



PLANNING COMMISSION AGENDA
Thursday, February 28, 2013
Morgan County Council Room
6:30 PM

PUBLIC NOTICE is hereby given that the Morgan County Planning Commission will meet at the above time and date at the Morgan County Courthouse, Council Chambers, 48 West Young St, Morgan, Utah. The agenda is as follows:

1. Call to order – prayer.
2. Approval of agenda.
3. Declaration of conflicts of interest.
4. Approval of minutes from January 24, 2013.
5. Introduce Bruce Parker – Morgan County Snowbasin Consultant
6. Public Comment
7. Discussion/Decision: Wildflower Outdoor CUP: Requesting a Conditional Use Permit for outdoor gear and apparel retail sales on the property located at approximately 5941 Old Highway Rd.
8. Discussion/Decision: Verizon Wireless CUP: Requesting a Conditional Use Permit for an unmanned 12'x26' Telecom Shelter to be located at the peak of Big Mountain Pass.
9. Public Hearing/Discussion/Decision: Brown Rezone; a request to rezone 4.330 acres of property from the R1-20/A-20 zones to the R1-20 zone at approximately 4396 Cottonwood Canyon Road.
10. Discussion/Decision: The Ponderosa Subdivision: A proposed three lot subdivision; the first plat of land otherwise known as Phases 7 and 8 of the Rollins Ranch Development Agreement, located at the end of Hidden Valley Road.
11. Acknowledge outgoing Planning Commission member Adam Toone.
12. Staff Report.
13. Adjourn.

PLANNING COMMISSION AGENDA
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MEMBERS PRESENT

Roland Haslam, Chairman
Darrell Erickson
Debbie Sessions
Adam Toone
Shane Stephens
Steve Wilson

STAFF PRESENT

Charles Ewert, Planner
Ronda Kippen, Assistant Planner Tech
Teresa Rhodes, Transcription

MEMBERS ABSENT

Alvin Lundgren

COUNTY COUNCIL PRESENT

Tina Kelly

***** MINUTES *****

1. Call to order – prayer.

Member Erickson offered the prayer.

2. Approval of agenda.

Remove agenda item #5

Member Sessions moved to approve the agenda with the amendment of removing agenda #5. Second by Member Wilson. The vote was unanimous. The motion carried.

3. Declaration of conflicts of interest.

There were no conflicts declared.

4. **Approval of minutes from January 24, 2013.**

Members Sessions moved to approve the minutes of January 24, 2013 with the noted corrections. Second by Member Toone. The vote was not unanimous, with Member Erickson abstaining because he was not present at that meeting. The motion carried.

5. **Introduce Bruce Parker – Morgan County Snowbasin Consultant**

This item was taken off the agenda.

6. **Public Comment**

Member Stephens moved to open public comment. Second by Member Erickson. The vote was unanimous. The motion carried.

Mike Wasuita – representing the Northwest Irrigation Company

Mr. Wasuita noted in 2007 their open ditch system was converted over to a pressurized line. In 2009 and 2010 they went through and had some surveys done to stipulate where the line was. Everyone signed an agreement and easement to allow the pressurized system to go through the property. At this point in time, this proposed Ponderosa property, was the Rollins Ranch property i.e.: Gardner property; the property was in transition at the time between the Gardeners and Rollins Ranch. The pressurized line for the ditch company goes through this property. At this time, they would like Mr. Durbano to sign an easement recognizing the pipe is there; which it has been since 2007. He would encourage the planning commission to not go too far ahead with this until the ditch company gets the easement signed by Mr. Durbano.

Member Sessions moved to close public comment. Second by Member Wilson. The vote was unanimous. The motion carried.

7. **Discussion/Decision: Wildflower Outdoor CUP: Requesting a Conditional Use Permit for outdoor gear and apparel retail sales on the property located at approximately 5941 Old Highway Rd.**

Stacy Palmer, applicant. Mrs. Palmer noted she started an on-line business last year for ladies outdoor apparel and would now like to expand that into a retail store with limited hours of operation; limited being several hours during the week and some hours on Saturday.

There was discussion on the outdoor advertising sign. It was noted that the sign will be placed on the building and not the pole that is outside of the building. As per code it states it will be approved by the community development director which is the same as the planning department staff.

Chairman Haslam asked about the hours of operation.

It was noted hours would be 3 p.m. - 6 p.m on Wednesday and 3 hours on Saturday.

Member Sessions asked what they think the hours of operation may be in the future. Mrs. Palmer noted that the Warner's have requested they limit the hours of operation because they do not want traffic all day long at the location. She noted she would comply with their wishes.

Chairman Haslam asked about maintenance that had been done on the property. Mrs. Palmer noted they have painted and done some new flooring.

Ronda Kippen presented her staff report (Please see attached exhibit A)

The following was briefly discussed:

- Wild Land Urban Interface.
- Building inspector stated it would be wise to have the fire official go out and look at the site due to the commercial use.

Member Sessions moved to forward a positive recommendation to the County Council for Wildflower Outdoor Apparel CUP Application 12.175 based on the findings and conditions listed in the staff report dated February 7, 2013 with the change in finding #8 that the first sentence be deleted which states that the property is inside the Wild Land Urban Interface area. Second by Member Toone.

Member Toone questioned condition #3. If it is not a required inspection, he would recommend it be removed; it seems obsessive. If it does not put the County at liability then he does not see why we need to worry about it.

**Member Toone moved to amend the motion striking condition #3.
Second by Member Sessions.**

Ronda Kippen noted when ever business is being reviewed, if there are customers coming to the site you do want to make sure that the appropriate steps have been taken to make sure fire mitigation has been looked at.

Member Toone withdrew his amendment.

Member Toone moved to amend the existing motion to strike condition #3 and re-word #8 to strike the words “and approval”. Second by Member Sessions.

Member Sessions noted that again we have a finding for a condition that no longer exists. There was brief discussion. Member Tone noted he believed you can still have a finding but to not make it a requirement is fine.

Item #7, landscaping was discussed. Member Erickson believed there needed to be a statement made whether it was in or out. There was discussion and it was determined that the intent was if the Planning Commission felt it was necessary then a condition would be added. If no condition was added then the Planning Commission believed it was ok without.

Chairman called for a vote on the amendment to the motion.

The vote was not unanimous, with Members Sessions opposed and Members Stephens, Erickson, Toone, Wilson for. The vote carried with a vote of five to one.

The Chairman Called for a vote on the following amended motion.

Member Sessions moved to forward a positive recommendation for Wildflower Outdoor CUP Application 12.175 based on the findings and conditions listed in the staff report dated February 7, 2013 with the following conditions as amended.

1. That a sign permit be submitted and approved by the Community Development Department.
2. That the proposed business limits customer visitation hours to fall within the timeframe of 6:00 AM to 10:00 PM.
- ~~3. That the applicant schedules a site inspection with the local fire official and receives approval prior to the issuance of a business license.~~
4. That a building permit is required to be issued for any electrical, plumbing, heating, framing, etc. during the remodeling process.
5. That all County, State, and Federal laws are upheld.

This recommendation is based on the following findings:

1. The 2010 General Plan supports growth of retail and other commercial activity in Morgan County-particularly Mountain Green-in order to provide goods and services to County residents.
2. The request conforms to requirements of the Morgan County Code 8-5C-1 and 8-8-4.

3. Due to the age and condition of the existing building, State Code does not require additional improvements at this time. All other items appear to be in compliance with Building Code.
4. Code has specific standards for signage. Staff is recommending a sign permit application be submitted for approval by the Zoning Administrator.
5. The number and types of vehicle has been identified in Code as potentially creating a safety concern. Staff feels adequate hard surface parking is being provided and that no further conditions should be imposed.
6. The hours of operation may be a conditional use to operate.
7. Morgan County Code has specific landscaping standards. If the Planning Commission feels additional landscaping is required in order to comply with code, staff would recommend a landscaping design to be submitted for approval by the Zoning Administrator.
8. Due to the commercial use of the property, staff recommends a site inspection ~~and approval~~ from the local fire official prior to the issuance of a business license.

Second by Member Toone. The vote was unanimous. The motion carried.

8. Discussion/Decision: Verizon Wireless CUP: Requesting a Conditional Use Permit for an unmanned 12'x26' Telecom Shelter to be located at the peak of Big Mountain Pass.

Mr. Garcia, representative for Verizon, noted that his company has entered into an agreement with AT&T to locate on their tower. However, code requires a special permit for the building. There will be no water, just power and fiber. He noted the building height will be about 12 feet tall

Member Erickson asked if there is documentation that this is a lease property. Mr. Garcia noted they do have a lease agreement with AT& T.

Ronda Kippen presented her staff report (Please see attached exhibit B)

Member Wilson moved to recommend approval of the Verizon Wireless Telecom Shelter Conditional Use Permit request for the placement and construction of a pre-fabricated unmanned 12' x 26' equipment shelter, application #13.003 based on the findings and conditions listed in the staff report dated February 20, 2013:

Conditions:

1. That a building permit is required to be issued for the project.
2. That all Fire Protection requirements, as approved by the local fire official, are adhered to.
3. Prior to the commencement of construction, contact must be made with "blue stakes" and other local public utilities to identify underground utility lines.

4. That the maximum height of the building is twenty feet (20') or less, as measured to the bottom of the eave.
5. That all outstanding dues owed to the County for engineering review be paid current prior to the acceptance of the building permit application.
6. That all other County, State, and Federal laws are upheld.

This recommendation is based on the following findings:

1. The proposed use has been identified as a "Public Facilities and Public Service Facilities" and is "an accessory building and uses customarily incidental to conditional uses".
2. The request conforms to requirements of the Morgan County Code 8-5A-3, 8-6-18 and 8-8-4.
3. The shelter will be placed within their fenced leased area and does not create any engineering concerns as proposed.
4. The proposed use will be placed within an existing 6' chain-link fenced area. The applicant will be replacing the damaged portions of the existing 6' tall chain-link fence topped with barbed wire, and will install tan vinyl slats on the East and South sides of the fence. The tan vinyl slats will protect and will not interfere with existing views and will blend with the natural aesthetics of the land.

Second by Member Erickson. The vote was unanimous. The motion carried.

9. Public Hearing/Discussion/Decision: Brown Rezone; a request to rezone 4.330 acres of property from the R1-20/A-20 zones to the R1-20 zone at approximately 4396 Cottonwood Canyon Road.

Tony Pantone, representative for the Church of Jesus Christ of Latter Day Saints noted this is the same application which came before the Planning Commission one month ago. The only difference is that Mrs. Brown is requesting a rezone to R1-20 instead of RR-1

Charlie presented his staff report (Please see attached exhibit C)

Member Wilson moved to go into public hearing. Second by Member Session. The vote was unanimous. The motion carried.

There was no public comment.

Member Toone moved to close public hearing. Second by Member Sessions. The vote was unanimous. The motion carried.

Member Sessions moved to forward a positive recommendation to the County Council for the Brown Rezone Request, application #12.162, rezoning property at approximately 4396 Cottonwood Canyon Road from A-20 to R1-20, based on the findings listed in the staff report dated February 21, 2013.

1. That the request complies with the county's current Future Land Use map.
2. That the request complies with the County's Airport Overlay Zone.
3. That allowing the rezone will promote the property owner's desired use of the land.
4. That the uses listed in the proposed zone are harmonious with existing uses in the area.
5. That the recommended amendment is in accord with the County's General Plan.
6. That any future development on the property will require aviation and hazards agreements to run with the land, as required by the current MCC 8-5H-7.
7. That changed or changing conditions makes the proposed amendment reasonably necessary to carry out the purposes of County ordinances.

Second by Member Erickson. The vote was unanimous. The motion carried.

10. Discussion/Decision: The Ponderosa Subdivision: A proposed three lot subdivision; the first plat of land otherwise known as Phases 7 and 8 of the Rollins Ranch Development Agreement, located at the end of Hidden Valley Road.

Doug Durbano, Applicant

Mr. Durbano noted this is what was to be phases 7 and 8 of the Rollins Ranch subdivision. The subdivision has had some ups and downs with the economy. They purchased 88 acres of the subdivision about 1 year ago with the hope to build a home and a couple lots for their children.

They recognize this land is subject to a development agreement, signed by the County and therefore they need to comply with that.

They have interchanged with Charlie's office about 8-12 times and finally met with the County Council several weeks ago to present a development agreement that they believed was tweaked enough that it might be received with positive vote or with some suggestions on changes. They had some success the last time they met with the County Council. He believes one of the keys to that success was that the original developer had also had approved an amendment that was passed unanimously. This would allow them (the applicant) to amend and continue their development and he believed that freed them up a little to come and do the same thing.

The County Council recommended they come back and get input from the planning commission as well as the planning office and incorporate a couple of changes.

Mr. Durbano referred to page two of the packet presented by the planning office which lists 9 items, specifically the ordinance based on certain items that are not complete, missing, or not appropriately addressed: However, he believed they were appropriately addressed and would like to go over those items. He believed this had been going on for so many years that some documents had simply been lost.

1. Service agreements from all utility companies, pursuant to MCC 8-12-24(F)(4).
 - Has a service agreement (will serve) from Cottonwood water issued a year ago.
 - Cottonwood opposed their well with the condition that they were in their district and should use their water. Cottonwood withdrew objection based on Durbano's commitment that they would connect with them. He presented a copy to Charlie.
2. Written verification of all proposed water sources, pursuant to MCC 8-12-24(F)(8).
 - Did make a well permit. Presented a copy of order from the state engineer.
 - They paid fees to Weber Basin Conservatory District, and were granted a water right to dig well. They have not dug the well. This document is 6 months to 1 year old. Presented documents to Charlie.
3. Information regarding the proposed culinary water supply, pursuant to MCC 8-12-24(F)(8) and MCC 8-12-46(B).
 - Believed Item #3 was duplicative to numbers 1 and 2.
 - Charlie noted it would depend on what Mr. Durbano was using because staff has not been informed until now.
4. Site geologic units, pursuant to MCC 8-12-24(F)(9) and MCC MCC 8-12-24(G).
 - Geotec report – provided but sent electronically August 2012. Mr. Durbano provided a hard copy. Charlie noted he had the report. Mr. Durbano noted this report was used when Rollins ranch was originally approved for its lots.
5. Source protection area for well head, if applicable, pursuant to MCC 8-12-24(F)(10).
 - Verification from the Weber/Morgan Health Department could be basis for denying a building permit not a basis to reject moving this application forward.
 - They are not certain, at this point, if they will be digging a well or using a septic system. They recognize the need to comply, but there may not be a need to.

Mr. Durbano skipped over #6 in his discussion at this time and discussed item 7. (#6 has been left in numbered format but it was addressed after #7).

6. Copy of protective covenants for common area maintenance, pursuant to MCC 8-12-24(I).
 - Mr. Durbano noted this is a situation where a CC&R needs to be filed because there is common area. He noted this makes sense if you are doing a large subdivision and you have common area with access issues as well as maintenance issues. He noted they do not have any common area on this three lot subdivision. There are no

common water/drainage systems; it does not apply. He noted he put 'not applicable' because there are no common areas on this.

- He noted there is drainage and storm water capacity that deals with the entire development of Rollins Ranch. This was part of the proposal of the original PRUD some two or three years ago. It does have the capacity and they do have the contractual ability and right, when they purchased the property, to hook into that storm system. They have three lots that might impact that but since these lots are much larger, they also have sufficient lot capacity to receive water runoff from roof, cement, and to be incorporated into the infrastructure of the ground and probably not impact the storm sewer drainage system because of the larger lots.
- The protective CC&R's for the common area that deal with these common storm sewer systems does not apply; none are proposed.

7. Fire protection plan, pursuant to MCC 8-12-46(C) and the 2006 Wildland/Urban Interface Code.

- Water flow is provided by Cottonwood Water, and he has letters that state they have capacity for these types of services. He showed on the plans that there is a fire hydrant within 50' from the proposed location of the home. He believed they were ok on this.

Chairman Haslam asked Mr. Durbanio to back up and address # 6.

8. Streetlight proposal, pursuant to MCC 8-12-46(F)

- Noted this is pursuant to the County Engineer. He has not heard that the county engineer wants this. Believes the original development agreement required streetlights at various locations and there was maybe one streetlight that would fall into their subdivision. He is ok with that one streetlight, if required. He suggested maybe location could be discussed.

9. Adherence to requirements of the development agreement, including:

- a. Copies of protective covenants, pursuant to §2.3.
 - Eliminated in the development agreement until they go beyond three lots.
- b. The required agreements between the developer and Browning Arms, pursuant to §2.10.
 - Talked about below.
- c. Providing open space and open space amenities within the subdivision, pursuant to §2.4.
 - Stated that open space occurs naturally and the development agreement can be amended to eliminate any statutory open space for the three lots.
- d. Providing streetlights, pursuant to §2.7.
 - Discussed earlier.

Mr. Durbanio noted these all deal with the development agreement. This is where he wanted to end, but would take a few minutes on this. He noted the following:

The development agreement has been amended a second time by the original developer. Their request would be a third amendment. He has received input and he has a copy of the planning office's comments. He has then incorporated the comments he has received from the County Council. The County Council requested that he present them with an amendment to the development agreement that would allow for what they are proposing. He believed what he heard, when he met with the members of the County Council, is that they liked what he was trying to do. But technically, if the body believes the previous 101 lots should be done he believes the County has the right to insist upon that and he would not disagree. He would suggest that it may not be the best thing. He believes what he is proposing is a better use of the ground and less impactful to the County. If they were to follow through with the 90 acres and 100 and some lots, that is adding some pressure to County infrastructure; fire, water, road maintenance. They believe by reducing the density they are actually presenting something that would be more favorable to the county and it suits them just fine. He noted he and Shauna are not developers, they are homesteaders. They want to have their house and a farm. He will acknowledge that if it is something that the county really thinks it needs to have, then this proposed amendment does not do that. What it does say is the following:

- Limit to the 90 acres only.
- 3rd amendment will be for the Ponderosa.
- Recognize that the first three phases were designated as having certain numbers of lots of high density but the current proposal is that they will develop three lots, in a proposed phase one, into ranchettes.
- Has added that phase 2, phase 3, and a phase 4 could be proposed and they could be phased in over the next 10 years. As long as he is alive, and they do not fall on hard economic times, it will be a farm. Doesn't know what the kids will choose to do with it when he is gone.
- Due to the size of the larger lots, at least to the first phase, the open space that resides, geographically by nature, will remain. Frankly all of it is now open space. Seemed like the county council was amicable to that concept.
- They amended the paragraph in the development agreement dealing with the CC&R's. Given they only have three lots, they did not believe CC&R's were applicable. If this body believes they are applicable they can make some up; they will be simple.
- Septic tanks – given the distance from at least one of the proposed homes the sewer in the road has been measured and is only 8' deep. All of the lower lots on the plat do not have enough width for that sewer to drain in an appropriate fashion. As Dennis pointed out, he granted them will serve, but he put in some conditions suggesting that there would probably be a need for a possible pump from the house, but there could be some other pumps required by the sewer district which would be undesirable. Denny suggested that the house on lot one may be better served by a septic tank. They have made application to have a septic at the request of the sewer district. They have taken that advice and incorporated it into the language of the development agreement. Language states: Lot #2 and #3 will hook directly to the sewer but lot #1 may not be feasible or practical to hook to the sewer so they will simply comply with the sewer districts requirements relative to lot #1.

- Frontage: This issue has been brought up a time or two. Under the current zone of this acreage it was zoned as RR-1. Under the County ordinances RR1 requires a 200' frontage. Under the PRUD and the Development agreement it does not say a frontage requirement; it leaves up to concept plan.
 - He noted Exhibit B-1 in the packet. They are proposing Lot #3 has a 198' frontage. Lot #2 has about 96' of frontage. Lot #1, which is 6 1/2 acres and has a 60' connection; 60' frontage. He noted he circled in Red, on the plat, areas that might only have 60' frontage.
 - He believed the following information seals the deal: Of all of the 100 some lots, of the proposed 300 lots in the whole subdivision only have about an average of 70' frontage. He understands they have to have health, safety, and welfare in mind, but the frontage sometimes can be a factor.
 - Lot one is proposed as 6 acres, and has a 60' main road as an access—; this would be similar to a cul-de-sac. If that is not sufficient for one lot, given the circumstances, he doesn't know what they are thinking because the frontage in the entire subdivision is serviced by frontage on the Old Highway.
 - Development agreement does not specifically say what it should be. The County Council had a similar reaction, but we are in a PRUD so there is some flexibility. The document does not limit or state frontage; sometimes we need to ask what makes sense. Believes frontage is designed to protect against some access issues as well as some deteriorating value issues.
 - Development agreement he would propose that the frontage requirements of phase one, as well as any future phases, will generally be in compliance with the frontage allowed under the former PUD statute and or as shown on other lots and concept drawings of Rollins Ranch. Using that as an example he believes they have covered the frontage issue.
- Entered for the record a service line agreement from Questar Gas. He noted gas is in and on the property.
- Entered for the record a service agreement with Rocky Mountain Power. May 25, 2012 entered into a subdivision contact with Rocky Mountain whereby they contracted with them the necessary electrical lines. Power has been installed and paid for. Mr. Durban pointed out, on the plat, where the switch plates were installed.
- Browning agreement was pursuant to the original development agreement where the developers were required to enter into a contract with Browning to provide certain protections; these protections have not been done, but the development agreement has been done. He provided to the Commission an agreement dated back in September and signed by Josh Romney and Craig Walker. He noted The Browning agreement is in place but he will represent that it has not been fully complied with. The objection was they had to make sure there was a Browning agreement, which there is, but what he is not positive of is whether or not the developer has complied with it. Contractually, when they brought the property the agreement was that as long as they did not propose 8-10 lots then the responsibility, under the development agreement, would remain the responsibility of the original developer. They recognize this agreement as part of the original development agreement and believe it remains the responsibility of the original developer. They would like to participate in a way that makes some sense.

Surveyor and Engineers comments.

- He believes they have complied, as specific as they can, with the required ordinance of Morgan County.
- He noted the water and ditch issue may need some further discussion but those are things that neighbors work out between themselves. He does not believe they are part of the plat approval process.
- Staff recommends denial but he really doesn't know what else they can do shy of nit-picking.

Member Wilson asked about the pressurized line.

Mr. Durbano noted he has some problems with Northwest irrigation – He noted he understood when he purchased the property that the developer had run an 18” line through the property to eliminate any ditches rights that the parties had through the property.

Member Wilson noted the original PRUD accepted that line. Member Wilson asked if the people that Mr. Durbano bought the property from did not accepted that easement as part of the purchase. Mr. Durbano noted currently there exists no easement on that line that runs through his property.

Charlie noted as far as he understands it is not there at this time. It is required to be platted under the subdivision rule; if of course, the utility has the right to be there. That is a private civil issue but it has to be resolved before the County can plat the subdivision.

Mr. Durbano asked who owns the pipe. He noted he has talked to Mike Wasuita and ask where the pipe sits on the property and where do they want the easement. Originally the request was for a 30’ easement. He believed that was excessive; 15' may be enough. Bottom-line, there is some work that needs to be done on the pipeline. He is not opposed to it being on the property. This was a piece of business that was not finished before he bought it and he has been left to clean it up. He is not opposed to cleaning it up but is opposed to being leveraged. He noted some questions to consider:

1. Apparently the pipeline provides advantage to people downstream. Does this pipeline provide some advantage to the burdened property?
2. Can the burden property tap into the pipeline, if so what is the cost.
3. Who bears the maintenance and liability of the pipeline?
4. He continues to attend their meetings. He noted there has been open dialogue at those meetings.

Member Sessions – asked if Mr. Durbano was applying under the development agreement of Rollins Ranch or trying to apply under a normal subdivision.

Mr. Durbano said he is applying under the development agreement of Rollins Ranch.

Member Sessions stated it seems Mr. Durbano is picking and choosing what part of the development agreement he wants to uphold. Some things he says yes, some things he says it is

not important. She noted Mr. Durbano had referred to it as nit picking, she calls it code compliance. She has a problem with being on both sides of the fence.

Mr. Durbano noted a development agreement is a contract between the government and the private developer. It supersedes the ordinance.

The market tanked and the developer somewhat wanted to abandon parts of this development at one time. He purchased it and here he is. He noted because it is a contract between the County and the developer and now a contract that is between the County and the new property owner; he believed the answer was they can do anything they want.

Member Sessions believed Mr. Durbano needed to amend the development agreement if he wants to change it. The planning commission cannot amend the development agreement they have to follow it.

Mr. Durbano noted the development agreement needs to be amended. They have proposed an amendment and gone to the County Council and received a unanimous vote, subject to some modification, and then they are prepared to amend it. They have taken those suggested amendments, discussed them, and now they have come back with a proposed amendment agreement. They believed that it may be appropriate to have this planning commission's input on any amendments.

Member Sessions stated Mr. Durbano is asking for final decision and that is why it is recommended denial, because they cannot make a favorable final decision at this time.

Mr. Durbano noted he would respectfully suggest that the planning commission can make a final decision subject to, because they know that it has to be the county council that has to approve the final amendment. He asked if the planning commission can simply say that this plat, as presented, is acceptable? The lots as proposed do not violate the current development agreement.

Member Sessions believed the planning commission could not address this because it is contrary to the development agreement.

Chairman Haslam asked what the drive is to get this approved tonight.

Mr. Durbano noted the drive is that any day now the plans for their homes will be submitted to Charlie and the plans will be denied; it is a personal drive. He noted they had a buyer, Mark and Trin Crockett, who bought lot #3 and put it under contract; he corrected himself and noted they had reserved the right to buy lot #3. Because of all this back and forth they have gone and selected a different lot. He noted this is what happens when it takes an inordinate amount of time to accomplish what most government agencies can process in 30-90 days.

Chairman Haslam asked Mr. Durbano, if he purchased this property does that not make him the developer; does that not make him responsible not the original developer, Josh Romney. Mr. Durbano stated that is true

Chairman Haslam asked for clarification, noting that Mr. Durbano has stated he is not trying to pull away from the original development agreement; he is staying within the confines. However, according to the map, which we have before us, lot #2 is open space. So how is he complying with the original application of Rollins Ranch?

Mr. Durbano noted there was a presumption that the green coloring on lot #2 was a mistake and never intended to be open space. Open space was the other green areas, not a lot. Mr. Durbano noted their proposal is to turn that green lot #2 back into a residential lot.

Chairman Haslam asked why he doesn't want to put the road in the way it is and just put his home in up around the corner. Mr. Durbano noted they are getting awful close to that road, but they are just following more of the property line rather than going out in the center of the property.

Chairman Haslam stated Mr. Durbano had stated he wants to stay within the development agreement which obviously is showing that road as a dedicated county road. It is his understanding that Mr. Durbano wants to take Lot #1 and make it a private entity that is not the same concept plan; it is either private or public.

Mr. Durbano showed, on the map, that one of the roads cannot go through the property because of the slope; it will be a cul-de-sac. They are proposing that a private road follow back to a single house and the reason that is preferred is because there is just a single home; that does not violate a development agreement. The road is being proposed private and they will maintain and plow it. It makes sense to follow the property line because in theory if the property is ever sold then there will be access from that side. If, in the future, they were to come back and say things changed we want to put in these lots, then they would put in a road that would bypass the house and follow what is called the old Powder Horn dirt road; there would be a second public road put in.

The Chairmen asked Mr. Durbano to define ranchette, larger lots. Lots 2 and 3 do not qualify as ranchettes. Mr. Durbano stated that is correct, but asked the chairman to define Ranchette. He noted instead of having high density it is a little more spread out.

Member Wilson noted they have a letter from Cottonwood Mutual Water Company (please see attached exhibit D).

Mr. Durbano noted this was the first time he had seen this letter. He noted the following:

- Statement in letter regarding two connections: Mr. Durbano noted originally the will serve letter for the two connections were the barn and the home. The other two lots already have water connections to them.
- Extension of water distribution line was done without Cottonwood mutual's permission; Mr. Durbano noted that is not true. He noted when they were bringing in a dirt road, back to the barn; they discovered breaks and even potential breaks where they had meter heads stubbed off into the dirt. The contractor he hired said it would be best to move the meters and valves up out of the way because equipment was being run over them. He

had the contractor stake the area and show them where the water lines were and his recollection was that the water line was extended. Mr. Durbano asked if that was without permission. Mr. Haslam noted he has to go with what is on the paper. Yes, Mr. Haslam was there but it was never approved through Mike Johansen; and Mike was the manager at that time. Mr. Durbano noted the information he was given was that the four Crockett guys knew what they were suppose to do.

- Application for a well permit was applied for after seeking will serve from Cottonwood mutual. Mr. Durbano noted he applied for a well because he believed the farm would benefit from a well. He asked what was wrong with applying for a well.

Member Wilson asked if the pressurized Northwest Irrigation line goes through any of Mr. Durbano's development.

- Mr. Durbano pointed on the map to where he believed the line was located.
- Member Wilson asked if he would be opposed to a 15' easement. Mr. Durbano stated he would not.

Charlie presented his staff report (Please see attached exhibit E)

Mr. Ewert noted the following:

- In the four years he has worked for the County he has not recommended denial. That is because most of the time staff and the applicant can come to amicable terms.
- He provided the nine points because he believed that was the simplest way to present the reasons for denial. Beyond the 9 points of incomplete application there are a lot of other substantive review issues that Mark Miller, Vaughn Hill, County Recorder, and he found; they are all are in the staff report.
- Staff did not have any service agreements from any utility companies until tonight.
- Staff does have information now on a well, culinary hook ups, but they have not been able to evaluate those. They do not have information on well yield. Staff will need those as per code, before we can look at a subdivision.
- Currently in the code it doesn't matter whether he wants to use a well or public water. Staff needs to see a plan, which they have not seen anything on until tonight.
- Geotechnical report is not a geologic report. It does contain information on site geology but it does not tell where that site geology is. It says that Norwood Tuft has been found on the property. We don't know where that is so we don't know how to provide for that.
- This is the first time staff has seen the agreement for Browning specific to this development. He realizes this may be the same agreement that Gardner/Rollins had. It is the checklist and he did not have before tonight. The County is not responsible for administering the agreement. It is just a checklist and the County makes sure it is done and an executed agreement in place. And the County likes to check with Browning, because they have been a good citizen in the community, to be sure they have been adequately represented prior to final plat recording.
- There is no fire protection plan which is required by the 2006 Wild land Urban Interface code. No comments are in the file from the fire chief which is required by code.

- Streetlights are required. The light is not a county streetlight however and it will need to be paid and maintained for by someone. Currently under the development agreement, under the HOA, and the existing CC&R's of plats 1, 2, and 3 that is the HOA.
- Adherence to the development agreement: Fundamentally he does not disagree with the conceptual logic that Mr. Durbano brings up on the three lot subdivision. He believes there is a way to make it work; but not this way. It does not comply with the existing agreement or ordinances.
- Believes this plan can be made to comply with the existing ordinances. It's a matter of going through the checks and balances. He noted Morgan County is not more difficult to develop land in than other jurisdictions. They do have a lot more entities to deal with - the water company, sewer company, fire district. However, the only thing Morgan County offers a developer is a street and maybe garbage pickup. It's a matter of bringing all these entities together and coming up with a plan and then executing the plan. So far we have not had a sufficient plan for any of the reviewers to be comfortable with.
- Open space has not been shown and today it requires what it requires.
- Does not believe the plan is unattainable, it just isn't going to work like it has been presented.
- A final written decision can't be made by the Planning Commission or the county planner. It has to be made by the County Council. Believes Mr. Durbano is asking for this a little too soon.
- Frontage - development agreement does not specify how much frontage is required. The plan does show lots and some level of engineering specificity. However, because the existing configuration, of this plan, is so far out of alignment with the existing proposed plan it is hard to say what the obligation is.
- Review transmittal shows the most recent redlined notes with a red box around it. Other red lines are comments from last October. These redline items are still outstanding in the ordinance.
- Plats with blue line comments went out with the original review in October.
- The development agreement clearly establishes that when the original developer sells the property the new person that buys the property is the new developer. They have all the rights in the development agreement to execute the development agreement as it is written. Mr. Durbano is the developer of this property even though he is sensitive to Mr. Durbano's desire to not be called that.
- The concept plan that was presented in the development agreement does have some level of engineering specificity. Not the level that the County's current subdivision code requires, but the level of specificity that was required at that time for concept plan. Because that was provided in a conceptual plan the County allowed the developer of the project to skip subdivision concept and go straight to preliminary. That is why there is a preliminary plan in front of us and not a concept. One of the requirements of the subdivision ordinance is that the preliminary documents will match the concept documents; another reason why staff is having an issue with it. Staff does not have a problem with what Mr. Durbano is proposing as long as the political body is comfortable

with loosing the 101 lots that otherwise would have been there at this time. However, keep in mind that even after the 3 lots subdivision is executed the developer still retains the right to 98 lots after that. That can come in immediately after it is recorded with or without improvement/frontage. We want to be cautious and careful with how the next steps and the next phases of the development are done so that we are not causing problems with future preliminary plans on the property.

- The development agreement does not restrict the phasing or selling of future properties to another person as far as staff reads it.

Chairman Haslam asked if Mr. Durbano was planning on staying in the Rollins Ranch development agreement, HOA, and open space, or is he taking 88 acres out, putting his three lots in, and Rollins Ranch does not get any say in this.

Mr. Durbano noted he wished he could say yes or no, but it is a hybrid between the two.

Chairman Haslam noted the following:

- He noted density calculation is going to change if Mr. Durbano decides to pull out of the original development agreement.
 - Mr. Durbano stated the open space is not going to be accessible to the Rollins Ranch or public access.
 - Open space is open to the eye but not necessarily open to ATV or foot use. If it is common space it is open to human beings, ATV's and others.
 - The only common space in the Rollins Ranch development was down by the club house and pool.

Member Stephens asked if Charlie would clarify that.

Mr. Ewert noted Mr. Durbano is accurate. For a time, the County was administering open space and requiring open space. It could be assumed that they meant common space as allowed by state statute but it is hard to argue that because the term is not the same thing.

The idea that all the open space areas in phases 7 & 8 are not accessible to anyone else in the subdivision is correct. Currently under today's rules he hasn't subdivided the property so he hasn't recorded CC&R's, he hasn't set up an HOA or the rights through those to who gets to use that property and how. If the County used common terminology that the state code uses, which Morgan County does not, they would have called it common space. Common space under state statute says that you cannot have one person in the subdivision own the rights to that space it has to be equally shared across the subdivision, unless by some other agreement.

Today Mr. Durbano owns a piece of property. There is not HOA or public access unless there is some other easement or covenant or otherwise that has been recorded against the property.

Under the development agreement he believes it was envisioned that all of this area would be part of the HOA. Mr. Durbano made a good point that this portion of the property from the tan line and above is a different neighborhood and a different neighborhood may have different HOA rules and different HOA's are going to have different restrictions and the County does not care what those are because we don't administer them.

Today the agreement says you have to have CC& R's which sets up an HOA, you have to have open space, trails, street lights, and architectural standards. It does not say what any of that is.

Member Sessions moved to forward a negative recommendation to the County Council for the preliminary plat for the Ponderosa Subdivision, application #12.086 subject to the seven findings as listed in the February 21, 2013 Staff report. Second by Member Wilson.

Chairman called for discussion.

Member Sessions noted since the applicant has requested final decision the Planning Commission's hands are tied. The current application is incomplete and not ready for review.

Options other than denial were discussed.

Member Stephens ask if having received the newly submitted items tonight would that allow the Planning Commission to agenda this in two weeks. Mr. Ewert stated it would not. He could not offer a time frame at this time.

Member Erickson indicated that it seems that we need a final development agreement so that we know the path to follow.

Member Sessions noted the development agreement needs to be amended first. Mr. Ewert noted the Planning Commission should ask the applicant if he is comfortable with that and also comfortable working toward a resolution.

Chairman Haslam ask Mr. Durbano if he would be willing to withdraw his request of final preliminary plat approve and accept a postponement at this time?
After discussion of possible time frame, Mr. Durbano stated he would be willing to do that.

Member Sessions withdrew her previous motion.

Member Stephens moved to postpone a decision for the preliminary plat for the Ponderosa Subdivision, application #12.086 until April 25, 2013, with a progress report on March 28, 2013. Second by Member Wilson.

Member Toone asked if there was anything presented tonight that would not need to be reviewed again. Mr. Ewert noted a lot of the items Mr. Durbano presented tonight were new and have not been reviewed.

The Chairman called for a vote.

The vote was unanimous. The motion carried.

11. Acknowledge outgoing Planning Commission Member Adam Toone.

Charlie presented Member Toone with a framed are picture and thanked Member Toone for his service during the past four years.

12. Staff Report.

The following items were briefly discussed:

- Current submittals in the office.
- Flexible subdivision ordinance survey.
- CD zone
- Snow Basin
- Upcoming agenda items.
- Geologic ordinance.

13. Adjourn.

Member Toone moved to adjourn. Second by Member Stephens.

Exhibit A, agenda item #7 - Discussion/Decision: Wildflower Outdoor CUP: Requesting a Conditional Use Permit for outdoor gear and apparel retail sales on the property located at approximately 5941 Old Highway Rd.

**Planning and Development Services
STAFF REPORT
February 7, 2013**

To: Morgan County Planning Commission
Business Date: February 28, 2013

Prepared By: Ronda Kippen, Planning Technician

Re: Wildflower Outdoor Conditional Use Permit Request

Application No.: 12.175
Applicant: Shawn and Erika Beckstrom/Morriah and Stacie Palmer
Project Location: 5941 Old Highway Road
Zoning: CH/R1-20 Zone
Acreage: Approximately 31.52 Acres
Request: Conditional use permit approval for retail sales of outdoor gear and apparel store.

SUMMARY

This application is a request for a new business to be located at 5941 Old Highway Road. The proposed business will be located in an existing commercial building built approximately in 1980. The building will be utilized as an online retail store and will be open to the public for retail sales of outdoor gear and apparel. The applicant, Wildflower Outdoor, specializes in outdoor gear, apparel and events for women. The applicant has previously been approved by staff for the online retail store at the subject property. The new proposed use is to consider the public use of the subject property to be used as a "sporting goods and bicycle shop or other retail trade, apparel and accessories".

This proposal is being evaluated against the current requirements of the zoning ordinance and is listed as a conditional use, which requires the application to be reviewed and approved by the Morgan County Planning Commission and Morgan County Council. The subject property is in the R1-20 and CH zones (See Exhibit A). The proposed commercial use is entirely within the CH zone which allows for the use through a conditional use permit.

ANALYSIS

General Plan. The Future Land Use Map identifies this property as "Village Low Density Residential" which allows for half acre residential lots. However, the current zoning for this property is CH which

allows for commercial growth. The 2010 General Plan has identified the need to support growth of retail and other commercial activity in Morgan County-particularly Mountain Green-in order to provide goods and services to County residents. (See 2010 General Plan page 13, Land Use Strategic Objectives)

Zoning. This property is located on a parcel that is split by two separate zones. The current zoning for the subject parcel is R1-20/CH. The R1-20 zone is located North of Old Highway Road with a small portion along the Southwest corner of the subject parcel. The CH zone is located on the South side of the subject parcel, fronting Old Highway Road. The building and its proposed commercial use fronts Old Highway Road and will be within the CH zone. (See Exhibit B)

The proposed business is determined to be allowed in the CH zone through a conditional use permit. Morgan County Code (MCC) 8-5C-3 identifies this as at least two uses the proposal may be considered under: "Sporting goods and bicycle shop" or "Other retail trade, apparel and accessories". Both of these uses require a conditional use permit in the CH zone.

Building Code Requirements. The proposed business will be located in one of the two commercial buildings located on the subject parcel and has been inspected by the Morgan County Building Inspector (See Exhibit C for inspectors memo). It should be noted that this building does not meet the current accessibility requirements of ADA, ADAGG, or ANSI 117.1 standards for entering and exiting the building, or the requirements in the bathroom facility. However, unless major remodeling requiring a building permit is to take place, it is not required by State law to bring the building to current code regarding accessibility because of the age and condition of the building. It is recommended that the business owners conform to all Federal laws and requirements pertaining to accessibility. All other items seem to be in compliance with Building Code.

Conditional Use Requirements.

- *Signage:* MCC 8-8-4 has identified the need for limitations and control of the number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and appearance and harmony with adjacent development. The applicant has chosen to only utilize a "Wall Sign" and has withdrawn the proposed use of an existing "Pole Sign". MCC 8-10-7 has specific "Wall Sign" standards. MCC 8-10-9 and 8-10-11 identifies the Sign Permit process. Such a permit is issued by the Community Development Department. (See Exhibit D)
- *Vehicles:* MCC 8-8-4 identifies potential conditions related to safety for persons and property concerning the numbers and types of vehicles per time period associated with the conditional use activities. The applicant indicates that the site has an existing asphalt parking lot approximately 67' x 55' which should allow for 6 (9' x 22') parking spaces. Staff feels adequate hard surface parking is being proposed and that further conditions at this time are unnecessary.
- *Hours of operation:* MCC 8-8-4 states "time of day and days of week a conditional use may operate". Staff recommends that the proposed business limits customer visitation hours to fall within the timeframe of 6:00 AM to 10:00 PM.
- *Landscaping:* MCC 8-8-4 and 8-6-27 have specific landscaping standards. Landscaping is

encouraged to ensure compatibility with the intended characteristics of the district and to enhance, conserve and stabilize property values by preventing litter and providing an attractive neighborhood. The applicant has proposed some minor landscaping improvements. Considering that this is an existing site, requiring new or more landscaping may not be necessary. If the Planning Commission feels more landscaping is needed in order to comply with the provisions of both of these codes, then a Landscape Plan should be submitted and approved by the Zoning Administrator.

Fire Protection. The property is within the Wildland Urban Interface Area. Due to the commercial use of the property, staff recommends a site inspection and approval from the local fire official prior to the issuance of a business license.

STAFF RECOMMENDATION

Staff recommends approval of the Wildflower Outdoor Conditional Use Permit request for retail sales of outdoor gear and apparel, application #12.175 with the following conditions:

6. That a sign permit be submitted and approved by the Community Development Department.
7. That the proposed business limits customer visitation hours to fall within the timeframe of 6:00 AM to 10:00 PM.
8. That the applicant schedules a site inspection with the local fire official and receives approval prior to the issuance of a business license.
9. That a building permit is required to be issued for any electrical, plumbing, heating, framing, etc. during the remodeling process.
10. That all County, State, and Federal laws are upheld.

This recommendation is based on the following findings:

1. The 2010 General Plan supports growth of retail and other commercial activity in Morgan County-particularly Mountain Green-in order to provide goods and services to County residents.
2. The request conforms to requirements of the Morgan County Code 8-5C-1 and 8-8-4.
3. Due to the age and condition of the existing building, State Code does not require additional improvements at this time. All other items appear to be in compliance with Building Code.
4. Code has specific standards for signage. Staff is recommending a sign permit application be submitted for approval by the Zoning Administrator.
5. The number and types of vehicle has been identified in Code as potentially creating a safety concern. Staff feels adequate hard surface parking is being provided and that no further conditions should be imposed.
6. The hours of operation may be a conditional use to operate.
7. Morgan County Code has specific landscaping standards. If the Planning

Commission feels additional landscaping is required in order to comply with code, staff would recommend a landscaping design to be submitted for approval by the Zoning Administrator.

8. The property is inside the Wildland Urban Interface Area. Due to the commercial use of the property, staff recommends a site inspection and approval from the local fire official prior to the issuance of a business license.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the Wildflower Outdoor Conditional Use Permit Request for retail sales of outdoor gear and apparel, application #12.175, based on the findings and conditions listed in the Staff Report dated 2/7/13 and as modified by the conditions below:”

1. List any additional findings and conditions...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the Wildflower Outdoor Conditional Use Permit Request for retail sales of outdoor gear and apparel, application #12.175, based on the following findings:”

1. List any additional findings...

Exhibit B - agenda item # 8: Discussion/Decision: Verizon Wireless CUP: Requesting a Conditional Use Permit for an unmanned 12'x26' Telecom Shelter to be located at the peak of Big Mountain Pass.

STAFF REPORT

February 20, 2013

To: Morgan County Planning Commission
Business Date: February 28, 2013

Prepared By: Ronda Kippen, Planning Technician

Re: **Verizon Wireless Telecom Shelter Conditional Use Permit Request**
Application No.: 13.003
Applicant: Technology Associates for Verizon Wireless
Project Location: Big Mountain Pass aka Pratts Pass, Highway 65
Zoning: F-1 Zone
Acreage: Approximately 1.03 Acres; Limits of disturbance is approximately 0.007 acres.
Request: Conditional Use Permit approval for placement and construction of a pre-fabricated unmanned 12' x 26' equipment shelter.

SUMMARY

This application is a request for the placement and construction of a pre-fabricated unmanned 12' x 26' equipment shelter. (See Exhibit A). The equipment shelter is an environmentally secure self-supporting small building that contains telecom equipment away from the main switching centers. The site is located at the top of Big Mountain Pass aka Pratts Pass, Highway 65, along the Morgan County/Salt Lake County line (See Exhibit B). Verizon Wireless is a privately owned company that provides public cellular service. There is an existing building and cellular tower located on the subject parcel. The applicant has leased a portion of the property currently owned by AT&T and would like to place a pre-fabricated, unmanned 12' x 26' equipment shelter to house their new equipment. The applicant is also proposing replacing and upgrading an existing single meter bank with a 6-gang meter bank and adding six new antennas to the existing lattice tower (See Exhibit C). Rocky Mountain Power will provide a three-phase 120/208 volt service to the new utility rack. The new proposed antennas will not add to the height or footprint of the existing tower (See Exhibit D). The equipment shelter will be placed in the area that is currently surrounded by a 6' tall chain-link fence (See Exhibit E).

The proposed use is considered an expanded use of the facility, and is being evaluated against the current requirements of the zoning ordinance. The subject property is in the F-1 zone which requires a conditional use permit for the proposed use.

REVIEWS

Planning and Development: The Morgan County Planning and Development Service Department has completed their review of the Verizon Wireless Telecom Shelter Conditional Use Permit Request for placement and construction of a pre-fabricated unmanned 12' x 26' equipment shelter and have the following comments:

Zoning: The property is zoned F-1. The placement and construction of the equipment shelter will be done on the Morgan County side of the subject parcel. (See Exhibit F)

The proposed equipment shelter is determined to be an accessory structure, incidental to the main use of the property as a Wireless Telecommunication Facility, which is conditionally permitted in the F-1 zone. This proposal maybe identified pursuant to Morgan County Code (MCC) 8-5A-3 as either "Public Facilities and Public Service Facilities" or "an accessory building and uses customarily incidental to conditional uses". Both of these uses require a conditional use permit in the F-1 zone.

The equipment shelter will be located to the East of the existing building on a 1.03 acre lot. The required setbacks for a utility structure in the F-1 zone are 30 feet for the front, 15 feet for the rear and 15 feet for the sides. The proposed use falls within the required setbacks (See Exhibit G).

Conditional Use Requirements:

- **Fencing.** MCC 8-8-4 states that fences shall not create visual nor other safety hazards. For this use the applicant is proposing to replace some damaged portions of the existing 6' tall chain-link fence topped with barbed wire, then install tan vinyl slats on the East and South sides of the fence. The tan vinyl slats will not interfere with existing views and will blend with the natural aesthetics of the land.

Supplemental Requirements:

- MCC 8-6-18 identifies the maximum height of any utility building is twenty feet (20'), as measured to the bottom of the eave.
- MCC 8-6-18 requires all contractors, owners and/or developers to identify all underground utility lines within the construction site. Contact must be made with "blue stakes" and other local public utilities to identify underground utility lines prior to the commencement of construction.

Fire Protection: The property is outside the Wildland Urban Interface Area. A fire protection plan, or other considerations as approved by the local fire official, will be required during the building permit process.

Engineering Review Comments:

Mark Miller with Wasatch Civil has reviewed the application for the placement of the 12' x 26'

equipment shelter with the following comment: “the shelter will be placed within their fenced leased area and does not create any engineering concerns as proposed”.

STAFF RECOMMENDATION

Staff recommends approval of the Verizon Wireless Telecom Shelter Conditional Use Permit request for the placement and construction of a pre-fabricated unmanned 12’ x 26’ equipment shelter, application #13.003 with the following conditions:

11. That a building permit is required to be issued for the project.
12. That all Fire Protection requirements, as approved by the local fire official, are adhered to.
13. Prior to the commencement of construction, contact must be made with “blue stakes” and other local public utilities to identify underground utility lines.
14. That the maximum height of the building is twenty feet (20’) or less, as measured to the bottom of the eave.
15. That all outstanding dues owed to the County for engineering review be paid current prior to the acceptance of the building permit application.
16. That all other County, State, and Federal laws are upheld.

This recommendation is based on the following findings:

9. The proposed use has been identified as a “Public Facilities and Public Service Facilities” and is “an accessory building and uses customarily incidental to conditional uses”.
10. The request conforms to requirements of the Morgan County Code 8-5A-3, 8-6-18 and 8-8-4.
11. The shelter will be placed within their fenced leased area and does not create any engineering concerns as proposed.
12. The proposed use will be placed within an existing 6’ chain-link fenced area. The applicant will be replacing the damaged portions of the existing 6’ tall chain-link fence topped with barbed wire, and will install tan vinyl slats on the East and South sides of the fence. The tan vinyl slats will protect will not interfere with existing views and will blend with the natural aesthetics of the land.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the Verizon Wireless Telecom Shelter Conditional Use Permit Request for the placement and construction of a pre-fabricated unmanned 12’ x 26’ equipment shelter, application #13.003, based on the findings and conditions listed in the Staff Report dated 2/20/13 and as modified by the conditions below:”

1. List any additional findings and conditions...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the Verizon Wireless Telecom Shelter Conditional Use Permit Request for the placement and construction of a pre-fabricated unmanned 12’ x 26’ equipment shelter, application #13.003, based on the following findings:”

1. List any additional findings...

Exhibit C, Agenda item #9: Public Hearing/Discussion/Decision: Brown Rezone; a request to rezone 4.330 acres of property from the R1-20/A-20 zones to the R1-20 zone at approximately 4396 Cottonwood Canyon Road.

To: Morgan County Planning Commission
Business Date: February 28, 2013

Prepared By: Charles Ewert, Planner

Re: **Brown Rezone**

Application No.: 12.162
Applicant: Bonnie Brown
Project Location: 4396 Cottonwood Canyon Road
Zoning: A-20
Acreage: Approximately 4.330 Acres
Request: Request for approval to rezone approximately 4.330 acres of property from A-20 to R1-20.

SUMMARY

The applicant is requesting to rezone a portion of her property from the A-20 zone to the R1-20 zone. The purpose of the rezone is to facilitate a land exchange between the applicant and the Church of Jesus Christ of Latter-day Saints so that the Church may pursue the possibility of a Church development. As an incidental benefit, if granted the rezone will bring the applicants currently nonconforming property into conformity with the requested zone's area requirements, and could help facilitate later development as well.

Rezoning is a legislative decision. To make a positive recommendation the Planning Commission needs to make two primary findings: that the proposed amendment is in accord with the master plan of the county; and that changed or changing conditions make the proposed amendment reasonably necessary to carry out the purposes of adopted ordinances.

To evaluate the merit of the request against the need for these findings, having an understanding of the recommended use of the property as provided for in the future land use map and an understanding of the existing zoning map, ordinances, and area uses are imperative.

It is also imperative to understand the maximum use of the property under the new requested zone. Some objective evaluative criteria to consider are: the potential resulting density, access to the property, traffic circulation, culinary water resources, sewer services, flood plain proximity, fire protection, topographic features, and the potential for geologic hazards. Each of these criteria is explored in this report.

Staff has provided a recommendation for approval with certain findings for the Planning Commission to consider herein.

BACKGROUND

The subject property is located along the north side Cottonwood Canyon Road, approximately 0.14 Miles from the intersection of Old Highway Road and Cottonwood Canyon Road (see Exhibit A). The property (Exhibit B) has a mixed use of agriculture and residential. From the inception of what is currently all of the Brown's two contiguous parcels (parcel #03-005-034-04, approximately 3.269 acres, and 03-005-034-08, approximately 0.994 acres – the home site), there have been parcel divisions that have not complied with the subdivision requirements or the minimum zoning requirements of the A-20 zone, and there has not been any evidence presented that these divisions were condoned by the County in accordance with adopted processes. The current owner has recently become aware of the problems this may cause and is desirous to bring the property into compliance with zoning requirements by rezoning it to a zone that better fits the current parcel configuration and meets the minimum recommendations of the County's Future Land Use Map.

The above issue was brought to light after the LDS Church approached the applicant with a proposal to purchase a portion of the subject property in order to gain more sufficient frontage and access for a potential future church development site on adjacent property (see Exhibit B). On further consultation with the County it became clear that a lot line adjustment could not be executed between the parcels because it would make the Brown parcels even more non-conforming, which is not allowed by MCC 8-12.

ANALYSIS

Planning Commission Responsibility. Pursuant to Morgan County Code (MCC) 8-3-3, the Planning Commission shall review the [zoning map] amendment application and certify its recommendations concerning the proposed amendment to the governing body within forty five (45) days from receipt of the amendment application in a regularly scheduled meeting. The Planning Commission shall recommend adoption of a proposed amendment only where the following findings are made:

1. The proposed amendment is in accord with the master plan of the county.
2. Changed or changing conditions make the proposed amendment reasonably necessary to carry out the purposes of this title.

General Plan. The first finding that the Planning Commission must make in order to make a positive recommendation for this rezone is that it is in accord with the master plan of the County. The 2010 General Plan and accompanied Future Land Use Map (as amended) is the County's master plan. The following is an excerpt from the plan that is relevant in evaluating this request (italics added for emphasis):

Both the text of the General Plan and the Future Land Use Map must be considered when making decisions about future development or redevelopment. Zoning changes should be in conformance with the Future Land Use Map. (Pg. 7)

According to the Future Land Use Map both of the Brown parcels are in the future land use designation of "Village Low Density Residential," which is designated for:

The Village Low Density Residential designation provides for a lifestyle with planned

single family residential communities, which include open space, recreation and cultural opportunities, including schools, churches and neighborhood facilities located in established village areas (formerly area plan boundaries) or master planned communities. *The residential density is a maximum of 2 units per acre.*

The petition to rezone Brown portion of the subject property to the R1-20 zone appears to be in conformance with the maximum recommendation for residential density of two units per acre.

Zoning. The current zoning on the property is A-20 (see Exhibit C) The Planning Commission should evaluate the request based on the potential changes in use and compatibility with existing conditions. To begin the evaluation, it is important to know the purpose of each zone and how they relate to each other.

The purposes of the A-20 zone are:

[T]o promote and preserve in appropriate areas conditions favorable to agriculture and to maintain greenbelt spaces. These districts are intended to include activities normally and necessarily related to the conduct of agriculture and to protect the district from the intrusion of uses inimical to the continuance of agricultural activity.

The purpose of the Residential District R1-20 zone is “to provide areas for very low density, single-family residential neighborhoods of spacious and un-crowded character.” See Exhibit D for a graphic depiction of what the rezone will look like after the proposed map change.

The minimum lot size requirement in the R1-20 zone is 20,000 square feet. The minimum lot size requirement in the A-20 zone is 20 acres (871,200 square feet).

The sizes and uses of properties adjacent to the subject property vary. To the south and east (across Cottonwood Canyon Road) there are established subdivisions with lots that are in some cases smaller than half-acre. To the north and west are properties of recreation grounds, agricultural grounds, and rural residential uses. To the north and east is the Mountain Green Commercial Park. The eclectic uses of property in the area primes this property for many types of uses; it may be found that the R1-20 zone will suit the area well.

The property is also located in the Airport Overlay Zone, and a portion to be rezoned abuts the “Approach Surface” as defined by MCC §8-5H-3 (see Exhibit C and D). MCC §8-5H-4 indicates that rezones under this area of the approach surface should not be considered favorably, thus, the applicant has provided a legal description that avoids the Approach Surface.

When evaluating a rezone, it is critical to evaluate the potential for land use changes that the proposed zone permits and/or conditionally permits. However unlikely, it is appropriate to evaluate the rezone as if the property is being used to the fullest extent allowable by County land use ordinance. A comparison of the differences in the allowed uses between the proposed R1-20 zone and the A-20 zone is a useful method to determine the potential changes the rezone may have on the area. See Exhibit F for this comparison.

The following criteria should be evaluated when determining the impact of the potential rezone:

1. Potential density: The applicant has provided a survey level accurate description of the 4.330 acre subject property, which yields a potential density of 9.431 dwelling units. Keep in mind that acreage is not the only limitation to a development's potential resulting density; frontage and developable slopes also plays a role, among others.
2. Access: The property proposed to be rezoned has roughly 555 feet of frontage along Cottonwood Canyon Road. Isolating only frontage as a review criteria, the applicant could potentially develop 5 lots along the frontage of the road as a result of the proposal, given that the minimum frontage in the R1-20 zone is 50 feet and the minimum width is 100 feet.
3. Circulation: Cottonwood Canyon Road is a thoroughfare that provides connections to and passed the subject property and other public streets in the County. Circulation to the property does not appear to be an issue.
4. Culinary Water Resources: Private culinary water systems serve the culinary water needs of the area. There is also the option for private wells supposing the property is large enough to support the required wellhead protection zone(s). The applicants will need to provide indication from a local water company of their willingness to serve the property or provide water right information, well log information, and Health Department approval if the property will be served by a private well prior to development on the property.
5. Sewer: The property falls within the boundaries of the Mountain Green Sewer Improvement District. They will be required to seek the district's approval to connect to the system prior to developing.
6. Flood Plain: A small portion of the northwest part of the property is located in the "AE" zone of the FEMA flood plain maps (see Exhibit E). The definition of the "AE" designation is:

Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. Base Flood Elevations (BFEs) are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply. (<http://www.fema.gov/national-flood-insurance-program-2/zone>)

If development is proposed in this flood plain area, the harmful impact of flooding issues or high ground water will need to be properly addressed. Development can occur in the flood plain, but only if the lowest floor elevation of buildings designed for human occupancy is one foot above the base flood elevation.
7. Fire Protection: The property is exempt from Wildland Urban Interface requirements, so a specific fire protection plan is not required. If/when it is developed it may still be required to have certain fire suppression as required by the local Fire Official.
8. Topographic Features: The property has a very mild grade. Topography does not seem to be a concern for potential future development.
9. Geology: The property appears to be in the "Qal" geologic unit designation, which is not

listed in MCC §8-5I as a hazardous unit (see Exhibit E).

Noticing. The MCC 8-03-3 requires a public hearing for a rezone when the County Council's hears the rezone request. State law 17-27a-205 requires the first public hearing (whatever body is hearing it) to be noticed on the County's website and published in a newspaper of general circulation in the area at least 10 calendar days before the public hearing, and mailed to the property owner affected by the change, as well as adjacent property owners within parameters specified by the county (which is 1000 feet in Morgan County). As part of the application process the applicant was responsible for identifying these property owners and for providing the County with a mailing list. The County sent notices to all individuals on the mailing list.

This public hearing notice was posted at a minimum within the State and County requirements in the following manner:

1. Posted to the County website within 10 days prior to this meeting.
2. Published in the Morgan County News within 10 days prior to this meeting.
3. Posted on the subject property within 10 days prior to this meeting.
4. Mailed to property owners within 1000 feet of the affected property, as identified by applicant.
5. Mailed to the property owner.
6. Mailed to affected entities
7. Posted in the foyer of the Morgan County Courthouse.

STAFF RECOMMENDATION

Staff recommends that if the Planning Commission can make the following findings for approval of the Brown rezone request that it does so:

1. That the request complies with the county's current Future Land Use Map.
2. That the request complies with the County's Airport Overlay Zone.
3. That allowing the rezone will promote the property owner's desired use of the land.
4. That the uses listed in the proposed zone are harmonious with existing uses in the area.
5. That the recommended amendment is in accord with the County's General Plan.
6. That any future development on the property will require aviation and hazards agreements to run with the land, as required by the current MCC 8-5H-7.
7. That changed or changing conditions makes the proposed amendment reasonably necessary to carry out the purposes of County ordinances.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – "I move that we forward a positive recommendation to the County Council for the Brown Rezone Request, application #12.162, rezoning property at approximately 4396 Cottonwood Canyon Road from A-20 to R1-20, based on the findings listed in the staff report dated February 21, 2013, and as modified by the findings below:"

1. List any additional findings...

Sample Motion for a *Negative* Recommendation – "I move we forward a negative recommendation to the

County Council for the Brown Rezone Request, application #12.162, rezoning approximately 10.187 acres of property at approximately 4396 Cottonwood Canyon Road from A-20/R1-20 to RR-1, based on the following findings:

1. That the current condition of the area does not merit changed or changing conditions. The area is not yet ready for the rezone request.
2. List any additional findings...

ADDITIONAL INFORMATION

Exhibit A: Vicinity Map

Exhibit B: Parcel Boundaries

Exhibit C: Current Zoning Map with Airport Overlay Zone

Exhibit D: Zoning Map after Proposed Changes (with Airport Overlay Zone)

Exhibit E: Flood and Geologic Hazards

Exhibit F: Comparison of allowed uses between the A-20 and R1-20 zones

**Exhibit D, Agenda item #10: - Letter from Cottonwood Mutual Water Company.
Discussion/Decision: The Ponderosa Subdivision. A proposed three lot subdivision; the first plat of land otherwise known as Phases 7 and 8 of the Rollins Ranch Development Agreement, located at the end of Hidden Valley Road.**

This letter is not available online but may be viewed with the official recorded minutes in the County Clerk's office.

Exhibit E, Agenda item #10: Staff report - Discussion/Decision: The Ponderosa Subdivision: A proposed three lot subdivision; the first plat of land otherwise known as Phases 7 and 8 of the Rollins Ranch Development Agreement, located at the end of Hidden Valley Road.

STAFF REPORT
February 21, 2013

To: Morgan County Planning Commission
Business Date: February 28, 2013

Prepared By: Charles Ewert, Planner

Re: **Ponderosa Preliminary Subdivision Approval Request**

Application No.: 12.086
Applicant: Fernwood, L.C.
Project Location: Approximately 4400 Ranch Blvd
Zoning: RR-1/A-20 Zone
Acreage: Approximately 88.4
Request: Preliminary Approval of the Ponderosa Subdivision

SUMMARY

This application is a requested preliminary plat approval of a three lot subdivision in phases 7 and 8 of the Rollins Ranch Subdivision (see attached Exhibit A). The subdivision deviates from the approved Rollins Ranch Concept Plan as adopted through the Rollins Ranch Development Agreement. Through another application the applicant has requested amendments to the Rollins Ranch Development Agreement from the County Council to accommodate this subdivision design. The Council has postponed decision on the amendments until Staff and the Developer can find agreeable terms.

Not only does the application not comply with certain requirements of Morgan County Code and the Rollins Ranch Development Agreement, as further specified herein, the application is currently incomplete and is not ready for a recommendation for approval by the Planning Commission. However, the applicant has requested in writing that a final decision be made as soon as possible (see Exhibit B). State Code §17-27a-509.5 allows a land use applicant to specifically request a final decision on any application, and the County must honor the timeframes as set forth therein.

Staff are desirous to work with the applicant to provide necessary changes in order to comply with existing requirements, and have suggested that the applicant postpones final decision until a later time. However, because the applicant has requested a final decision as soon as possible and continues to do so, and because of the requirements of UCA §17-27a-509.5, a final decision is necessary at this time. Staff are recommending denial.

BACKGROUND

Prior to the Rollins Ranch development, the property was in the A-20 zone. The County granted the rezone to RR-1 on August 1, 2006 as part of an overall agreement for the property to be developed in accordance with a specific master plan. The master plan was incorporated into what is now the Rollins Ranch Development Agreement, with exhibits. The applicant purchased the property after the execution of the development agreement, with all rights and restrictions afforded therein.

ANALYSIS

Completion. The application is currently incomplete. The applicant received a Review Transmittal regarding the incomplete and non-compliant nature of the application on October 9, 2012 (see Exhibit C). The applicant submitted additional information on December 26, 2012 (see Exhibit D). On January 24, 2013, the applicant was sent a letter advising that the application remains incomplete (see Exhibit E).

Specifically, the ordinance based items that are not complete, missing, or not appropriately addressed in the new submittal are as follows:

10. Service agreements from all utility companies, pursuant to MCC 8-12-24(F)(4).
11. Written verification of all proposed water sources, pursuant to MCC 8-12-24(F)(8).
12. Information regarding the proposed culinary water supply, pursuant to MCC 8-12-24(F)(8) and MCC 8-12-46(B).
13. Site geologic units, pursuant to MCC 8-12-24(F)(9) and MCC MCC 8-12-24(G).
14. Source protection area for well head, if applicable, pursuant to MCC 8-12-24(F)(10).
15. Copy of protective covenants for common area maintenance, pursuant to MCC 8-12-24(I).
16. Fire protection plan, pursuant to MCC 8-12-46(C) and the 2006 Wildland/Urban Interface Code.
17. Streetlight proposal, pursuant to MCC 8-12-46(F)
18. Adherence to requirements of the development agreement, including:
 - Copies of protective covenants, pursuant to §2.3.
 - The required agreements between the developer and Browning Arms, pursuant to §2.10.
 - Providing open space and open space amenities within the subdivision, pursuant to §2.4.
 - Providing streetlights, pursuant to §2.7.

Zoning. Given the incomplete nature of this application, it is difficult to provide a more substantive review, however, staff have provided the October 9, 2012 Review Transmittal, which covers the basic review issues as Exhibit C. The redlines thereon are staff's January 24, 2013 notes regarding the compliance of the December 26, 2012 re-submittal.

Subdivision Layout. The development agreement provides a conceptual plan that any proposed subdivision in Rollins Ranch should follow (See Exhibit A). Adhering to the "general configuration" of the concept plan relative to phases 7 and 8 is a much more subjective evaluation. If the County desires the

exact configuration of the concept plan, then this proposal does not meet the intent. Alternatively, it appears that the proposal has taken the concept's "general" configuration into consideration and incorporated it into the design with the idea that larger lots are preferred at this time, and re-subdividing those lots may be an option for future phases. The applicant has provided as part of Exhibit D an overlay of the concept plan onto the proposed subdivision so that we may see how closely it complies with the concept plan.

The proposed lot one is an approximate 6.431 acre lot that consumes several of the lots from the development agreement concept plan. It also covers a proposed future right of way that is supposed to provide access to the land northward. Lot one has no proposed frontage.

Lot two is currently designated as open space on the development agreement concept plan. The applicant is now proposing to make it a residential lot, and has given indication that utility services are already stubbed to it.

Lot three appears to generally comply with the configuration of the concept plan.

Roads and Access. The standard frontage as required by the existing RR-1 zone (200 feet) does not appear to be applicable to Rollins Ranch considering the previously approved lot configuration, and the clustering of lots. Frontage is not specifically addressed in the development agreement, but is implicitly addressed through the concept plan by way of graphic representation that every lot is given frontage along a proposed right of way.

Lot one is being proposed minimal frontage along a proposed private street, however, there is no proposal for the cross section, and no indication that it will be built to adopted County standards. Lots two and three are proposed to have access along the existing Ranch Road.

The subdivision ordinance requires streets to be stubbed to adjacent properties. This has been noted on previous reviews and redlines of the plans, but remains unchanged in the proposal.

REVIEWS

Planning and Development Services Review. The Morgan County Planning and Development Service Department has completed their review of the preliminary plat Ponderosa Subdivision application and has issued a recommendation for denial based on the information submitted at this time. Staff do not recommend denial lightly, and desire to work with the applicant prior to final decision to rectify known compliance issues. This would require the applicant to rescind the previous written request for final decision.

Engineering Review Comments. We have reviewed the revised Preliminary Plat for the Ponderosa Minor Subdivision. Engineering issues still exist with the revised proposal (storm drain detention, inlets from proposed roadway swales to storm drain in Ranch Road, private lane cross-section, verification of approved well location (including source protection area), sewer district boundaries, street frontage, lot

slopes at proposed house locations, etc.) We recommend the developer and his engineer meet with County staff to go over the requirements so that we can expedite approval of this subdivision. We have some recommendations that may simplify some of the complications with the proposed plan. A meeting could clarify unresolved issues and help the developer and staff to resolve the non-compliant elements of the proposal.

County Surveyor Comments

1. Lot one begins at the current end of Hidden Valley Road and has 60 feet of frontage. Is this adequate frontage?
2. The title report shows several easements. All of the easements in the report should be noted on the plat or an explanation given as to why the easements are not shown. I am not sure what are existing easements and what are proposed.
3. The Boundary Survey shows a fence line along the South Boundary that does not follow the boundary of the proposed subdivision. Rebar and cap have been set in the fence line by another surveyor. Does the adjoining property owner have a claim to the fence?
4. The scale for Sheets 1 and 3 says 1" = 100'. It should say 1" = 150'.
5. My biggest concern is the private road that comes off the end of the stub street. I'm not sure what the flag lot provisions are but it seems that it would be better if that section of road were dedicated and improved at this time rather than at some possible future date.

STAFF RECOMMENDATION

Staff recommends denial of the preliminary plat for the Ponderosa Subdivision, application #12.086, as currently proposed.

This recommendation is based on the following findings:

1. That the application is incomplete in the following manners:
 - a. Service agreements from all utility companies, pursuant to MCC 8-12-24(F)(4).
 - b. Written verification of all proposed water sources, pursuant to MCC 8-12-24(F)(8).
 - c. Information regarding the proposed culinary water supply, pursuant to MCC 8-12-24(F)(8) and MCC 8-12-46(B).
 - d. Site geologic units, pursuant to MCC 8-12-24(F)(9) and MCC MCC 8-12-24(G).
 - e. Source protection area for well head, if applicable, pursuant to MCC 8-12-24(F)(10).
 - f. Copy of protective covenants for common area maintenance, pursuant to MCC 8-12-24(I).
 - g. Fire protection plan, pursuant to MCC 8-12-46(C) and the 2006 Wildland/Urban Interface Code.
 - h. Streetlight proposal, pursuant to MCC 8-12-46(F)
 - i. Adherence to requirements of the development agreement, including:
 - i. Copies of protective covenants, pursuant to §2.3.
 - ii. The required agreements between the developer and Browning Arms, pursuant

- to §2.10.
 - iii. Providing open space and open space amenities within the subdivision, pursuant to §2.4.
 - iv. Providing streetlights, pursuant to §2.7.
2. That the proposal does not provide adequate frontage to all lots as otherwise graphically depicted in the Rollins Ranch Development Agreement.
 3. That the proposal does not adequately show the extension of public or private street improvements to adjacent properties in a manner that meets the County's adopted street standards.
 4. That the proposal does not meet all aspects of Morgan County Code 8-12 as addressed in Exhibit C of this report.
 5. That there are engineering concerns yet to be adequately addressed.
 6. That there are surveying concerns yet to be adequately addressed.
 7. That due to the incomplete nature if the submittal, County reviewers have not been able to provide an effective and complete substantive review of the plans.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the preliminary plat for the Ponderosa Subdivision, application #12.086 subject to the conditions and findings as listed below:”

1. List findings and conditions...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the preliminary plat for the Ponderosa Subdivision, application #12.086 subject to the findings as listed in the February 21, 2013 Staff report, with the following additional findings:

1. List any additional findings...

SUPPORTING INFORMATION

Exhibit A: Rollins Ranch Concept Plan.

Exhibit B: Applicants Written Request for Final Decision

Exhibit C: Staff's October 9, 2012 Review Transmittals with Staff's January 24, 2013 redline comments.

Exhibit D: Current Subdivision Proposal

Exhibit E: Letter of Incomplete Application

