

BOX ELDER COUNTY PLANNING COMMISSION MINUTES MAY 18, 2023

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 by a roll call, constituting a quorum:

Roll Call

Mellonee Wilding	Chairman
Jared Holmgren	Vice-Chair
Lonnie Jensen	Excused
Steven Zollinger	Excused
Bonnie Robinson	Member
Jed Pugsley	Member
Jennifer Jacobsen	Member
Vance Smith	Excused

the following Staff was present:

Scott Lyons	Excused
Marcus Wager	County Planner
Destin Christiansen	Excused
Stephen Hadfield	County Attorney
Boyd Bingham	Co. Commissioner
Diane Fuhrman	Executive Secretary

Chairman Mellonee Wilding called the meeting to order at 7:00 p.m.

The Invocation was offered by Commissioner Jared Holmgren.

Pledge was led by Commissioner Jed Pugsley.

The following citizens were present & signed the attendance sheet

See Attachment No. 1 – Attendance Sheet.

The Minutes of the April 20, 2023 meeting were made available to the Planning Commissioners prior to this meeting and upon review a **Motion** was made by Commissioner Jared Holmgren to approve the minutes as written. The motion was seconded by Commissioner Jed Pugsley and passed unanimously.

UNFINISHED BUSINESS -NONE

PUBLIC HEARINGS

Chairman Mellonee Wilding explained public hearings provide an opportunity for the public to voice their concerns or approval on an item. In the meeting there is also unfinished business, public hearings, and new business. The unfinished business and new business provides opportunity for the commissioners to take action on an item. It is not a time for public comment or input. Although the commissioners may ask questions of the applicant during these times.

ORDINANCE TEXT AMENDMENT, Z23-005, Request for a text amendment to Section 1-3-040, Definitions, Section 3-4-080-2, Commercial & Manufacturing Frontages and Setback Distances of the Box Elder County Land Use Management & Development Code. ACTION

Staff stated the applicant is requesting a text amendment to create a definition for non-functional frontage due to topography or other legal or practical reasons as well as creating setback distances that would be categorized with the new definition. The proposed amendment would affect section 1-3-040 (Definitions) and section 3-4-080-2.1 (Commercial & Manufacturing frontages and setback distances) of the Box Elder County Land Use Management & Development Code.

Staff explained the standards for reviewing zoning text amendments as they apply to this request.

A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan; The County's General Plan states that future land use decisions will consider the following: promoting development patterns consistent with, and sensitive to, resident preferences; and balancing private property rights with public interests.

B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property; This text amendment would apply to all commercial and manufacturing zones of unincorporated Box Elder County that would have "nonfunctional frontage" as proposed. The Planning Commission needs to decide if this amendment would be harmonious.

C. The extent to which the proposed amendment may adversely affect adjacent property; The proposed amendment could adversely affect adjacent property with the proposed allowance of buildings set at a zero setback. The public hearing process may shed additional light on this subject.

D. 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, storm water drainage systems, water supplies, and waste water and refuse collection. The proposed text amendment should not have an effect on the adequacy of facilities.

Staff has the following concerns regarding this request: Regardless of any granted access, all other frontage would be considered non-functional; If any slope meets the minimum requested (5' rise over 20' run), all frontage is considered non-functional frontage; Proposal #2, wants to use another's property as a setback distance for an applicant's property. It also indicates this would be implemented where frontage is considered non-functional frontage; however, based on the proposals, it seems, aside from any access granted, everything would be considered non-functional frontage; As to proposal #3 a 0' does not provide for the buffer setbacks are expected to provide on a property line; As proposed, this language would likely produce interpretation and/or potential enforcement issues where every property and situation is different; It seems for the commercial/manufacturing zones, the proposed language would essentially create non-functional frontage wherever access wouldn't be used or has been denied. All setbacks would then be reduced to 0'.

Staff read the applicant's proposed language:

Proposal #1: The inclusion of a definition for "Nonfunctional Frontage" in Code Section 1-3-040. The proposed language for this inclusion would read as follows:

Frontage, Nonfunctional: For purposes of this Code, street line frontage across which access may be denied, limited, or cannot be had because of topography or for other legal or practical reasons, such as street access restrictions by County or Utah Department of Transportation access management, shall not constitute frontage, as that term is defined herein. Street line frontage will be determined as nonfunctional frontage if the slope across any portion of the frontage is in excess of five (5) feet in height for each twenty (20) feet in horizontal distance measured from the property line to the travel way. If the County or Utah Department of Transportation has limited access to one vehicular access point, street line frontage outside of the site triangle of the granted access would be nonfunctional, regardless of topography.

Proposal #2: The inclusion of language in the existing definition of "Frontage" in Code Section 1-3-040 to address situations, where due to topography or restricted access, there exists a gap, larger than twenty feet between the property line fronting a street and the travel way of that street. The proposed language for this inclusion would read as follows:

Where street line frontage is determined to be nonfunctional frontage and When there is there exists more than twenty (20) feet from the property line fronting a street to the travel way of the adjoining street, then the space between the property line and the travel way shall be counted towards the required setbacks contained in code section 3-4- 080-2.1.

Proposal #3: The inclusion of language regarding the setback requirements for nonfunctional frontage in the table contained in code section 3-4-080-2.1 lists the minimum depth and/or length for yards in the zoning districts regulated by the Box Elder County Code. The proposed language shall incorporate the existing side yard setback requirements for all other zones and shall designate the nonfunctional setback for the CE zone to 0'. The proposed language would appear as follows:

	C-N	C-S	C-H	C-G	M-FP	M-G	C-E
Frontage, Nonfunctional (must comply with Section 5-1-180)	10 0	10 0	10 0	10 0	10 0	10 0	0

The public hearing was then opened for comments. There were no comments.

Hearing no comments, a motion was made by Commissioner Jared Holmgren to close the public hearing on the Ordinance Text Amendment, Z23-005. The motion was seconded by Commissioner Bonnie Robinson and passed unanimously.

ACTION

Staff explained further concerns regarding the proposed language as follows:

Comment 1 to Proposal #1: In circumstances where access cannot be had across street line frontage due to slope, the determining factor that would convert "frontage" into "nonfunctional frontage" would be a slope in excess of 5 feet of height for each 20 feet in horizontal distance. For example, if you have 200 feet of frontage, the entirety of the frontage will be considered nonfunctional

frontage if any portion of the frontage has a slope in excess of the amount described above, would be considered nonfunctional frontage.

Comment 2 to Proposal #1: In circumstances where the County or UDOT has only provided one access point, the remaining portion of street line frontage outside of the site triangle for the allowed access would be considered nonfunctional, regardless of topography. For example, if a 35 foot access is allowed, the frontage outside of the site triangle of that access will be considered nonfunctional, regardless of topography.

Commissioner Mellonee Wilding asked what is the point of non-functional frontage? Staff explained the applicant would like this proposal put into place so where ever non-functional frontage is, except where the access point is, it would have a zero foot setback. This way they could go all the way to the property line and build. The applicant would like to build storage units and use the buildings as a type of fencing. There are new storage units in Willard City using the outside perimeter as an access road. In South Willard, another one was approved which has an access road on the perimeter of the development that acts as an access road. However, the applicant does not want to do this and has created this proposal.

Commissioner Bonnie Robinson asked if this would change the code for the whole county. Staff said it would in the commercial/industrial zones. Commissioner Robinson is also concerned with safety regarding this proposal.

Staff said Proposal #2 does not make sense as the applicant is trying to use someone else's property as a setback. Staff also does not agree with Proposal #3 which provides for a 0' setback for all commercial and manufacturing zones.

MOTION: A Motion was made by **Commissioner Bonnie Robinson** to forward a recommendation of denial to the County Commission for application Z23-005, an ordinance text amendment to Section 1-3-040, Definitions, Section 3-4-080-2, Commercial & Manufacturing Frontages and Setback Distances of the Box Elder County Land Use Management & Development Code based on the concerns of staff; the proposal does not make sense safety wise. The motion was seconded by **Commissioner Jed Pugsley** and passed unanimously.

ZONING MAP AMENDMENT, Z23-006, Request for a zone change of 30.29 acres from A-20 (Agricultural 20 acre) to RR-20 (Rural Residential 20,000 sq. ft.) located at approximately 5200 West 4800 N in the Bear River area of Unincorporated Box Elder County. ACTION

Staff stated the applicant is requesting that parcel 04-088-0005 (30.29 acres) be rezoned from A-20 (Agriculture 20 acres) to the RR-20 (Rural Residential 20,000 sq. ft.) zone. The parcel is in the Bear River City area and the applicant has been through the annexation petition process with Bear River City. The surrounding land use is Agricultural and the surrounding zones are A-20 and RR-20.

Staff explained the standards for reviewing zoning text amendments as they apply to this request.

- A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan;** The County's General Plan states: This plan suggests that most growth should occur in the cities and towns. The County can adopt policies to encourage that to happen but must continue to recognize private property rights and coordinate with the incorporated communities. In the West Corinne section of the plan, it states: Future Land Use: as part of the agricultural heritage area, large lot zoning should remain, to encourage continued agricultural activity. Irrigation capabilities, culinary systems, and water rights should be studied to assure the current system can serve the area in the future.
- B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;** The area is mainly agricultural uses with some residential scattered. The Planning Commission needs to decide if an RR-20 zone could be considered harmonious.
- C. The extent to which the proposed amendment may adversely affect adjacent property;** This is unknown. The public hearing process may bring forth additional information.
- D. 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, storm water drainage systems, water supplies, and waste water and refuse collection.** It is unknown what the adequacy of facilities is in this area for the RR-20 zone.

The public hearing was then opened for comments.

Chad Hardy, applicant, explained the plan is to parcel off about 5 ½ acres to sell to family members. He said there is already water there.

Hearing no further comments, a motion was made by **Commissioner Bonnie Robinson** to close the public hearing on the Zoning Map Amendment, Z23-006. The motion was seconded by **Commissioner Jennifer Jacobsen** and passed unanimously.

ACTION

Staff stated based on their analysis of the zoning map amendment application and materials submitted, staff sees no problems with the application. The Planning Commission will need to determine if the proposed map amendment meets the approval standards found in Sections 2-2-080€ of the Box Elder County Land Use Management & Development Code.

Commissioner Bonnie Robinson wants to make sure the road does not become a problem as there have been road troubles before. Staff said if the subdivision is done, some improvements will be required.

Commissioner Mellonee Wilding said the County General Plan would rather have development in the cities, but the applicant has attempted to annex and has followed the county's annexation policy. She thinks it is harmonious with the overall character of existing development in the vicinity because of the already existing RR-20 zone in the area and feels it meets all the standards.

MOTION: A Motion was made by **Commissioner Bonnie Robinson** to forward a recommendation of approval to the County Commission for application Z23-006, a request for a zone change of 30.21 acres from A-20 (Agricultural 20 acre) to RR-20 (Rural Residential 20,000 sq. ft.) and adopting the conditions and findings of staff. The motion was seconded by **Commissioner Jared Holmgren** and passed unanimously.

ORDINANCE TEXT AMENDMENT, Z23-007, Request for a text amendment to Chapter 6-1, Subdivisions, to change verbiage regarding wells in the Box Elder County Land Use Management & Development Code. ACTION

Staff said the applicant has requested consideration that a text amendment be made to amend Sections in Chapter 6-1, Subdivisions, in the Box Elder County Land Use Management & Development Code.

Staff explained the standards for reviewing zoning text amendments as they apply to this request.

A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan; The General Plan states: "Box Elder County understands that future development is most likely to occur in areas where adequate services are available. The County does not support extending services through or into areas that have not been identified for future development. With respect to responsible land use planning and efficient resource use, it is the County's preference that growth and development take place within existing communities or in unincorporated areas within which adequate services are or may be made available."

B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property; This text amendment would apply to all areas of unincorporated Box Elder County where a well would be considered, the Planning Commission needs to decide if this amendment would be harmonious.

C. The extent to which the proposed amendment may adversely affect adjacent property; Whether the affect is adverse is possibly subjective and up to adjacent property owners. The public hearing process may shed additional light on this subject.

D. 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, storm water drainage systems, water supplies, and waste water and refuse collection. The proposed text amendment would likely not have an effect on the adequacy of facilities.

Staff explained there are multiple sections in Chapter 6-1 of County Code requiring the developer, or someone who is subdividing, to drill a well or test well for testing prior to subdivision approval.

The County Attorney agrees with staff and stated the following: They do not specifically state that a well has to be drilled prior to subdivision approval, but it is clear that the information required for approval (water pressure, sufficient supply, etc.) is not available unless or until a well is actually drilled. The argument that we don't require the same thing from culinary water suppliers (without requiring an actual connection to be installed) is not persuasive because all of this information is currently available from the existing culinary water suppliers before any connections are installed.

Staff read the applicant's proposed text amendment and their reasoning for it.

Proposed Text Amendment: If public water is not available and a private well is required - Buyers will be required to drill the well and test the water prior to the occupancy permit being issued. Subdivider may subdivide the lot and sell the lot with proper notice per 6-1-060E & 6-1-240O to buyer or builder.

Reasoning from the applicant:

1. Subdivider has no idea what buyer is going to do with the lot or if they even build on it at all, or what water requirements might be required.
2. Developer does not know where to place the well on the lot to allow for the proper distance from the septic system and other potential conflicts.
3. Requiring the well to be drilled and tested prior to subdivision not knowing whether the subdivision is approved, possible, or meets the code is unrealistic for a buyer.
4. Well drillers have taken a substantial amount of time to schedule to drill a well. The subdivision could be happening simultaneously.
5. As it says in 6-1-060E "It shall be unlawful for any subdivider to sell any portion of an approved subdivision until the prospective buyer or builder has been advised that occupancy will not be permitted until all required improvements are completed."
6. As it says in 6-1-240O "It shall be unlawful for any subdivider to sell any portion of an approved subdivision until the prospective buyer or builder has been advised that occupancy will not be permitted until all required improvements are completed."

The public hearing was then opened for comments.

Bradon Capener read a letter from applicant Micah Capener who was unable to attend.
(See Attachment No. 2 – Capener Letter.)

Mr. Capener commented he thinks the well being dug makes more sense at the building permit level. The lot we are trying to subdivide is just one lot into 2 pieces on some frontage, it is not like a master planned community. He could easily see someone buying the lot to build a home on in the future. If we drill a well now and it sits there for many years, or the people buy it and change their minds, we would have a well there that may or may not be used. At the developer level we do not know what the buyer is going to use it for. Historically, the county has not required this. The code has been reinterpreted within the last few months. It made sense at one time and there has not been a problem, we are unsure why the county all of a sudden changed the way they interpreted the code.

Monica Clevenger, East Garland, expressed her thoughts about the impracticality of requiring the proof of water and wells. A seller cannot predict a buyer's use of the property. A buyer will not spend money to put in the research before they purchase a property, it could potentially delay the sale of a lot especially with well permits being a year out. This could hamper some transactions from happening.

Hearing no further comments, a motion was made by **Commissioner Bonnie Robinson** to close the public hearing on the Ordinance Text Amendment, Z23-007. The motion was seconded by **Commissioner Jared Holmgren** and passed unanimously.

Staff explained before we started requiring the wells and the water report to be done, we were unaware these sections of code existed. After digging deeper into the subdivision codes we found we were not compliant with our county code. Although code does not explicitly state the developer has to drill a well, with what code does state, staff does not see how approval could be given without it being drilled. We feel when someone buys a lot with the expectation it is buildable, it should be fully ready at that point.

Based on the information presented in this report, application materials submitted and a review of areas, staff recommends the Planning Commission forward a recommendation of denial to the County Commission.

Commissioner Jed Pugsley asked if this was a large parcel of land to be subdivided, would a variance be an applicable option? Staff said the county's hearing officer needs a special circumstance for a variance. There is nothing special associated with this subdivision. it is just a standard subdivision.

Commissioner Jared Holmgren asked if there are water rights available for small wells. Staff's understanding is there are small wells available.

Commissioner Mellonee Wilding understands the process might be time consuming but that is not a reason to lessen the county code. Everything has slowed down and that is just a part of business, it does not mean the county changes the requirements. She understands the applicant's issue, but a text amendment is a permanent change for the entire county, not an answer for a single situation.

MOTION: A Motion was made by **Commissioner Jennifer Jacobsen** to forward a recommendation of denial to the County Commission for application Z23-007, an ordinance text amendment to Chapter 6-1, Subdivisions in the Box Elder County Land Use Management & Development Code based on the reasons presented by staff and the staff report. The motion was seconded by **Commissioner Jared Holmgren** and passed unanimously.

ORDINANCE TEXT AMENDMENT, Z23-008, Request for a text amendment to Article 5: Exhibit A, New Road Standards 2014 of the Box Elder County Land Use Management & Development Code to allow a 70' entrance for heavy trucking operations. ACTION

Staff said the applicant is requesting a text amendment to allow a 70' entrance for commercial heavy trucking operations, currently the standard is a 50' entrance. The proposed amendment would affect Article 5: Exhibit A New Road Standards 2014 of the Box Elder County Land Use Management & Development Code

Staff explained the standards for reviewing zoning text amendments as they apply to this request.

A. Whether the proposed amendment is consistent with goals, objectives and policies of the County's General Plan; The County's General Plan states that future land use decisions will consider the following: promoting development patterns consistent with, and sensitive to, resident preferences; and balancing private property rights with public interests.

B. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property; This text amendment would apply to any type of proposed heavy truck operation in unincorporated Box Elder County. The Planning Commission needs to decide if this amendment would be harmonious.

C. The extent to which the proposed amendment may adversely affect adjacent property; The proposed amendment should not adversely affect adjacent property. The public hearing process may shed additional light on this subject.

D. 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, storm water drainage systems, water supplies, and waste water and refuse collection. The proposed text amendment should not have an effect on the adequacy of facilities.

Staff read a letter received from applicant Jim Flint, Hansen and Associates Inc.

(See attachment No. 3 – Letter.)

The public hearing was then opened for comments.

Bret Cummings, Hansen & Associates, stated our request is to add to the standards to allow a 70' access for semi-trucks. This would increase the safety of the accesses as the trucks would not be required to swerve into oncoming traffic by making a large radius turn. It would also increase the safety of the site itself as trucks coming out would not be conflicting with trucks entering the site.

Hearing no further comments, a motion was made by **Commissioner Bonnie Robinson** to close the public hearing on the Ordinance Text Amendment, Z23-008. The motion was seconded by **Commissioner Jed Pugsley** and passed unanimously.

ACTION

Staff explained the reason this item came forward is due to one specific project. The project does have other ways to get into the site that would not require an ingress/egress on the county road.

Commissioner Mellonee Wilding asked if this is an issue other companies have complained about. Is this a county-wide problem or an issue specific to this project? She does not like changing county code for a specific problem.

County Road Superintendent Darin Mcfarland stated there are many trucking companies using county roadways and there have not been any issues.

Commissioner Jared Holmgren asked if this would be a hardship for the county if the 70' entrance was approved. Darin Mcfarland said if there are too many approaches in that short of a distance, it adds more line-of-sight issues.

Commissioner Jed Pugsley said the Flying J and Sinclair in Snowville have huge entrances and they have consistent problems. Commissioner Pugsley has property across the street with a 66' entrance. He has problems with trucks running over the curb and running over rocks. He has narrowed it down consistently to make sure the trucks can make the radius. He feels it makes more of a traffic hazard to increase to 70'.

Commissioner Jared Holmgren asked if the code could be amended to read a minimum of 50' up to a maximum of 70'. County Road Superintendent Darin Mcfarland said he would not recommend increasing to more than 50'.

MOTION: A Motion was made by Commissioner Bonnie Robinson to forward a recommendation of denial to the County Commission for application Z23-008, an ordinance text amendment to Article 5: Exhibit A. New Road Standards 2014 of the Box Elder County Land Use Management & Development Code based on the findings of staff and recommendations from the County Road Supervisor. The motion was seconded by Commissioner Jed Pugsley and passed unanimously.

NEW BUSINESS - NONE

WORKING REPORTS – NONE

S-3 Sign Overlay Zone


Staff brought this item before the Commissioners in March but has received little to no feedback from the commissioners. Staff asked the commissioners if they want to pursue the item further or keep what is already in code. All Commissioners agreed to keep what is in code.

PUBLIC COMMENTS - NONE

Commissioner Jared Holmgren took the opportunity to go on record with his thoughts about the text amendment for wells. He said the text amendment the applicant wanted, in his opinion, is the reason we have to have zoning ordinances. It was aggravating when the applicant read the letter and made his comments. Commissioner Holmgren expressed his appreciation for staff and all the work they do.

ADJOURN

MOTION: A Motion was made by Commissioner Bonnie Robinson to adjourn commission meeting. The motion was seconded by Commissioner Jared Holmgren and meeting adjourned at 8:06 p.m.


Mellonee Wilding, Chairman
Box Elder County Planning Commission

May 18, 2023

[illegible]

Letter from Micah Capener – to be read in the meeting.

Historically the county has not required wells to be dug and water tested prior to subdividing and selling the lots. I asked Scott Lyon if the code had changed to require a well to be dug and tested prior and he said no the language has not changed but the staff's interpretation of the code has changed.

Years ago the county didn't require a water right in order to subdivide a property. It is now required to have a water right in the county in order to subdivide which is much more restrictive than all of the cities! Currently in all of the cities that I am aware of no water is given, promised, or allocated until approval of the building permit not at the subdivision level.

I asked Scott Lyon if there had been problems with wells that had triggered this change in interpretation, or a safety concern of some sort and he said no. He mentioned the only problem they have had was related to water quality which was solved with a reverse osmosis filter system.

As you know all of the water companies are working feverishly to develop new sources and work with the Bear River Conservancy district to get water available. It is very likely that any lots approved now for wells may be changed to a culinary system when water becomes available and the well never needs to be dug at all..

In most areas where wells will be needed the subdivision process is needed in advance to be able to know where the proposed master planned roads, easements, canals, ditches, septic systems, and other environmental and storm drain issues are before a well is known where to even dig it.

Most homeowners are unaware of all of the county codes and rules that are constantly changing to be able to successfully navigate choosing where to dig the well prior to approval of the subdivision.

The time it would take to wait for the state to approve the water right, the well driller to drill the well, test the water, complete the subdivision, install the subdivision improvements, and build the home would take many years even for the knowledgeable builder/developer.

Thank you for your consideration!

Micah Capener

APPLICANT's purpose of ordinance text amendment request:



Hansen and Associates, Inc.
Consulting Engineers & Land Surveyors

April 21, 2023

Re: Text Amendment - 70-foot entry for trucks

Currently Box Elder County has a road standard that has a maximum commercial driveway entrance width of 50 feet (attached). There's no explanatory code language, just the depiction in the road standards.

The proposed text/drawing amendment isn't to remove the 50-foot parameter but to allow a 70-foot opening under certain conditions and projects subject to heavy truck traffic. The proposed wording is:

70' (Heavy Truck Traffic Areas)

The reasoning is that standard semi-trucks (approximately 73 feet long) have an outer pivoting turning radius of 46 feet. Most entrances along County roads from the edge of pavement to the right-of-way line have a distance of only around 20 feet, which self-limits the turning radius. Off-site, along the County road, this causes trucks to naturally swerve into the on-coming traffic to not clip landscaping and entrance improvements. On-site, the 46-foot radius compels trucks to swerve into the outbound lane of the 50-foot entrance. Weather and other factors compound the issue.

The proposal isn't for retail enhancement but for legitimate heavy truck traffic areas.

Thank you for considering this request.

Respectfully,
HANSEN & ASSOCIATES, Inc.
Jim Flint, PE / PLS