn't mean that we get to go wild. We will be scrutinized. A lot of the older gravel pits don't have any conditions of approval. There are requirements from DEQ that will prevent us from putting toxins into the air. All of those are part of the conditions of approval that we agree upon.

The concerns about the trucks speeding, we can put up signs and make that a safe intersection. We can put restrictions in place for the gravel trucks. As far as the impacts to the roads, we agree to pay a yearly fee to maintain the roads so the taxpayers won't have to. To sum up our request, we are asking for a gravel pit extraction operation, rock

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crusher, temporary office, scales and caretaker's unit. There will be no retail sales on the property.

Reisse Perin- What is your best estimate, based on the volumes, that this project will be completed?

Shawn Nickel- A lot of it will have to do with the market, economy and the need for gravel. If a big project comes along then it will be depleted rather quickly or if it's staggered residential or roadway improvements here and there it will take longer. That is one of the reasons for doing this in phases because they are small enough at this time to allow for de-watering within in a reasonable amount so we wouldn't be depleting the groundwater per se. There won't be one giant pit that will take thirty years to deplete. We are not proposing a time frame at this point, so I can't tell you exactly how long the operation will last for the four phases. The plan is to have one pit and one crusher at a time and once that one is depleted then move on to the next pit.

Don Wilkerson – Would you be willing to change your sequence of phases to help the effects on the neighboring properties?

Shawn Nickel-We could definitely look into that. We are flexible for that and for the additional buffering. Specific to the neighbors that have the concerns, we are definitely flexible to what we can do to try to help the neighbors.

Chairman Reynolds- Do you know who the grantor of the access easement is?

Shawn Nickel-I went through a lot of paperwork back to 1961. Our Attorney advised us that this is not a perpetual easement but an outright easement. I don't know if our Attorney is going to have to talk to the County Attorney to work it out or not, there may be a case law out there. From what I found in my research it goes back two or three hands. As far as dust, smell and exhaust those are things we will have to monitor. DEQ has standards for fugitive dust that will have to be maintained and staff has added some conditions about watering the road. The access road will have some sort of dust control also.

Don Wilkerson – You mentioned landscaping berms for buffering and maybe a quality fence could be an option and that wouldn't have to be maintained like trees and grass.

Shawn Nickel- That is something we can look into. To elaborate on that, the two properties that will be mostly affected is Mr. Schenk and Mr. Payne's and we will do some additional buffering or fencing for those.

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Tim McNeese- I wanted to talk about the road easement access that I have seen. The applicant is interested in meeting with staff and fire officials to determine what an acceptable width of the road would be for the easement and the number of and width of the turnouts to ensure public safety. For these reasons, I would ask that you add a condition that requires the applicant to have contact with applicable public safety officials and fire authorities to determine that information. Normally we don't get involved in civil disputes between parties regarding legal issues such as the applicability of the easement. The legal issue here is the expansion of the easement and case law says that there are a couple of ways that the easement can be lawfully expanded. One of those ways is through increased use and the other is increased width. Whether it was intended when the easement was first granted that somebody may want to use it other than for agricultural access is a legal issue and I have researched case law on that and found it is a matter of law for the courts to decide. It's not our prerogative to determine today whether or not there is going to be an expansion of the easement but it is our concern, and I can refer to case law if need be, that would justify your authority to require the applicant to contact the holders of these easements and verify that they have adequate access over the easements in an amount and width and conditions that would ensure public safety. Otherwise, it could constitute an impermissible expansion of the easement. If you are interested in imposing condition of approval 9.b., I would like you to add a comma after the word nature and add "frequency of use and width". So staff would be recommending that the applicant provide written consent from the three property owner's for expanding the nature, frequency of use and width of the ingress/egress easement.

Brad Hawkins-Clark- I think the first decision that should be made is if this use is appropriate – period - forgetting the easement and the technical and mechanical stuff which is important for the hearing but generally on land use matters where they are requesting a specific use of the property, the question is whether or not the proposed use is appropriate. Staff recommends that you look at this as a hierarchy and first decide if the use is appropriate. I'm just pointing it out for you, the applicant, and the public that if you are leaning towards not allowing the use then a lot of this stuff goes away. If you are leaning to allow the use with conditions then the other things are appropriate. I offer that to help you organize your conversation and deliberation so that you are not deliberating things that didn't matter if your intent is to allow the use to begin with.

Chairman Reynolds Made a motion to continue the hearing until Tuesday, October 13 for Special Use Permit #SUP-09-007 based on the information that we are lacking such as the future of the ponds, to hear from the Fire District for the road use, public safety and drainage.

Don Wilkerson – I agree with Chairman Reynolds and I need more time to think about this application. I would like the applicant to come to the next meeting with a letter of

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agreement in hand from the Fire District and also a letter of agreement from Gem County Drainage. I would like to see that staff confer with Kim Reed from the Road and Bridge Department that if this gets approved and there is that much truck usage on Sales Yard Road, maybe that driveway section needs to be beefed up to handle the additional load so it doesn't get broke down.

Don Wilkerson seconded the motion.

Vote: Unanimous.

REGULAR MEETING

1. ITEMS FROM THE PUBLIC: None.

2. ITEMS FROM THE PLANNING DIRECTOR/ADMINISTRATOR:

a. Update on Ordinance Amendments:

Brad Hawkins-Clark stated that the Board of County Commissioners approved the Zoning and Subdivision Ordinance amendments with the exception of the RV section that they remanded back to the Commission.

3. ITEMS FROM/OR QUESTIONS FOR THE DEPUTY PROSECUTING ATTORNEY: None.

4. ITEMS FROM THE ZONING COMMISSION:

a. Update from CAFO Sub-committee: Chairman Reynolds stated that the CAFO sub-committee met on September 4th for the final time and the CAFO is ready to go before the Zoning Commission for a public hearing on October 13th.

5. ADJOURN:

Reisse Perin made a motion to adjourn.

Don Wilkerson seconded the motion.

Vote: Unanimous.

Chairman Reynolds closed the meeting at 9:50:48 p.m.

Chairman Dale Reynolds