BOARD OF ADJUSTMENTS MINUTES 11 SEPTEMBER 2014

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Present: Hal Olsen, Lee Atwood, Nolan Gunnell, Brooks Tarbet, Tony Baird, Megan Izatt

Start Time: 06:00:00

Atwood welcomed.

06:03:00

Agenda

Adopted with no changes.

#1 Elections

Gunnell *motioned to keep the same chair (Lee Atwood);* ***Tarbet*** *seconded;* ***Passed 4, 0***

#2 Appeal – Cronquist Pole Barn (Shawn Cronquist)

Charles Parson I am the legal counsel for the Cronquist's. We are here on an appeal for the denial of a zoning clearance for a pole barn up Canyon Road in Smithfield. The original zoning clearance was granted back in November 2012 and was good for one year. That expired prior to me requesting an extension and Josh showed us an extension wasn't possible due to the code. We didn't do anything over the winter of 2013-2014. Then in the spring of 2013 an amendment was passed that stated that no site grading could be done on any building lot that was greater than 1,500 cubic yards without a variance. Finally on May 20, 2014 our initial request for an extension was denied in a formal memo. After the denial the Cronquist's filed a second request for a zoning clearance. They started putting in the fire access that was needed. There is probably about 1,000 yards of material to be removed to level that lot. In the pictures you can see the pile on the lot, and that is going to be pushed down to fill in that hole and some of that would need to come out to get the 120 feet needed for the hammer head. The second application was submitted June 3, 2014 and on July 8, 2014 staff denied it again for a couple of reasons. One, because that definition of site grading has been changed to only 1,500 cubic yards and since we've already removed more than that 1,500 yards on the previous application, we can't take more out because of the previous application. We disagree with that for a couple of different reasons. First, to say that a parcel has previously had material removed from it is now subject to a future application when the prior use was legal, it wasn't a conforming use but a legal use at the time under that first zoning clearance when there was no limit on material removed, and secondly that position would put everybody in the valley under that 1,500 limit and they would have to go back and check every parcel's history for removal of material. That doesn't make sense to the applicant.
Secondly, the July 8th notice states that Josh was not the proper authority to submit that zoning clearance to because the Cronquist's did not appeal that first denial in May 2014. Again the applicant doesn't agree with that statement because the code clearly states that if any approval has lapsed beyond its date, which it had here, then it shall be void and any new application would be required to conform with the new ordinance. The applicant has no problem with that, they do not need to take out more than 1,500 cubic yards. The original zoning clearance expired, we don't disagree with staff that they weren't allowed to extend it, but certainly they are within their rights to apply for a new zoning clearance and are willing to comply with the new definition as it is in the code. Staff also stated that they would have to get a mineral extraction permit, but the definition for mineral extraction states that you don't need a permit if it is for excavation of a building site. It seems staff feels like we are trying to get around the code and use this dummy pole barn application for extraction. They just want to level the lot and put their pole barn up. They didn't get it done in 2013 and they tried to extend and that is where we are at.

Gunnell you stated that there was no limit on what could be extracted on the original zoning clearance?

Mr. Parson there is not.

Gunnell yet I have here that it is not to exceed 5,000 cubic yards.

Mr. Parson that was only a discussion not a set limit. After it is all said and done that is probably what it will be total but there was no, and still is not, a requirement for anyone to state how much material they are moving from their property.

Gunnell yes but you have to identify a number in excess of 1,500, do you not?

Mr. Parson the application does not have any requirement for the amount of material that is being removed from the parcel. If you look at exhibit C, there are no requirements for the amount of yards that can come out.

Olsen when was the gravel originally taken out?

Mr. Parson the gravel was taken out from November 20, 2012 to November 20, 2013. The code is actually 7420, and that code does say anything over 1,500 yards on a building site does require a zoning clearance. However, in the application there is nothing that requires the application to state how much material they are removing from their property. That is where we get into an equal protection claim, in that my clients are being held to this 1,500 yard standard and nobody else's application has to state how much they are taking out. Casper's Ice Cream in Richmond is doing a large addition to their property and I don't know if they are taking more than 1,500 yards and nothing in the permit states how much they are taking out. If everybody was being subject to that standard fine but looking at the application it doesn't seem like that is going on.

Gunnell do you know what is a document verifiable request for an extension, it's not just an email?

Mr. Parson correct and we are not arguing that we should have been granted the extension. We are fine with that original clearance denial, but we just want to file a new one and comply with the code as it is written now.

Atwood you are saying there is about 1,500 yards now?

Mr. Parson there is about 1,000 yards, certainly not more than 1,500 yards, to be removed to finish the lot.

Atwood sometimes the other applicants may only be moving material around on the lot and not removing it.

Mr. Parson sure, and that doesn't have to be stated but the point is that the amount being removed is not being asked of anybody else because it's not on the application.

Tarbet how much you are going to move and how much is going to stay there?

Mr. Parson it's going to be less than 1,500 yards.

Gunnell is this near a property line?

Mr. Parson yes.

Gunnell if you take a lot of fill out aren't you going to affect that other piece of property?

Mr. Parson the property line to the west used to have a mineral extraction operation a long time ago and we need to bring this site down to the same level so there isn't a steep drop off. They aren't exactly level but they are pretty close.

Olsen it was mentioned that a bunch was taken out but no one has ever stated how much was actually taken out. Does anybody know?

Mr. Parson Shawn figures it was about 4,000 to 5,000 yards but there is no way to know for sure because we weren't required to keep track.

Atwood Let's hear from staff now.

Harrild when the permit was first issued our concern was for extracting material and that the pole barn was the method to get to the material. With that understanding, we know there needs to be an allowance for somebody to build a pole barn and move material, so the original permit was issued. With that understanding it does specify about 5,000 yards in the permit which referenced the permit when it was submitted. I don't know the amount of material that has been pulled, but they have referenced between 4-5,000 yards. The other concern we had is that there are multiple locations for a pole barn on that site and that made us suspicious as to the location and the timing for pulling the material. That is why you see that reflected in the zoning clearance with the specific number attached and with the response when that permit expired. Our concern with this is also what generated that piece of ordinance to identify and close that loop hole. The other thing that we would note is that if it is only going to be a 1,000 cubic yards or less then we would issue the permit. They would have to keep track of the amount of material extracted and staff would issue that permit. But the concern has been that the intent is not for the pole barn but for the extraction. Again, if it is going to be more than 1,000 cubic yards then the Director is not the authority to issue the permit; an application would need to be submitted to the Planning Commission. Also if it is going to be less than 1,000 cubic yards, they are indicating it is going to take into next year for extraction and that, to me, indicates more than a 1,000 cubic yards being pulled. So our concern is that the primary use is not the pole barn but extraction. Staff is capable of issuing the permit if they can commit to less than 1,000 yards.

Tarbet a 1,000 or less is what you are saying and where this is a new application the ordinance states 1,500 cubic feet. So why are you holding them to 1,000 or less?

Runhaar 1,500 is fine. We are referencing a 1,000 because that is what they have told me. We can issue the permit for 1,500. Our problem is with the history of this thing, it's an extraction operation under the guise of a pole barn. The other thing is if they void this permit and come back and want to remove another 1,500, and then void that permit and come back and want to remove another 1,500. We'll give the applicant the benefit of the doubt because we did change our code because of this issue. Then they throw in the issue of a home. Even a 2,000 square foot home footprint wouldn't extract more than 750 cubic yards of material, so when you start to talk about 5,000 cubic yards of material that is more like 8 homes, roughly.

Tarbet so if they are willing to commit to 1,500 now but then came back for 1,500 more feet that is where you have heart burn?

Runhaar yes, we would issue a denial there. They have made the statement that we would have to look back at every home to check extraction and they are correct. We don't want to do that. We will grandfather their first 5,000 yards. We see things that are non-committal here and they can't indicate how much material has been moved. That we might need 2 years to remove the current material and it took them 1 year to take 5,000 yards out? You can see our concerns. The access to this property uses a number of public roads and goes through neighborhoods. There are a number of issues that need to be addressed and our ordinance was a little bit lax on it so we weren't able to address it fast enough. But we are going to make sure that they stick to what they apply for. If you want us to issue a permit for anything under 1,500 yards, we can do that tomorrow.

Atwood have you visited the site?

Runhaar repeatedly.

Atwood was there enough of a flat spot to put in the pole barn they want?

Runhaar I think you could argue that.

Olsen my concern is if you took 5,000 yards out of there how is that not level enough for a pole barn?

Mr. Parson the clearance was issued for a year, at the time there was nothing in the code regarding the number of yards. I know 5,000 was talked about but I can't see anything in the original permit that limits their original zoning clearance to any number of yards. They've validated our concern that they think we are boot strapping this for extraction. But this is just pit run being removed; this is not a gravel pit. This is a site that was disproportionately higher than the property next to it and to get the fire road in and get the pole barn level, the material had to come out. This is up a canyon and then up a hillside. There may have been a place for the barn but the county cannot dictate where they can put a structure on their property other than setbacks. All the extraction that took place was legal, it was a conforming use. It was still conforming when they changed the definition because it was issued before that change. They just didn't get it done in that year. The applicant's son has an excavation company and did this when he had time and just didn't get it done during that summer. I understand the concern that he would apply for the 1,500 yards every year but this is not the intent of the applicant. They want to build a barn. They haven't touched that parcel since the permit expired. We don't want to be on the wrong side of anyone. We want to conform with the statutes as they are written.

Atwood is it currently level enough to build the pole barn?

Mr. Parson no it's not.

Atwood so a little more work needs to happen?

Mr. Parson the pole barn would be about even with that pile. Some of that has to be knocked down and leveled out and most of the material that needs to come out is for that hammerhead access for the fire road. But there still is that pile in the middle and some of that needs to come out. They are going to be hauling in hay and tractors and whatever and they need the room to turn around and do drop offs since they are bringing in large loads of hay.

Atwood does the application have any timeline on what it would be to get the material out?

Mr. Parson it's Sept. 11, I contacted staff in April of this year and it could have been done by now. If they'll be able to get it down before snow flies, I don't know. If we were taking about 40-50,000 yards

then I can understand the concern that this was a pit but that's not it. We are talking about 1,000 yards and they can certainly get that out and get the barn built in one year.

Tarbet is the permit good for a year?

Mr. Parson let me clarify that, this building does not need a permit. There is no electricity, water, etc. going to this building. This building is a permitted right. This will be done as soon as they can get it done because they want to be using this pole barn next year.

Atwood with an application like this, is there anything in the ordinance that states they regulate that 1,500 yards?

Harrild there is not. We can require as a condition that they are required to identify when they pull a load but that would be reliant on them to keep track of what they are doing and that doesn't seem to be reliable. Staff doesn't have a way to track it.

Olsen correct me if I'm wrong but if they are going to conform to the 1,500 yards then why are we here tonight?

Mr. Parsons We have stated several times that we don't need to move more than 1,500 yards but we have emails from staff saying they would deny the request because it is a mineral extraction operation.

Olsen my concern is that if you already have taken 5,000 yards out, I would have already had that leveled and the barn put up.

Mr. Parsons the applicant's son is doing this for free when he has the time. He was close and just didn't get it done before the weather turned. As to your question to staff, the ordinance isn't very good. There is no way to keep track of this. They don't even ask on the application how much material is being moved. This was unique because they knew there had been issues prior to this and they came out to the site a couple of times and we thought everybody was on the same page. I understand that they don't want pits all over this valley but these people got caught in the crossfire and a lot of material has to be taken out for leveling.

Olsen again, integrity comes in here. How much does a dump truck hold? You do extraction and you know how much each truck holds so that should tell you how much is being taken out.

Mr. Parsons I have no problem with that but are they requiring that of everyone? That is where we get the equal protection issue. Staff says they don't require applicants to track that.

Olsen this is a different issue where you have already taken out 5,000 yards on the original permit which was supposed to be it.

Mr. Parsons there is no penalty if you don't get it done in time. They just weren't able to complete the project in a year.

Olsen and I agree with that but now when you reapply you should state that you are taking no more
.
Mr. Parsons it was legal and it wasn't noted as a requirement that 5,000 yards was the limit. Again it comes back to it's not on the application how much material we could move.

Harrild if you look at the original permit, it is condition 1 and the second sentence. This clearance does not permit extraction beyond that identified on the site plan for the construction of a pole barn. Then if you look at the original site plan submitted, it clearly identifies approximately 5,000 cubic yards and this was submitted by Mr. Cronquist.

Mr. Parsons so 5,000 was the number but we didn't have a surveyor out there keeping track it was just based on the Shawn's expertise.

Atwood what do we do to get back to this so we aren't here again in a year?

Mr. Parsons I don't want my clients to submit to anything more onerous then what anyone else has to.

Gunnell the issue is that they were working on this project and they allowed that to lapse and they didn't apply for the extension. When you say we are putting an onerous thing on your client, the issue is that there was no urgency to get the extension and then you have that change of ordinance.

Mr. Parsons I contacted Shawn last November and he stated that it wasn't going to be completed. I contacted Josh, and it was only through an email, but I did contact him within the year and then winter hits and then as soon as the snow melted I was back in contact with staff trying to resolve this.

Gunnell I believe the extension issue takes away from your saying we are only doing this to your client. If the time for the permit was lapsing then there should have been an urgency to get the extension so that we fit into that requested time period or requested cubic yards. Instead of saying that we are now putting undue pressure on Shawn by saying only 1,500, when that is what everyone is at now.

Mr. Parsons I'm fine with everyone being at 1,500, I'm just saying no one else is being asked what they are taking off their property.

Gunnell we've breached an ordinance change and the lapse of a permit and everything.

Mr. Parsons the prior use was legal and the new use will be legal.

Gunnell it's the bridge of the extension going away and starting something new and how many people meet that? We aren't going to find that in a lot of areas.

Mr. Parsons I understand that this is unique but going forward is everyone else going to be held to that? Is anyone else asked the yardage issue? That's my only concern. I agree they have every right to ask about that but nobody else is asked.

Olsen how come there was no urgency?

Mr. Parson after re-reading the zoning clearance, I realized that it was from the date that Josh signed it, not the date that Shawn actually went in and got the permit. We didn't just call in June of this year and ask for an extension. My first contact with them was what I believed to be in one year. As far as I can tell that wouldn't have mattered because under the code that clearance should be void once it expired and then you have to file for a new zoning clearance or permit, once it's expired we have to file a new application. We couldn't legally extend the old one.

Olsen when someone gets a permit from you and they realize they are coming up to the deadline, it seems like I would come to you before it even expires to get it extended. Does that happen a lot?

Runhaar typically not a lot. But if it does happen we need a day or two to do that. I think the discussion here with the appellant and us is if they want to argue about the 1,500 yards in this case then direct us to issue the permit for the 1,500 yards. We will enforce that 1,500 yards and we will work out a way to do that by truck counts or whatever. But for them to say that we don't enforce that on everyone is a little untrue. I can't measure it for everyone because I don't have the staff. But that is like saying I don't apply certain pieces of the ordinance because it isn't listed as a requirement in the permit. The permit states that they will comply with the law. I don't list every page of my zoning or building code for them to comply with. If they fail to comply I would go out and enforce on that. Most homes we would never look at it, but if that home starts moving more material than I can count on we probably would have that discussion. I think we can save everyone's time by you directing us to issue the permit, direct us to make them meet the ordinance. We will meet the ordinance with them, and if there is a problem at that point, let them appeal the permit or the ordinance itself.

Gunnell *motioned to approve a permit for the Cronquist's as long as they conform to the 1,500 yards;* ***Olsen*** *seconded;* ***Passed* 4, 0.**

06:49:00

#3 Appeal – Wild Bunch Kennel (John and Caryn Mullin)

Joseph Chambers I am counsel for the Mullins. I was asked at 3:00 pm to represent the Mullins and I am going to ask for a continuance to work on this. If that is not allowed then I ask that you turn it back over to the Planning Commission with the instruction to make proper conditions. One of the things that is obligatory is to apply legal definitions. There is a difference between findings and conclusions. The Planning Commission has that obligation to make findings. If you would look at the definition for factual questions, factional issues are generally regarded as telling something empirical. Findings are things like, Mr. Atwood and Mr. Gunnell are compatible, that is a conclusion. If I said you were incompatible, that is also a conclusion. If I said to that Mr. Atwood is a Republican and Mr. Gunnell was a democrat, which is a finding, assuming you are, in fact. If you take a look at the findings that were made by the Planning Commission, and they are contained in this document, if you look at the findings of fact they are conclusions. The first finding is that the proposed use is not compatible with the character of the site, adjacent properties, and other existing and proposed development. They have not made findings. They have simply adopted a conclusion that it was not compatible, but they have not made any finding as to why it is not compatible. They go on to say, the use will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or injurious to property or improvements but they don't identify how they arrived at that conclusion How are they deciding, what finding did they make in terms of that? I know that may be hyper-technical but the reason their job is to make findings so that you can reviews those findings with the definitions of the ordinance to determine if those findings are substantial. We have the burden of proof of showing that those findings are not supported by substantial evidence. But in this case there are no findings.

If you look at the first Google image, it gives you the general layout of the area. Newton is to the north of this and Highway 23 runs through Cache Junction; this property is on the west side of Cache Junction. If you look at the second image, you will see that the Ballard Field is to the west and Mr. Clements home is to the north. To the east is Highway 23 and some farms and residential houses, and then there is another home that is to the south of that. Then I've also given you another Google Image and this sort of gives you the layout of the property. The purpose of this is to show you that north of Mr. Clements's home is an operation that has a number of trucks and then there is his home and to the west is the Ballard field and to the south is another home and field and then you have the railroad on the far east and the water is further than that.

I would like to walk you through the staff report. This is what the Planning Commission received from staff. They gave an overview and indicated that the application was to board up 42 adult dogs for

breeding purposes. My understanding is that the dogs are bred one time per year and that is puppies' not adult dogs. The staff outlines the ordinance. If you read through that ordinance, what staff indicates is that the Mullin's meet the provisions of the ordinance for the Conditional Use Permit. Going back to the staff report, they give a summary of the proposal and what is going to happen out there. If you will go down to the part that discusses access, the planning staff identifies access to the property from Highway 23. The use on this has been indicated that it has not been obtained from UDOT. I work with UDOT and I know they want to limit the access from state highways but in terms of going in and out of the property I'm not aware of anything special that needs to be obtained. They indicate that the drive needs to meet fire code; they indicated that they have water rights and that any animal waste that is generated should not be disposed off in the septic tank but at a land fill. Then they then go through special conditions for service provisions regarding shoulder space, additional waste containers, but they indicate water and fire suppression is sufficient. Then the staff did not make a determination on this but indicates that they will help draft determinations once it goes before Planning Commission. So my client goes before the commission and there was public clamor at this meeting. When you get down to the Sept. 11, 2014 summary that staff has provided, they indicate that on August 7, 2014 Planning Commission considered Mr. Mullin's request. Then they set forth the ordinance that my clients have to meet.
If you understand the nature of a conditional use permit, the permit should be issued if there are conditions that can be put in place to mitigate the adverse effects of this operation. If you look at the minutes, you will see there is no action where Planning Commission discussed the adverse affects of this. They go through the ordinance and the six criteria for the permit but no findings were made. Findings are such items as there is adequate water resources, adequate waste resources, etc. No findings were made. The Planning Commission simply went ahead and found that the proposed use was not compatible with the character of the site, adjacent properties, or other existing or proposed development. Take a look at this and take a look at what would be incompatible with a farming area to the west? There is an argument that it might be incompatible with Mr. Clements's property but he has indicated that he is not opposed so long as they put in a privacy fence. That is a conditional use permit consideration. Outside of that area we've already agreed that if we are able to do it we would it. The property directly east is another field and their property for at least three or four building lots there is not another neighbor until you go south to the Whites. So when the Planning Commission makes their findings, I am looking for was the site was incompatible because of xyz. They haven't given a reason for incompatibility.
That is not what this body's job is, this body is to review their findings and see if the conclusions they made are then supported by the evidence. If I had to appeal this case to the district court, there is nothing in the record to support or not support their conclusions. That is why I think this needs to be returned to the Planning Commission. They need to make some conclusions. I appeared before the Planning Commission to oppose the expansion of a mink farm and that mink farm was allowed to be expanded, and the noise and the smell and the operations of the blood and the attraction of the insects is worse than this. You know firsthand what you have to do to control the environment around a farm. We are talking 42 dogs, and the emotional side of this, there was a statement made that dogs should be raised as a pet and not to be sold off as a business operation. They make no findings of safety; these dogs are not a German Shepherd, they are not Pit Bulls; they are Pugs and they are not a large dog. When you go down to the findings that this is not in the general welfare, I don't know how vague you can get than that. If you refer back to the definition of what a finding is, I think you would have to conclude that the Planning Commission hasn't done their job and it needs to be remanded.

Atwood when you are talking about facts, are you saying we can only determine those once the operation is built? So we can't say that the Planning Commission thinks there will be a problem because there is a high concentration of dogs?

Mr. Chambers that 42 dogs make x amount of noise and therefore because of the noise it becomes incompatible with the area. But how can it be incompatible with a field to the west? There is more noise made by the family that is planting, fertilizing, and harvesting the crops. This isn't a situation where it's a

not in my backyard issue. I think actually the fact that Mr. Clements's is here and is not opposed to it, and he is the next door neighbor, speaks volumes as to how this can be done. The Planning Commission needs to take evidence. They need to look at how it was handled in Casper, Wyoming. They haven't asked about complaints with the current operation the Mullin's are running in Wyoming or what how the Mullin's will handle waste, smell, etc. What you had was a bunch of people from PETA and the Humane Society saying we have too many dogs that we can't place so we don't need another breeding operation. That is an irrelevant consideration to the factors laid out in the ordinance and that is what the courts have indicated. When you get that type of clamor the Planning Commission has a hard job but they need to focus on what the ordinance says and what the facts are.

Gunnell what would you define as the character of the site out there? I think you called it agriculture.

Mr. Chambers there is a grandfathered-in commercial operation. I would call it a farming community to the west and the Newton community is far off. There is a railroad and I don't know how often the railroad runs. It's a mixed use community and is primarily zoned agriculture.

Gunnell how would you define the kennel, as a commercial operation?

Mr. Chambers no it is an agricultural operation. They are growing animals and preparing them to sell.

Gunnell that seems to be a broad definition doesn't?

Mr. Chambers to argue that point I would need additional time.

Gunnell okay, so she said they had 35 dogs and 7 that were neutered. So they are breeding and having pups, so isn't that greater than 42?

Mr. Chambers they are bred at different times and sold off.

Gunnell you indicate that they are pugs, but given that this is a kennel couldn't the style of dog change? If the demand goes up for a different type of dog, wouldn't that mean they would change to meet the demand?

Mr. Chambers there are two things there, #1 she doesn't want to breed anything other than Pugs and I know that is subjective rather and objective. But that is the type of the thing that the Planning Commission can discuss and can limit with a condition stating that it is limited to pugs. That is why I think the Planning Commission failed. I don't think the Planning Commission discussed specifics about the effects on the property and neighbors. They didn't look at the options of putting in a privacy fence, limiting the breed, inquiring into those other factors. They didn't say okay, this is your property and in this country we hold our rights to ownership of property sacrosanct so long as we don't impose on the other party. That is why the county issues conditional use permits so there can be conditions on it. And I don't think the Planning Commission got down to the level of saying these are the effects that are adverse and can they be mitigated. They skipped over that process and adopted these findings but they are not findings. When I looked at this and looked at the definition of findings and conclusions, they are conclusions and not findings of fact. I think the Planning Commission skipped over deciding on findings of fact and took an easy way out that wasn't the right way.

Atwood we'll let staff up here now.

Harrild I'm not here to defend the findings of the Planning Commission; they had that discussion and made those findings. Something to note is that when you have a conditional use permit (CUP) that CUP

is issued and is retained with the land. If this couple were to move and someone else to move in they could still use that CUP and it could have a greater impact. There would be no ability for the Planning Commission to limit that use more. When we talk about public comment, there was a lot of comment and the main concern was a puppy mill. I saw that in comments over and over. However the discussion with the Planning Commission was not whether this was a puppy mill or not. The second part of that is there were neighbors there that expressed concerns over noise and associated impacts from the dogs. While there was a lot of attention from the news and such, what the Planning Commission considered were the concerns from the neighbors, not the public clamor. Also as regards minutes, given the timing of the Planning Commission meeting where the minutes are finalized and this meeting it was not possible to give them to you. We can pull them up now and review them and we can substantiate the comments and discussion held by the Planning Commission that covers the points that Mr. Chambers contest that was not there but that is available. Beyond that, Mr. Chamber's request to continue due to a lack of time for preparation I can understand. If it is suitable for the Board of Adjustments to do that and consider the minutes and discussion held we can do that now or you can do that on your own and see the points that were made and considered, I could see that also. But those are just some points staff would make regarding those findings and maybe gives you some more context to those findings in the sense that they were more general but the context supports the specific nature of the findings.

Gunnell with what they came back with, when you say the character of the site and general properties to me that's a statement that you can look at and see what is going on there, you can see that that is an agricultural area. Mr. Chamber's comment that a tractor plowing or fertilizing makes more noise, I don't necessarily agree with that.

Harrild there is another distinction I should make and that is, this is considered a different use than agriculture. The state defines agriculture as things such a dairy farm or a mink farm. Agriculture has a different set of rules and a kennel doesn't fall under that definition and has a different set of rules and there is a higher level of requirement.

Gunnell so when applying the character of the site and adjacent properties that was carefully applied and looked at in the Commission as I am looking at it and that is something I focus on as well.

Olsen on the second condition, I would like to read those minutes and see what the neighbors said and how they felt about that. I'm sure the neighbors did feel that it was detrimental.

Harrild would you prefer to have time to review those or would you like to pull them up now to look at?

The Board of Adjustments discussed a possible extension. Some members of the Board felt that the original decision was issued over a month ago and to have a month to visit an attorney is sufficient time.

Mr. Chambers I have not had a chance to review the minutes and if they were not available to you they would have not been available to me and to pull them up here and now is severely prejudicial.

The Board of Adjustments discussed the requirements the Planning Commission had to make their decision. The Planning Commission felt that they did not meet numbers 3 and 5 of the County ordinance regarding conditional uses. The Board of Adjustments job is to decide if the Planning Commission acted correctly and not to go back and change the findings. The applicant would probably appeal the decision no matter what part of the ordinance the Commission had picked to apply.

Runhaar staff would recommend you review the minutes on this issue. The minutes were a matter of timing and when they could go out.

Mr. Chambers I object to you reviewing the minutes when they are not available to me to address. If you do this my client's rights to due process are violated.

Atwood no, what we are discussing is doing an extension to this meeting so everyone can have a chance to review the minutes.

Runhaar we will have the approved minutes up in a day or two. You will want to review them because they are too long to review now. It is staff's contention that the minutes need time to be reviewed and considered. If this group has no concerns regarding the findings then great, but if it needs to go back to the Planning Commission because you need more specifics then that is fine. But you are not here to review this and say, "did they or did they not do all the pieces and handle it," you are here to say whether they made an appropriate finding or decision on this. The Board of Adjustments isn't here to second guess their judgment; you are here to decide if they did things properly. Review the minutes and if you agree the findings are inadequate that is a procedural issue and you send it back for a procedural issue.

Diana White I live directly next door to this property. I was here at the last meeting and I do know that it wasn't PETA here; it was Four Paws and the Humane Society. One thing they decided was to not have it because it would be detrimental to the neighbors. We live on the hill and there are a lot of coyotes up there and the dogs in heat would be bringing them down all the time. There was a comment regarding the noise from the humane society and how at a mile away you can still hear the dogs from the humane society. So 42 dogs and all of them, whether bred or not, will be in heat all the time. The other issue is cleanliness and they have a plan to take care of the dogs but the problem is that there are three people to care for 42 dogs. The third person will only be there part of the time. The Humane Society has 6 full time people and then they have the volunteers who help and they can't keep up with all the cleaning and feeding with those volunteers. So how are two people, sometimes 3, going to keep that clean and sanitary so that is not attracting other kinds of problems and diseases. So there are lots of issues out there and they did actually talk about the number of dogs and how that is too many. I understand the fact that it is not humane was talked about but the counsel made it clear that that was not the reason for their decision. The decision was made on the fact that there are coyotes, that is too many animals for two people to care for and they also said that if they reapplied for a different amount of dogs and more specifics on the materials used they would look at that. But currently the plan was 5 or 6 dogs per kennel, which there are 19 kennels. It was also discussed what would happen if the type of dog were to change so many things were looked at in making the decision to deny. On their website it shows that they only have 19 dogs at their Casper facility and the rest of the dogs were new arrivals. They don't even know what it is like to have 42 dogs and what it is going to take to keep them clean, excursed, etc. This is a nuisance issue if the dogs are bored and trapped; they are going to be whiney and always in heat. They did not make the decision based on whether this was humane or not.

Mr. Chambers I appreciate her comments because each of those issues are a finding that could have been adopted. Had the Planning Commission said these dogs are going to be in heat and the coyotes are going to come down, that is a fact. They could have then said it was going to create a safety issue. That is what the Planning Commission needs to do. They are not there to adopt the ordinance and punch it into a word processor. They are there to make findings as to why it is not suitable. It sounds like you have made the decision that based on your knowledge it is compatible. So if you have go to the minutes, and I have concerns with you doing that, because then you are going to assume that the Planning Commission adopted all of those and didn't reject any that were available. Their job is to listen to the public and then make findings that lead to relevant sustainable conclusions, and had they done that great, but they didn't. This board is to review the findings presented and the only findings you have are conclusions. If they had made the findings she stated, then you would be in a position to decide whether or not they had done their job.

Caryn Mullins we have two dogs to a kennel. If we have 19 kennels that is 38 dogs. They are 5x5, they are larger then what is required and are cleaned every day. They have mats of Astroturf in case they don't get out in time and we soak those in Clorox to help keep them clean. We clean up the feces and we soak up the water in a shop vac. These Pugs are spoiled, they are taken care of. It's not a puppy mill, they are what I do.

Dan White I am the neighbor to the south. The last meeting I think they did meet the requirements. Is a dog kennel Ag or not? They don't show it in the Ag zone. When you have 42 dogs and are breeding and selling them, it is a commercial facility and that means rezoning before they can even get a permit to get a conditional use. I used to own a dog kennel and there is no way that I would have owned 42 dogs. We had a commercial dog kennel and I would never own 42 dogs.

Board members expressed interest in reviewing the minutes from the Planning Commission. The Board discussed whether or not the item should be sent back to the Planning Commission or given an extension to decide whether or not the Planning Commission did their job.

Olsen Mr. Chambers didn't you first state you wanted an extension?

Mr. Chambers yes. To answer the question about whether this is an agricultural use or a commercial use I would like more time to research. I wasn't prepared to answer that question tonight. When you look at the findings and say there is a finding that the neighbor's appeared, no there is not. There is a finding that it is incompatible and that is what they court is going to look at if we appeal to district court. I feel that the court is going to remand this back to the Planning Commission for more detailed findings and I want to avoid that if possible. Remanding this back to the Planning Commission isn't an insult.

Runhaar you have the three findings in front of you and you have Tony to use at your discretion. If it does go to district court, we are prepared to defend it. But if you decide you need more time to review things, that is fine, take your time and complete all that you feel you need to, to make your decision.

Atwood Tony, what are your thoughts?

Baird I think you need to continue this item for at least two weeks. I think you should review the minutes and allow the applicant's counsel to review the minutes; I think that allows due process for the appellant. You may send this back to the Planning Commission after reviewing everything but I think you need time to address the underlying factual findings and whether the record is sufficient to justify the findings.

Staff and Board of Adjustments discussed the timing issue for the minutes. In general, for past meetings minutes have been present for review. There was a timing issue for review of the minutes. The minutes were not available to the Board or the appellant's counsel. Due process requires that all the information be present, and part of that is having the minutes available.

Olsen *motioned to continue the item to give time for a review of the Planning Commission minutes;* ***Tarbet*** *seconded;* ***Passed 4, 0.***

Gunnel *motioned to nominate Hal Olsen as the Vice-chair;* ***Tarbet*** *seconded;* ***Passed 4, 0.***

7:55:00

Adjourned.