

**MEETING OF THE
MILLARD COUNTY PLANNING COMMISSION**

**MEETING MINUTES
March 2, 2022**

The Millard County Planning Commission met on Wednesday March 2, 2022 at the Millard County Offices, 71 South 200 West, Delta, Utah.

PRESENT: Joyce Barney Planning Commission Vice Chairman
DeMar Iverson Planning Commissioner
Peter Greathouse Planning Commissioner
Denton Peterson Deputy County Attorney
John Nye..... Planning Commissioner

EXCUSED: David Sturlin Planning Commission Chairman
Bob Rogers Planning Commissioner
Erin Sorenson Planning Commissioner

ALSO PRESENT:

Adam Richins..... Millard County Planner
Mallori Wood..... Secretary
Matt ward Millard County Chronicle Progress
Susan Williamson Rural Power and Light
Cody Dickson..... Rural Power and Light
Shannon Lundberg Rural Power and Light
Steele Weston Coyote Flats Campground
W. David Weston Coyote Flats Campground
Rick Roper Millard County Resident
Randy Lake..... Millard County Resident
Stacey Lake Millard County Resident
Mike Utley Millard County Resident
Patrick Stefanoff Millard County Resident
Nita Utley Millard County Resident
Scott Holman Millard County Resident
Karla Holman Millard County Resident
Troy Davis..... Millard County Resident
Garth Lake Millard County Resident
Leslie Lake..... Millard County Resident
Russ Day Millard County Resident
Edria Day Millard County Resident
Kortnie Anderson Millard County Resident
Lori Zubeck Millard County Resident
Lynn Zubeck Millard County Resident
Steve Albrecht Millard County Resident
Forrest Roper..... Millard County Resident

PURSUANT TO AN AGENDA WHICH HERETOFORE HAD BEEN PROVIDED to each member of the Planning Commission, posted at the Millard County Offices in Delta, the Public Safety Building in Fillmore, and the Main Street Courthouse in Fillmore, posted on the Utah Public Notice Website and the Millard County Website, and provided to the Millard County Chronicle Progress, a newspaper of general circulation within Millard County, Utah as required by law, the following proceedings were had:

1. WELCOME, CALL TO ORDER – Vice Chairman Joyce Barney called the meeting to order at 6:32 pm. She welcomed all present.

2. PUBLIC INPUT Public input was moved to after item #5.

Patrick Stefanoff approached the commission. He asked if the commission was to review the application and give the applicant 30 days to bring it into compliance, and it was denied again. Would that restart the 12 months?

Deputy County Attorney Denton Peterson stated that once an application is submitted and denied that no application that is substantially similar on the same piece of ground can be submitted for a minimum of one year. So that year would run from the time the denial was made.

Steele Weston approached the commission. He feels that he has had 2 people represent him in this matter but would like to speak on behalf of himself so that the public can hear from the person who had put for the Coyote Flats Campground. He stated the reason he feels that he needed to do this now is because he feels like his rights were not properly enforced. He stated that members of the commission stated in the December 1, 2021 meeting that the application was missing information. He believes that the decision to deny was made without all the needed information. He would like to correct a problem before the commission rather than cost the county and himself a lot of money fighting. He wants to make sure the commission has all the facts before they make a decision to deny.

Deputy County Attorney Denton Peterson stated he knows there were comments made addressing violations of rights and addressing incompleteness. Our Millard County Code provides and our Administrator Manual provides that any application that is submitted to the county for a Conditional Use Permit or any permitted uses that it first be submitted to the administrator. It is his duty to review that application and to determine whether it is complete or incomplete. That completion is the minimum amount required for the application to be considered complete and therefore be eligible for

consideration by this commission. He also stated that it was the applicant who has the opportunity to prepare it or to hire counsel and then submit that application. If there is a finding of incompleteness²⁰⁶ does allow a 30 day safe harbor for the applicant to cure the insufficiencies and resubmit the application. That is specifically applicable to the zoning administrator not the zoning commission. The applicant has the ability to withdraw that application at any time prior to the planning commission issuing a decision. The planning commission does not have the authority to find an application as incomplete, they do have the authority to approve or deny an application. An application can be tabled when the applicant voluntarily agrees to hold off on a decision until more information can be provided. When that is not done and the decision is made to deny the application it becomes final.

Lynn Zubeck approached the commission he lives on 4500 south and is extremely concerned about the traffic. He was wondering if there have been any studies on what the traffic flow will be like on that road if this application is approved. He is wondering why the camp ground can't be put where the old one was in town. He is also concerned about the water.

Steele Weston approached the commission he stated he feels like he needs to respond because he lives in this community. He is extremely concerned about traffic and influx of people. He stated that if the people coming to this area don't have a place to stay while they're here they'll start staying on abandoned property, out on the west desert, up Oak City Canyon. They'll be throwing their trash on the side of the roads. They'll be in the parks. He would like to build this campground to ensure they have somewhere to go and not be a disturbance to the community. He would like an elected official to tell him where they will be staying. He would like to have the workers in an organized setting rather than all over the area. He stated he has spoken with owners of other properties around the area and they are not willing to sell to him. That is why the area he chose is where it is.

He stated that he was told by a county administrator to resubmit an application, he believes that the administrator has the authority to override the denial.

Patrick Stefanoff approached the commission he wants it on the record that he also doesn't want people on the streets or on their abandoned property. The people in South Track make their living on their properties out there. He doesn't believe that they would want to risk their lively hood by having a campground put in the area.

Deputy County Attorney Denton Peterson reminded this is not a public hearing.

Vice Chairman Joyce Barney stated that she believes it is time to move on to the next item on the agenda.

3. REVIEW and POSSIBLE APPROVAL—Application Z-2022-005 for a C-1 Conditional Use Permit for a Solar energy system (minor) located approximately 1.8

miles southwest of Leamington within the Agriculture 20 (Ag-20) zoning district. McPherson Land & Livestock LLC, applicant.

Susan Williamson Director of Operations for Rural Power and Light approached the commission and gave a description of the application. Mr. McPherson would like to use the solar power to supplement a portion of the power to his irrigation pumps needed for his agricultural and livestock operations.

There was discussion of how many acres of this 20-acre parcel will the solar panels will sit on.

Commissioner John Nye asked if the applicant would eventually use 100% solar power. Susan Williamson stated that as of right now, this is what the customer has requested. If he would like more he can add to the system.

Commissioner Peter Greathouse sated that he has had discussion with a Rural Electric employee about the amplitude, frequency and damage to equipment. Susan Williamson stated that this is regulated and has been approved by Rocky Mountain Power so they'll meet all of their regulations and the USDA feasibility recommendations. Planner Adam Richins stated that many of these commercial systems are an engineered design.

There was discussion about controlling the vegetation surrounding the solar panels to prevent fires. Susan stated there will be gravel underneath and around the solar panels.

Cody Dixon, director of Field Operations for Rural Power and Light approached the commission. The panels on the back end will be about seven feet four inches off the ground in a 26-degree angle toward the front which will sit about one foot six inches off the ground.

There was discussion about fencing the area to control access. Cody Dixon stated that the customer would like to add fencing to prevent damage to the panels by his livestock and other animals in the area.

The Planning and Zoning Commission finds this application in Conformance to the General Plan.

Commissioner John Nye made a MOTION to approve application Z-2022-005 with the following recommendations:

Recommendation

1 Approve the C-1 Conditional Use Permit application permitting the construction and operation of Solar Energy System (minor) with the following reasonable conditions:

- a) Setbacks from property lines shall be those identified in 10/25/2 Appendix B-1 in the agriculture 20 (Ag-20) Zoning District.

- b) Necessary warning signage be placed on site perimeter fencing, electrical equipment.
- c) A weed-free area be maintained below and around equipment, and for distance at least 25' around panel installation.
- d) A Fire Management Plan acceptable to the County Fire Marshall be provided and follows. This plan shall address fire management during the construction and maintenance of the solar installation.
- e) Fencing shall be installed around equipment and area below and around equipment shall be graveled.

Commissioner Peter Greathouse SECONDED the motion. Voting was unanimous in the affirmative.

4. REVIEW and POSSIBLE APPROVAL—Application # Z-2022-006 for a Non-Plat Subdivision located at approximately 1450 W 850 N Fillmore. Andy Bray, Applicant

Andy Bray approached the commission and gave a description of his application.

Commissioner Peter Greathouse asked for clarification of the property location. The applicant stated it is West of Fillmore going toward Flowell, ½ mile north of the highway.

There was discussion about access roads.

There was discussion about power and how far the nearest source is or if they'll need to run power. The applicant stated there is power right at the south east corner.

The applicant is in the process of getting 5-acre feet of water and is planning on a septic system.

Commissioner Peter Greathouse made a MOTION to approve application Z-2022-006 and it is in conformance to the general plan. Following the proposed recommendations:

RECOMMENDATION

1. Approve the Non-Plat Subdivision as proposed.
2. Basis for Recommendation or Approval of the Subdivision: (Title 11-Subdivision Regulations)

11-1-4: Definitions

Subdivision:

- A. Any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development, either on the installment plan or upon any and all other plans, terms and conditions.

- B. "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat or any other recorded instrument.
- C. "Subdivision" does not include:
1. A bona fide division or partition of agricultural land for agricultural purposes;
 2. A recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
 - a. New lot is created; and
 - b. The adjustment does not result in a violation of applicable zoning ordinances;
 3. A recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or
 4. A bona fide division or partition of land in a county other than a first-class county for the purpose of siting, on one or more of the resulting separate parcels:
 - a. An unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company; or
 - b. An unmanned-telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransformation, or amplification facility.
- D. The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision", under subsection A of this definition as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

11-3-1: MINI SUBDIVISIONS

- A. Conditions; Any property owner or an owner's agent (hereinafter a "property owner") may submit to the county recorder's office for recording a document that subdivides property by metes and bounds into nine (9) or fewer parcels, without the necessity of recording a final plat if:
1. The planning commission has reviewed the document and has given the county commissioners its recommendation on the subdivision application; and
 2. The document contains a certification of approval signed by the chairman of the county commissioners or his designee that:
 - a. The planning commission has given its recommendation to the county commissioners;

- b. The subdivision is not traversed by the mapped lines of proposed street as shown in the master plan and does not require the dedication of any land for streets or other public purposes;
 - c. Each parcel in the subdivision meets the minimum areas, width, access, and frontage requirements of the zone in which the property is located, or has been granted variance from those requirements by the board of adjustment.
- B. Use Restrictions: The uses on parcels created under this section must be either permitted or conditional uses in the zone district in which they are located. Non-Plat subdivisions which result in the creation of three (3) or fewer lots will be presumed to be for the primary purpose of supporting agricultural uses rather than for primarily residential purposes.
- C. Lot size: The sizes of the lots created in a three (3) or fewer lot, non-Plat subdivision may be smaller than the minimum lot size required in the zone in order to preserve agricultural land uses.
- D. One Time Process: Information on Deed: This special provision may be utilized only once per parcel or property. Parcels of land which are subdivided under these special circumstances must be deed restricted with a notation on the documents of conveyance that this one-time election has been exercised and that the resulting parcels may not be further subdivided without recordation of an approved subdivision plat. The deed restriction shall also obtain a statement that subsequent owners of the created parcels are not on notice that the parcels are in an agricultural zone, were created for the support of agricultural activities, and may be subject to the noises, odors and other conditions typical of agricultural activities. (Ord.01-08-27A, 8-27-2001, eff. 10-08-2001)

Commissioner DeMar Iverson **SECONDED** the motion. Voting was unanimous in the affirmative.

5. DISCUSSION—Denied C-1 Conditional Use Permit Application Z-2021-052. Coyote Flats Campground, LLC, Petitioner

Deputy County Attorney Denton Peterson stated that an application was submitted by Coyote Flats Campground titled “Application for Reconsideration of a C-1 Conditional Use Permit” and referenced a previous application (Z-2021-052) that was denied. No such application exists within the Millard County Code.. There are multiple places within the code that state that the Planning Commission has the authority to give approvals in conformance with the county code. Even though this was titled as an application there isn’t anything in the code that states any action needs to be taken on such a submission.

This item was placed on the agenda for discussion at the request of the applicant before the Commission.

According to the Millard County Code there is nothing that obligates any action be taken on this item. And nothing that gives the authority for the Commission to do so.

According to the Administrative Manual which is adopted by resolution and is part of the Millard County Code Rule 209 states that, " Any application that has been submitted and denied, if any application is then submitted for that land or any piece of that land that is for a project is substantially similar it should not be considered for a minimum of one year." There are a few exceptions within that stating if the denial was made by a mistake of fact or that the Commission decides to make a motion to act immediately, which they could do only if they could state on record a valid public purpose in doing so.

David Weston, father of Steele Weston, Coyote Flats Campground applicant, approached the commission. He stated that he appreciates the opportunity to come before the commission. He stated he disagrees with Mr. Peterson's legal analysis. This board gets its authority from the Utah Municipal Land Use Development and Management Act. Under the provisions of that act the county administrator functions arise. If the Commission has the legal authority to make a decision, then in his judgement they have the authority to review at any time in the event that they find the proceedings were unlawful or improper for any reason. He stated that what is transpiring here is no difference in particularity than seeking to readdress an issue to determine if there in fact has been some impropriety on the Commission's part or County Administrator's part. He stated that every applicant that appears before this Planning Commission has a right to a hearing that arises in compliance with the Millard County code. Any hearing that has been initiated and heard by the Commission that is contrary to the code automatically creates a suspicion that you're denying the proponents their due process rights arising out of the 14th amendment of the Constitution. Due process in this context means that all actions required to be taken by the code, necessary to confirm the applications or conditions have been conducted in accordance within the mandate of the code. He does not believe those conditions were met in regards to the Coyote Flats Campground application. He is asking the Commission to rescind their prior denial.

He stated that in conformance of the code which states, that if you have an application come before you that is incomplete, the code provides 30 days to augment that application so that it is complete.

He stated that the applicant hired an attorney to process the application for them. The applicant reasonably relied on the attorney submit the application in compliance with the code. He believes that the attorney didn't complete the application.

He stated that the applicant has the right to rely on the County Ordinance Administrative Manual. Which requires that an inadequate application be returned in order to bring the application into compliance.

He stated that the applicant believed that because the application was sent before the Commission, that it was in sufficient form to receive a favorable hearing. But when incomplete the administrative manual requires no action be taken upon an application that is incomplete until the deficiencies have been completed. Because this didn't happen, he believes that the applicant was denied his due process rights.

He stated that the applicant was advised by the administrator that he would be granted 30 days to bring the application into compliance. The applicant made changes and brought the application into compliance, returned the information to the administrator who then refused to act on them.

In conclusion he believes that if the Commission has the authority to make a decision, they then have the authority to review their decision and correct the decision if there are obvious errors. He is asking the Commission to review the December 1, 2021 minutes, table the application and rescind the denial. Give the applicant 30 days to bring the application into compliance and then reconsider.

He thanked the Commission for their time.

6. POSSIBLE CLOSED MEETING Pursuant To Utah Code Annotated Section 52-4-204 & 205

7. APPROVAL OF MINUTES – The proposed minutes for the regular Commission meeting held February 2, 2022 were presented for consideration and approval. Following review and consideration of minor corrections, Commissioner Peter Greathouse made a MOTION to approve the minutes for February 2, 2022. Commissioner DeMar Iverson SECONDED the motion. Voting was unanimous in the affirmative.

8. ADJOURNMENT

Commissioner DeMar Iverson made a MOTION to adjourn at 7:33 pm. Commissioner Peter Greathouse SECONDED the motion. Voting was unanimous in the affirmative.

Dated this ____ day of _____ 2022
Joyce Barney, Vice Chairman
Millard County Planning Commission