



PLANNING COMMISSION AGENDA

Thursday, May 24, 2012

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 May 10, 2012.
5. Discussion/Decision: To amend portions of sections 8-6 and 8-11 of the Morgan County Code pertaining to fencing standards.
6. Public Hearing/Discussion/Decision: To amend portions of sections 8-12 of the Morgan County Code pertaining to infrastructure improvement requirements for subdivisions along existing County streets.
7. Staff Reports.
8. Adjourn.

**MORGAN COUNTY PLANNING COMMISSION MEETING  
MORGAN COUNTY COURTHOUSE - RM. 29  
THURSDAY May 24, 2012 – 6:30 P.M.**

**MEMBERS PRESENT**

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

**STAFF PRESENT**

Blaine Gehring, Director  
Teresa Rhodes, Planning Commission Assistant

**MEMBERS ABSENT**

Alvin Lundgren

**COUNTY COUNCIL PRESENT**

Tina Kelly  
Howard Hansen

**\*\*\* M I N U T E S \*\*\***

**1. Call to order – prayer.**

The prayer was offered by Member Erickson.

**2. Approval of agenda.**

Member Toone moved to approve the agenda as posted. Second by Member Wilson. The vote was unanimous. The motion carried.

**3. Declaration of conflicts of interest.**

There were no conflicts of interest declared.

**4. Approval of minutes from May 10, 2012.**

Member Erickson Moved to approve the minutes of May 10, 2012 with minor corrections. Second by Member Sessions. The vote was unanimous. The motion carried.

5. **Discussion/Decision: To amend portions of sections 8-6 and 8-11 of the Morgan County Code pertaining to fencing standards.**

Chairman Haslam asked if anyone had any questions on this. The Members had no questions at this time.

Member Toone moved to forward a positive recommendation to the County Council for text amendments to section 8-6 and 8-11 of the Morgan county Code as presented by staff with the staff inserting the following amendments prior to being presented to the County Council:

1. Alter the definition title of 8-6-37, section A, #5 to read "Sight Obstructing Fence" instead of "obscuring" and all references to "obscuring" be replaced with "obstructing". 8-6-37, Section A, #5, Section E, #2, #3, #4
2. Strike or remove the phrase "In multi-family residential, commercial, or industrial developments:" from 8-11.6
3. In 8-11-6, Section A, #1 strike or remove the phrase "with an asphaltic or cement or other binder pavement and." So that the section will read:
  1. Each off street parking lots shall be surfaced and permanently maintained so as to provide a dustless surface.
  1. Alter the wording in 8-6-18 to read: "All utility lines shall be placed in designated easements. No pipe, conduit, line for eater, gas, sewage, drainage, or steam service shall be installed, altered or replaced, upon any lot (outside of any building) above the surface of the ground, except for hoses, movable pipes used for irrigation or other purpose during construction."

With the following findings:

1. Such fencing amendments will improve and maintain morals, peace and good order, and aesthetics of the county.
2. Parking lot amendments will aid the County in its ability to comply with the code, promote the prosperity of present and future inhabitants and businesses.
3. Utility amendments will secure economy in governmental expenditures in extending the life of the County's roads by reducing the amount of cuts across the roads. Any concern of overhead lines can be addressed and mitigated by conditional uses.

**Second by Member Wilson.**

The Chairman called for clarification of the motion and requested that each member be given a copy of the motion to review.

The Members reviewed the motion.

There was discussion on the motion regarding the following:

- multi-family/commercial industrial
- dustless

Chairman Haslam called for a vote.

**The vote was not unanimous with Member Toone for and Member Sessions, Wilson, Erickson, and Stephens against. The motion failed with a vote of one to four.**

**Member Session moved to forward a positive recommendation to the County Council for the text amendment regarding fencing regulations as presented by staff with the amendments as presented by staff report dated May 16, 2012. Second by Member Erickson.**

The Chairman Called for discussion.  
The following was discussed:

- The term Multi- family, residential, and commercial parking.
- Definition of Multi-family and duplex was discussed. Mr. Gehring noted Multi-family is defined as three and up.

For clarification purposes, Member Sessions withdrew her motion and made the following motion:

**Member Session moved to forward a positive recommendation to the County Council for the text amendment regarding fencing regulations as presented by staff with the amendments recommended by the Planning Commission staff report dated May 16, 2012 also with section 8-11-6 striking the words "*or industrial developments*" and adding the word "*zones*" and the word "*and*" between multi- family residential and commercial. Second by Member Erickson**

Chairman called for comments.

Member Sessions noted she would like more clarification regarding the poles and asked if staff or the engineer could address members Toones concern about knocking down a pole and not putting it back up. Mr. Ewert noted he would believe if it was an existing it may be replaced.

Member Sessions noted how it is written now it may not be replaced.

Mr. Ewert noted if she refers to Utility line installation section in Chapter 6 it is very specific about new utility lines and possibly omitting the portion about replacing existing poles would clarify better.

**Amending the motion Member Sessions moved to forward a positive recommendation to the County Council for the text amendment regarding fencing regulations as presented by staff with the amendments recommended by the Planning Commission staff report dated May 16, 2012 also with section 8-11-6 striking the words "*or industrial developments*" and adding the word "*zones*" and the word "*and*" between multi- family residential and commercial, and strike "*and no pole or other support structure therefore, shall be erected, altered, or replaced*" in 8-6-18.**

Member Toone noted by striking "Industrial Developments" you now would have no standard for a parking lot with a maintenance standards for industrial developments; which is fine if that is what was trying to be accomplished.

**The Chairman called for a vote. The vote was not unanimous with Members Stephens, Wilson, Erickson, and Sessions for and Members Toone against. The motion carried with a vote of four to one.**

6. **Public Hearing/Discussion/Decision: To amend portions of sections 8-12 of the Morgan County Code pertaining to infrastructure improvement requirements for subdivisions along existing County streets.**

**Member Erickson moved to open a public hearing. Second by Member Toone. The vote was unanimous. The motion carried.**

Charlie presented his staff report and noted the County Engineers Memo as well (Please see attached exhibit B & C)

There was a lengthy discussion on the following:

- Standards
- Deferral agreement
- Public/private roads
- Road deficiencies
- Widening the road for future residents

**Dave Sedgwick , Mtn. Green resident-** Mr. Sedgwick noted he has an application in with staff to amend his property which is an existing subdivision. Believed there is a lot of discrepancy in the ordinance. He believed a lot of this could be clarified and resolved with the current ordinance. He recommended keeping it simple because when things get more complicated there is more implications that become involved and more issues that come up; this seems to be getting more complicated.

He believed once the County accepts a road and it has been dedicated, the County already knows what zoning along that road is; they knew the conditions and accepted it as such. Any residents along that road should be able to utilize the frontage according to their zoning to build on that property; that should be a given right to a property owner. Once the County has accepted that road, the State law says that improvements will be roughly proportional to the impact of the development. He further noted another thing that was not address is that with roughly 7400 lots in the County, with current zoning, how many of those lots and what percentage are actually fronting an existing, county owned, dedicated road? He noted that is where the impact comes in. He showed a diagram on the board and questioned what portion of that impact should he be responsible for. If the road was already dedicated and improved he believed the ordinance already covers that depending on how the ordinance is read. he did not believe the impact on an existing road with existing frontage should be

limited to development but when there is a new road that now collects traffic from a new subdivision, onto an existing road, there is a disproportionate amount of use involved. He noted when he tries to compare what he is trying to do with the Cottonwoods, with their 800 lots and all those vehicles traveling in front of his property and Rollins Ranch with up to 600 lots, the impact is not fairly distributed. Especially if he is required to improve the frontage along Old Highway Road to a current standard which again could change to another standard years down the road. He noted the new section of Powder Horn Road that was just put in does not comply with the current street standards, so technically he is worried he would be required to tear it out and make it one foot smaller and make the sidewalk one foot bigger because that is the ordinance. As the ordinance has been worded, it applies to the rural areas of the community not R1-20 areas where he is at. It encourages development in the rural areas of the community where those costs don't have to be absorbed for improvements like this. Whereas, in areas where you want development in the higher density areas, you are requiring the cost of these improvements which is going to discourage the types of development.

Chairman Haslam asked Mr. Sedgwick how his comments pertain to the text amendment that is before the Planning Commission.

Mr. Sedgwick noted he is uncertain about it. He believed there is a lot of aspects that can clear up some things but he does not believe it is entirely necessary with the current ordinance or code. He noted on page 2 where it talks about roads that are included in a subdivision; the impact is not coming from properties adjacent to the existing road, so much as they are large developments that access these existing roads as additional collector roads.

He further noted he is totally against patchwork improvements on existing roads that have already been dedicated to the County and the County has accepted responsibility to maintain those road.

If the County were to go with this amendment he would encourage to at least define it equally to all residential areas. The community has zoning throughout that varies. He does not believe it should just single out the rural residential areas he believed it should be applied to all residential areas. Also, it should be defined whether this is something that would be applied to existing subdivision or not .

Chairman Haslam thanked Mr. Sedgwick for his comments.

Member Sessions requested discussion among the Members before a motion is made. The following was discussed:

- Number of lots in existing zoning. How many lots are there along existing roads?
  - Mr. Ewert noted he had not broken that number down. He noted the majority of the County's rural residential roads are born by corridor of the RR-1 zone. There is a fair amount of A-20 in between and then MU-160 and F-1. 7400 is an estimate ; the County had to have something to measure off of.
- Bonified agricultural subdivision.
  - Mr. Ewert noted that bonified agricultural subdivision is exempt from subdivision planning requirements.
  - the latest legislative session gave people the entitlement to break up their land as small as they want with no minimum zoning requirement.

- Widening of Old Highway Road - requiring a subdivision of four lots to widen Old Highway Road, but not requiring a large developer.
  - Mr. Ewert noted that is the heart of staff's recommendation; we need to re-look at our impact fees and provide something that is equitable.
- Re-subdividing -
  - Mr. Ewert noted if someone re-subdivides their lot it throws the applicant back into the subdivision process.

**Member Toone moved to close public hearing. Second by Member Sessions.**

The Chairman Called for a motion.

**Member Toone moved we forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding the county initiated text amendment regarding alternative infrastructure improvement requirements, application 12.034, based on the findings presented in the Staff report dated May 17, 2012:"**

1. **That the amendments are necessary to clarify ambiguous language in the subdivision ordinance.**
2. **That the amendments provide alternative improvement requirements for certain types of low-impact subdivisions which are reasonable and practical given their proportionate impact.**
3. **That the amendments are necessary to provide objective evaluative criteria from which to evaluate the allowance of alternative improvement requirements.**
4. **That the amendments are necessary to identify specific plan submittal requirements.**
5. **That the amendments are not detrimental to the County's health, safety, and welfare.**

**Second by Member Wilson.**

Member Toone believed this tightened things up. There is a concern about the approach. Mr. Sedgwick did make a lot of valid points. However, as he reads the proposed text, there is the option of deferral agreement.

There was discussion on the following:

- The number that constitutes a small subdivision.
- Widening Morgan Valley Drive - not going to solve the problem.

Member Erickson asked if Member Toone would consider taking the first section of 8-12-24 out as recommended by the County Engineer. Member Tone noted that would be a wise amendment.

**Member Toone amended his motion to remove, Page 1 section 8-12-24 preliminary plat submittal. Second by Member Sessions.**

Chairman called for a vote on the amendment

**The vote was unanimous. The motion carried.**

Chairman called for a vote on the original motion

**The vote was not unanimous with Members Toone, Erickson, and Wilson for and Members Sessions and Stephens against. The motion carried with a vote of three to two.**

**7. Staff Reports.**

Mr. Ewert would like direction on re-addressing 8-24 class submittal that the County Engineer had concerns on; It is insufficient to meet the needs of subdivisions. The question is whether the 100 year storm event is not in there and it should be included. He asked if the Planning Commission was comfortable with having staff move forward with some minor changes.

Storm drainage utility was discussed

Member Toone asked what the process was of initiating an audit to revise and update the impact fees. It was noted the Planning Commission can forward a recommendation to the County Council.

Member Toone further ask if the geotechnical ordinance was working or does it need to be re-visited? Mr. Ewert stated that there certainly aren't any loopholes that have been found yet; it is pretty robust.

Snow Basin –

Mr. Ewert noted the following:

- The County has returned their comments to Snow Basin and noted they were ready for an application.
- Big ticket items are the County wants a special assessment area for Snow Basin. The other is how are they going to keep their 60% open space. One recommendation was to work through a land trust.
- The County expects something back from Snow Basin within a month.
- Snow Basin did ask for a reduction in their fee of \$16,000 and the County denied it.

**8. Adjourn.**

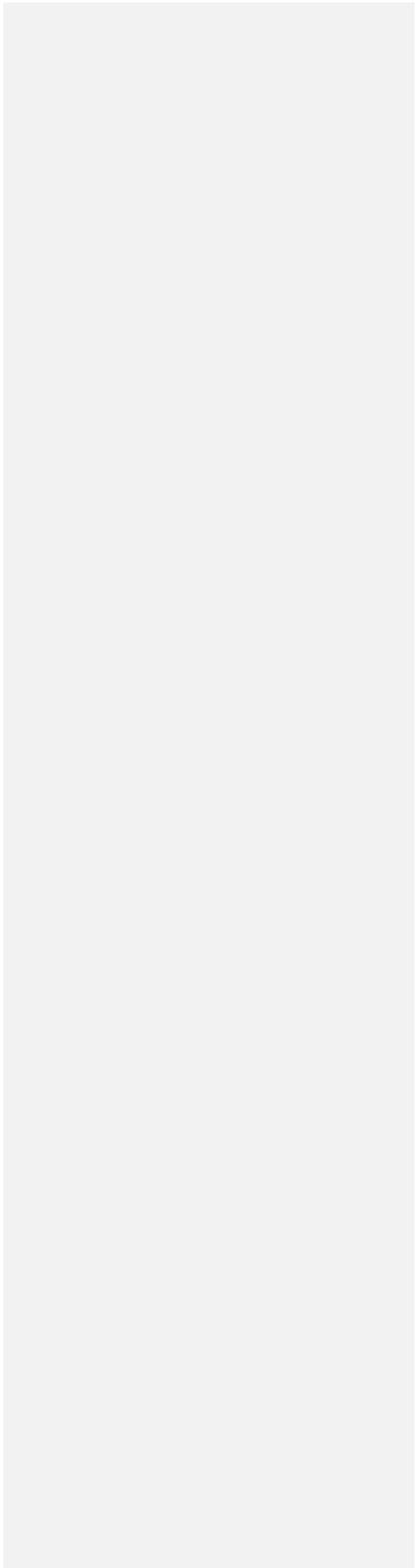
**Member Wilson moved to adjourn. Second by Member Toone.**

Approved: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Teresa A. Rhodes, Clerk  
Planning and Development Services

Date: \_\_\_\_\_



**Planning and Development Services**

48 West Young Street  
Morgan, UT 84050  
(801) 845-4015

**STAFF REPORT**

May 16, 2012

**To:** Morgan County Planning Commission  
Business Date: 5/24/2012

**Prepared By:** Blaine Gehring, AICP, Department Director

**Re:** Text Amendment Regarding Fencing Standards Revisions as Requested by Planning  
Commission

Application No.: 12.020

**BACKGROUND AND SUMMARY**

After the Planning Commission review and discussion, I was asked to make the following revisions to my original draft:

1. Remove the phrase “a chain link fence or” from 8-6-37 C2.
2. Remove the phrase “a chain link fence or” from 8-6-37 E1.
3. Replace the phrase “All Other Developments” in 8-6-37 E with “Commercial, Industrial, Institutional and Multiple Family Developments.”
4. Remove the word “Portland” from 8-11-6 A1.

I have made those revisions and they are shown in this report in blue and/or highlighted in yellow. Everything else remains as originally proposed. I made one additional revision to 8-6-37 E to better clarify what it is that section is regulating. This is in response to Member Toone’s concern that this not be construed as applying to agricultural uses.

**STAFF RECOMMENDATION**

Staff is recommending that Section 8-6-37 be expanded to include all fencing requirements and include new provisions related to fencing for commercial and industrial uses. The recommended amendments are as follows:

**8-6-37: FENCE, WALL AND SCREENING FENCING REGULATIONS:**

A. Definitions: The following terms used in this Section shall mean:

Scope: The term "fence" shall include any tangible barrier, an obstruction of any material, a line of obstacles, latticework, screen, wall, hedge, or continuous growth of shrubs or trees with the purpose of, or having the effect of, preventing passage or view across the fence line.

1. FENCE OR WALL: Any structure or device used for confinement, prevention of intrusion, boundary identification, or screening of an activity.

2. HEIGHT OF WALLS AND FENCES: Fence heights shall be measured from the top of the fence to the level of the ground on the inside of the fence.

3. OPEN-STYLE FENCE: A fence that is at least seventy-five (75) percent open and which does not create a visual hazard for pedestrians and drivers.

4. SCREENING DEVICE: A specific application of a wall or fence to conceal areas used for refuse, mechanical equipment, utilities, parking, multi-family residential developments, and commercial and industrial activities from adjacent residential districts or from street views.

5. SIGHT OBSCURING FENCE: An opaque fence providing a complete visual barrier to persons outside the perimeter of the sight obscuring fence. A slatted chainlink fence shall not be considered a sight obscuring fence.

B. Provisions Constitute Minimum Requirements: In interpreting and applying the provisions of this section, the requirements contained in this section are declared to be the minimum requirements.

C. Fences; Residential Standards:

1. Side Yards and Rear Yards: In any required side or rear yard on lots, the height of fences shall not exceed six feet (6') in height.

2. Front Yards: Fences in required front yards shall be allowed; provided, that solid type fences shall not exceed three feet (3') in height, and ~~open type fences (for example, chainlink fences)~~ a chainlink fence or a fence seventy-five percent open, shall not exceed four feet (4') in height. (75%)

3. Corner or Double Frontage Lots: In addition to the other provisions contained in this section, fences located on corner or double frontage lots shall be subject to the following provisions:

a. Any fence, wall and/or hedge on the front yard setback shall not exceed three feet (3') in height if opaque construction, or four feet (4') in height if open construction as defined in 2 of this subsection.

b. In the side yard setback which fronts on a street, height up to six feet (6') shall be allowed beyond forty feet (40') from the intersection measured

from the intersection of extended curb lines. Height within the forty foot (40') area shall conform to the requirements of a front yard setback.

c. Heights on the rear yard setback and interior side yard setback shall not exceed six feet (6').

4. Lots With Slopes: A fence may be built upon a slope greater than fifteen percent (15%); provided, that the following conditions are met:

a. Fences shall be located only upon areas constituting usable land unless otherwise approved by the planning department.

~~b. Fencing materials shall be in conformance with the sensitive lands regulations.~~

**Comment [BG1]:** There are no specific fencing regulations in the sensitive lands regulations.

~~b.~~ The fence shall be built in accordance to this chapter and comply with all restrictions imposed by setbacks, etc., as defined in this title.

~~c.~~ All requirements of the sensitive lands regulations shall be met prior to the construction of the fence.

~~e. Fencing on hillside lots shall only be approved in conjunction with an approved landscape plan in conformance with the general plan.~~

**Comment [BG2]:** In the absence of any specific hillside regulations, this should be deleted.

D. A fence enclosing a recreational facility (whether public or private), such as a tennis court, sports court, swimming pool, etc., may be allowed up to ten feet (10'), as long as it is not sight obscuring, is located at least five feet (5') from the property line, and is not within the minimum front yard setback area. A fence which is greater than ten feet (10') in height and/or closer than five feet (5') to a property line may be permitted with a conditional use permit. All fences in excess of six feet (6') in height require a building permit before construction.

E. Fences: ~~All Other Commercial, Industrial, Institutional, and Multiple Family Developments~~ : ~~With the exception of a single family or two family dwelling on an individual lot,~~ For all commercial, industrial, institutional, and multiple family developments, ~~the following shall apply to any lot or parcel:~~

1. A wall or fence shall be a maximum of six feet (6') in height, with the exception that any wall or solid fence located within twenty feet (20') of a public street shall be a maximum of three feet (3') in height, and ~~any chainlink fence or fence seventy-five percent (75%) or more open,~~ located within twenty feet (20') of a public street, shall be a minimum of ~~four feet (4')~~ in height.

2. Any outdoor storage area shall be screened from view by a minimum six feet (6') high  ~~wall or a solid barrier, sight obscuring fence constructed of or finished with materials to~~  ~~match or complement the main building material on site.~~

3. A solid, sight obscuring fence or wall of masonry, wood, vinyl, or similar material shall  ~~be constructed along property lines which adjoin an area which is primarily residential.~~ Such wall or fence shall be a

minimum of six feet (6') in height, except that the first twenty feet (20') from the street property line shall be stepped down to three feet (3') in height. The fence or wall shall be constructed of materials compatible with the principal buildings or architectural character of the surrounding neighborhood.

4. Transformers, substations, transmission, pump and/or related generator facilities shall be fenced or screened with a sight obscuring fence or wall constructed of materials compatible with the principal buildings or architectural character of the surrounding neighborhood if located within a commercial or residential area or if located in an industrial, agricultural or open space area fenced for security purposes with a minimum of an open-style fence. All such fences or walls shall be a minimum of six feet (6') in height.

**DF.** Vacant Lots: For the purpose of this section, it shall be presumed that a vacant lot shall contain a minimum front, side and rear yard that are otherwise required by ordinance. In any required side and rear yard on vacant lots, the maximum height of fences or other similar structures shall be six feet (6').

**EG.** Retaining Walls: Where a retaining wall protects a cut below or a fill above the natural grade and is located on the line separating lots or properties, such retaining wall may be topped by a fence, wall or hedge of the same height that would otherwise be permitted at the location if no retaining wall existed.

**FH.** Exceptions: The provisions of this section shall not apply to certain other fences such as tennis court backstops or patio enclosures in the front, side or rear yards, if approved by the Planning Commission, if in its opinion they do not create a hazard or violation of other ordinances.

The following changes to sections requiring fencing are recommended to bring all sections into compliance with Section 8-6-37:

**8-11-6: MAINTENANCE OF PARKING LOTS IN MULTI-FAMILY RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL DEVELOPMENTS:**

Every parcel of land used as a public or private parking lot in any multi-family residential, commercial, or industrial development shall be developed and maintained in accordance with the following requirements:

A. Surfacing:

1. Each off street parking lot shall be surfaced with an asphaltic or **Portland** cement or other binder pavement and permanently maintained so as to provide a dustless surface.
2. The parking area shall be so graded as to dispose of all surface water.
3. If such water is to be carried to adjacent streets, it shall be piped under sidewalks.

B. Screening and Fencing: ~~The screening and fencing of a public or private parking lot in any multi-family residential, commercial, or industrial development shall be in accordance with Section 8-6-37 of this Title. The sides and rear of any off street parking lot which adjoins an area which is to remain primarily residential shall be screened from such area by a masonry wall or solid visual barrier fence compatible with the surrounding area in terms of material, color and size and not less than four feet (4') nor more than six feet (6') in height.~~

**8-6-18: UTILITIES:**

All utility lines shall be placed underground in designated easements. No pipe, conduit, cable, line for water, gas, sewage, drainage, steam, electricity or any other energy or service shall be installed, and no pole or other support structure therefore shall be erected, altered or replaced, upon any lot (outside of any building) above the surface of the ground, except for hoses, movable pipes used for irrigation or other purpose during construction.

A. Transformers, substations, transmission, pump and/or related generator facilities shall be grouped with other utility meters where possible and screened or fenced in accordance with Section 8-6-37 of this Title, at least fifty percent (50%) of the perimeter with evergreen vegetation (irrigation systems required) or other appropriate method, such as solid, one hundred percent (100%) sight obscuring fencing or walls. Gas meters and electric service meters and panels shall be located on the side of the building.

**8-6-35: STANDARDS FOR CHURCH AND INSTITUTIONAL DEVELOPMENT IN ALL ZONES:**

E. Fencing: As a general rule, fencing be constructed of materials compatible with the principal buildings or architectural character of the surrounding neighborhood shall follow that of the surrounding area and be in accordance with Section 8-6-37 of this Title. However, chainlink fencing is not acceptable unless prior Planning Commission approval is granted. In cases where chainlink fencing is approved, vinyl coated chainlink mesh will be required.

**MODEL MOTION**

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the text amendment regarding fencing regulations as presented by staff with the amendments recommended by the Planning Commission.

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the text amendment regarding fencing regulations as presented by staff with the amendments recommended by the Planning Commission.

Exhibit B – Agenda item #6 – Engineering memorandum



Memorandum

**To:** Charles Ewert - Planner  
Morgan County

**From:** Mark T. Miller, P.E.  
Wasatch Civil Consulting Engineering

**Date:** May 16, 2012

**Subject:** **Alternative Road Standard Text Amendment**

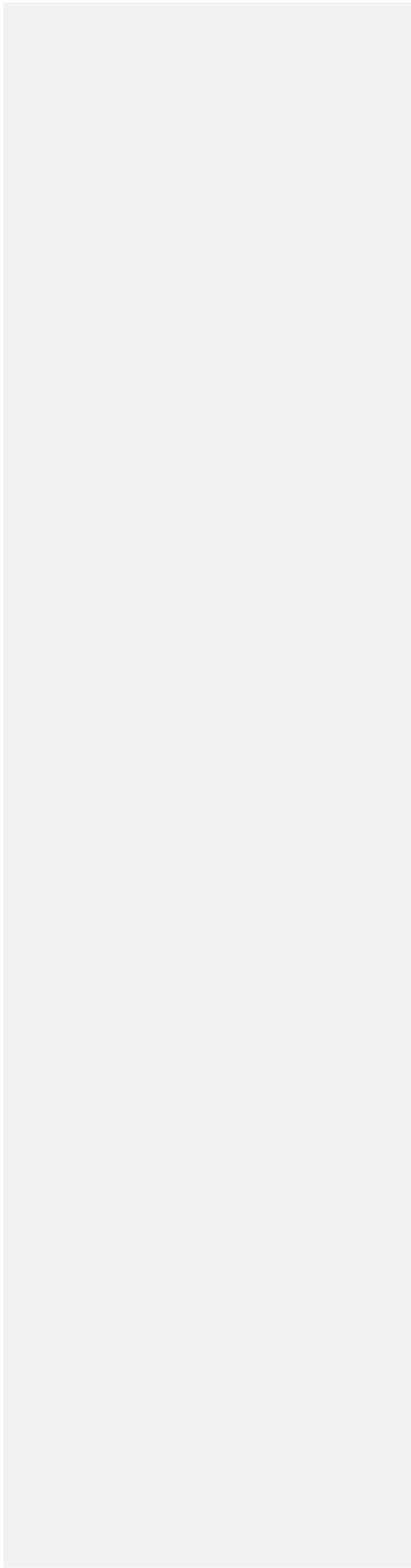
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I have reviewed the proposed amendments to **8-12-44: Streets** and recommend the following additions and clarifications:

- 1. D. Improvements Required; 1. Deferral Agreement:** This paragraph mentions modifications to the street design requirements. The deferral is meant to be for installation of improvements, not design modifications, as mentioned. On paragraph **b.** we could re-word to say "The deferred improvements are not necessary at this time to protect the public's health, safety, and the improvements would create a negative impact on abutting unimproved properties". When we talked in your office, I mentioned the negative improvements can have on natural storm drainage, so I think that last part is pertinent.
- 2. Improvement Exceptions:** This section also mentions exceptions to design requirements, but the exceptions are to required improvements. The last sentence of the first paragraph could be revised to read "sufficient for safe two-way vehicle traffic **with adequate shoulders, as indicated in section a. below and as determined by the County Engineer**, but shall not.....". I would also recommend a distance of 300 feet in lieu of 500 feet.

The second to the last paragraph uses language synonymous with the Impact Fees Act for the basis of finding but I believe we are granting exceptions more for reasons of practicality than proportionality or impact. I like your last paragraph as written. Call me if you want to discuss the final draft.

If you have any questions, please call.



**Exhibit B – Agenda item #6 – Staff report**

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**Planning and Development Services**

48 West Young Street  
Morgan, UT 84050  
(801) 845-4015

**STAFF REPORT**

May 17, 2012

**To:** Morgan County Planning Commission  
Business Date: May 24, 2012

**From:** Charles Ewert, MPA  
Planner

**Re:** County Initiated Text Amendment Regarding Alternative Infrastructure Improvement Requirements

Application No.: 12.034  
Applicant: Morgan County  
Request: To amend portions of sections 8-12 of the Morgan County Code pertaining to infrastructure improvement requirements for subdivisions along existing County streets.

**EXECUTIVE SUMMARY**

This staff report and the related proposed ordinance change is a response to the County Council’s request to study the County’s current requirement that new development – even the small two or three lot subdivisions – install infrastructure improvements along existing County roads on which they front. This topic is at the heart of the purpose of planning, and careful consideration should be given to the matter in order to protect the future needs of the community.

Current ordinances require lot frontages along exiting roads be improved to current standards. This requirement can cause some small subdivisions, especially those with a lot of frontage, to be financially unfeasible. The majority of exiting County roads are not built to currently adopted standards, so most new lots throughout the County along existing public streets will require street improvements (see Exhibit B and C to see what kinds of improvements are required in specific areas throughout the County.)

The 2010 Morgan County General Plan vision identifies Morgan’s desire to remain a rural community while observing private property rights. At times, these two values can conflict to some degree, and a careful balance must be struck in favor of a conclusion that benefits all interests.

In planning for the preservation of rural spaces, it is important to understand that a community’s movement toward urban development is generally incremental, and occurs over time. Every time a new property is

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introduced into the inventory of buildable lots the County is that much closer to urban development and its related need for urban facilities and infrastructure. The General Plan estimates that throughout the County there are currently approximately 7,400 lots that could be developed without even needing a zone change. Given the reality that every developable subdivision of land pushes the County incrementally closer to a more urban nature, and the fact that local land owners have the rights of existing zoning densities to induce approximately 7,400 lots into the county's lot inventory, it seems imperative to provide a plan now for future facilities and infrastructure needs.

The proposed ordinance was crafted as an attempt to provide flexibility in these improvement requirements for small 2-3 lot subdivisions, while still preserving the integrity of the existing plan for future developers to provide needed infrastructure improvements in and around areas identified for growth.

### **BACKGROUND**

The requirement for a new development to improve existing infrastructure is an attempt to make new development "pay for itself" in terms of infrastructure needs that result from the advent of that development. Regardless of the condition of an existing road serving existing uses, the inducement of new uses, higher densities, and more people lead to an increase in infrastructure demand that did not previously exist. Eventually, as infrastructure demand increases, levels of service, factors of safety, and infrastructure functionality will decrease, and in some cases fail.

Even though this may be a fairly new issue in Morgan County, it is not a new issue in areas familiar with development. There are a couple schools of thought that encompass how a jurisdiction should handle it. One that is popular amongst developers is that the jurisdiction should be responsible for all future improvements and expansions of existing public infrastructure as the demand increases – the argument being that the new people to the area will be taxpaying citizens that will contribute to the overall funds for improvements. Another, and one that has been supported by the Courts in many different legal battles, is that new development should be required to pay for itself by providing a contribution to the public infrastructure system proportionate to the size of the project such that existing taxpayers are not required to contribute to the new need for new improvements. This second school of thought is the most popular amongst jurisdictions primarily because it protects the existing taxpayers from the costs of new development that is unrelated to their existing uses.

One could argue that requiring new development to improve existing infrastructure benefits existing users of that infrastructure as much as new users, but when this principle is applied correctly, the requirement for the new infrastructure is only supposed to adequately and fairly supplement the need for expansion due to an expanding demand related to development. In other words, every new-comer to an area pays his or her proportionate share of the demand they create on the shared infrastructure. These concepts are at the heart of the rough proportionality and essential link tests that have been provided to jurisdictions by the Courts, and subsequently adopted as County ordinance (MCC 8-12-5 "General Considerations").

The question at hand here is which school of thought should be reflected in Morgan County's ordinances as the County moves into the future, and could there be a balance between the two? A related concern here is how to help local landowners who desire to create building lots for family members, or for the purposes of supplementing loss of agricultural income. It is important when viewing the issue from this lens to acknowledge the potential that any ordinance created must be objectively applied to all who qualify to use it; meaning there is little ability to regulate career developers separate from local farmers.

When considering a balance between the two, there needs to be an ability to define a threshold to identify under what circumstances the need for the improvements outweighs the developer's financial implications.

Perhaps the demand that a two or three large lot subdivision generates on the public's infrastructure is not roughly proportionate to the cost of the required improvements that will span the length of hundreds of feet of frontage. On the other hand, how is the requirement that developers subdividing many lots improve existing conditions any different from multiple two or three lot subdivisions developed in the same area? The impact is essentially the same. Over time, the County can expect to see a greater build-out of the rural residential zones that buffer existing streets. For most areas in the County, this build-out will likely occur incrementally in small two to three lot subdivisions, as has been the historical trend (with the exception of the use of the PRUD ordinance) – a trend that is a result of how land configurations interface with the zoning boundaries and requirements.

When looking at the historical context of why the zoning was created as it was, with rural residential buffers along existing streets, it becomes clear that the desire was to keep residential uses closer to existing infrastructure, thereby reducing the need for additional infrastructure as build-out increases. This is listed as one of the purposes of the rural residential zones. So in this respect, the original zoning designation of the mid 1900's is doing exactly what was intended. However, to mitigate safety issues, it is imperative that some plan is in place to ensure that the street system is improved over time to handle the increased demand as the entitled zoning densities move toward build-out.

## **ANALYSIS**

**General Plan.** One of the purposes of the General plan is to provide guiding assistance when these kinds of complex questions arise. By looking to the County's 2010 General Plan we may find the guidance we need to provide adequate policy revisions.

Some recommended policies from the general plan are as follows, with staff comments in italics:

(Pg 5) Land Use

(Pg 14) Goals, Objectives, and Policies

Goal 1: Manage and guide growth in a manner that promotes economic development and efficient use of services.

Objective 1: Plan for orderly and sustainable growth

Policies:

...

(Pg 15) Objective 3: Implement Area Plans

Policies:

...

2. Adopt development regulations that require infrastructure improvements for development in villages and village centers.

*This text encourages the County to consider villages and village centers as critical areas for infrastructure improvements as development occurs. Ordinance proposals should not leave the infrastructure in these planning centers without adequate infrastructure planning efforts.*

...

Goal 2: Require costs associated with new development to be borne by the developer.

Objective 1: Maintain clear policies and procedures to evaluate development proposals and

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identify both short-term and long-term financial impacts and costs.

(Pg 16) Policies:

1. Consider requiring a fiscal cost analysis for all rezoning applications in order to determine the adequacy of services and infrastructure in the area. Ensure that new development provides the on-site infrastructure needed to meet the needs of the residents of the development.

*Fiscal cost analyses may be required when the size and scope of the development renders the need.*

2. Maintain an annually updated capital improvements plan to quantify identified needs in light of anticipated growth and to determine how new projects will be integrated into the development impact fee structure.
3. Adopt a comprehensive index of level of service standards for all areas of the County so new facilities or expanded services can be predicted and planned for.
4. Consider the adoption or amendment of impact fees to cover the incremental costs of new facilities.

*If the County had an updated capital facilities plan (impact fee analysis) that adequately identified the need and associated costs required for public improvements along existing public roads as caused by new development, then it may be observed that "proportionate costs" can be collected through an update to impact fees – and applied to capital projects. While this is a reasonable alternative to requiring direct infrastructure improvements, one caution that the County should consider is whether collected impact fees will provide adequate revenue to appropriately supplement capital facilities projects (especially since impact fees must be spent within six years of their collection date), and whether the County desires to appropriate other funds to actually execute such projects. The impact fees currently collected do not adequately supplement road infrastructure projects. More study is necessary here. The excerpt below further affirms a recommendation for an updated study, plan, and fees. The County currently has Lewis Young Robertson and Burningham on contract for CIP and impact fee work, but has not made action on it for some time.*

...

(Pg 22) Transportation Element

Strategic Areas

(Pg 30) Road Impact Fees

Morgan County has maintained a policy that new development should pay for itself, and that the costs of development-related impacts should be borne by the developer. In order to ensure that the transportation impacts of development are borne by the development community, the County adopted a transportation impact fee in 2006. This fee should be re-evaluated as a result of this new planning effort, current growth projections for the County, and changes in Utah law regarding impact fees. Impact fees cannot be used for operation and maintenance costs, or to fix existing deficiencies not caused by new growth.

...

Goals, Objectives, and Policies

Goal 1: The existing county roadway system should be maintained and managed, and expansions should be made only to provide for orderly growth and meet compelling public interest needs.

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(Pg 32) Objective 1: Keep County roadway systems at a minimum to maintain the rural character of the County and protect taxpayers from additional costly road maintenance, construction and reconstruction.

Policies:

1. The County will not accept responsibility to maintain new road infrastructure unless it finds a compelling public interest to accept dedication of the road. Examples of a compelling public interest to add to the existing County road system would be to move people and goods safely and efficiently throughout the County, or to provide access to land designated for development by the General Plan.

*This is primarily referring to new infrastructure, not improvements to existing, but perhaps there is information here to help evaluate the topic at hand. Wider roads and inclusion of curb, gutter, and sidewalks will lead to more infrastructure and the associated operations and maintenance costs. However, the county has previously adopted standards that were identified as a compelling public interest related to health, safety, and welfare of residents.*

2. Development applications (re-zoning or subdivision) should be accompanied by a traffic impact analysis to determine the project impact on existing roads, and to project the need for additional new road, trail and other transportation infrastructure, as required. Methods to manage and fund mitigation of those impacts will be a part of the analysis.

*This section does not identify the threshold of the size of project the will merit a traffic study. This is applied as a discretionary requirement to development review when there is cause to believe there is a need to mitigate potential harmful impact.*

Objective 2: Ensure that County roadways are designed and maintained to provide safe, efficient vehicular circulation.

Policies:

...

2. Establish a Capital Improvements Program (CIP) which incorporates a capital improvements budget and plan for the construction of improvements to the County's roadway system. Specific improvement proposals should be determined for the entire community and all local benefit, cost, feasibility, and safety issues should be considered.

*As addressed above.*

**Land Use Ordinance Provisions.** There are many ordinances that refer to infrastructure requirements currently in the Morgan County Code both within and outside of Title 8. Attached are excerpts from Title 8 that may be relevant for consideration in this ordinance change (Exhibit D). An ordinance in specific question here is MCC 8-12-44(D), which reads:

- D. Improvements Required: Curbs, gutters, sidewalks, and park strips shall be installed on existing and proposed streets by the subdivider in all subdivisions where the adopted road cross sections require these improvements. The County Council may, after receiving a recommendation from the county engineer and Planning Commission, modify the street design requirements, if the following conditions are met:

1. A deferral agreement to construct any remaining required street improvements at a later date, to be determined by the county is executed prior to the recordation of the plat; and
2. The deferred improvements are not necessary at this time to protect the public's health, safety, and welfare.

This ordinance indicates that improvement components are required to be installed on existing roads. What is not specified here is the requirement to also extend the asphalt to the required width as well; however, because curb gutter and sidewalk could not be effectively installed without extended asphalt, it can be inferred that the extension of asphalt is just as much a necessary improvement. Further, the definitions of "public improvements" and "improvements" do specify street construction as follows:

**PUBLIC IMPROVEMENTS:** Streets, curb, gutter, sidewalk, water and sanitary sewer lines, storm sewers, flood control facilities and other similar facilities which are required to be dedicated to the county in connection with subdivision, conditional use, site plan, or other land use approval.

**IMPROVEMENTS:** Work, objects, devices, facilities or utilities required to be constructed or installed in a land development. Such "improvements" may include, but are not limited to, street construction to required standards, water facilities, sewer facilities, sidewalks, curbs and gutters, drainage facilities, street trees, street signs, streetlights, traffic control or safety devices, fire hydrants, and such other facilities or construction required by this title, subdivision regulations, or by the Planning Commission and/or governing body for the necessary proper development of the proposed land development.

And the street standards as adopted in February of 2011 (see Exhibit B) specify road widths that are greater than the majority of existing streets.

The fact that MCC 8-12-44(D) does not specify street width could pose a potential problem if Morgan County does ever get a large subdivision proposal along an existing street where the proportionate impact would otherwise demand the asphalt extension.

There are some ambiguities and inadequacies in these ordinances that may make requiring proportionate impact contributions difficult to attain. These ambiguities in the ordinances also create confusion when trying to determine whether certain improvement requirements should be applied, and in what cases. To clarify these ambiguities, and to provide more objective standards when determining what improvements are required, staff have proposed the subject text amendment (proposed in Exhibit A).

**Procedures for adopting amendments to Title 8 of the Morgan County Code.** Title 8- Land Use Regulations (formerly Title 16- Land Use Management Code) sets out the required procedures for adopting and amending the land use requirements of the County Code:

**8-3-2-C. Amendments and Rezoning:**

1. The governing body may amend:
  - a. The number, shape, boundaries or area of any zoning district;
  - b. Any regulation of or within the zoning district; or
  - c. Any other provision of the zoning ordinance.

2. The governing body may not make any amendment authorized by this subsection unless the amendment was proposed by the Planning Commission or is first submitted to the Planning Commission for its approval, disapproval or recommendations.
3. The governing body shall comply with the procedure specified in subsection B of this section, in preparing and adopting an amendment to the zoning ordinance or zoning map.

**8-3-2-B. Preparation and Adoption of Zoning Regulations:**

1. The Planning Commission shall prepare and recommend to the governing body a proposed zoning ordinance, including both the full text of the zoning ordinance and maps that represents the Planning Commission's recommendations for zoning all or any part of the area within the county.
2. The governing body shall hold a public hearing on the proposed zoning ordinance recommended to it by the Planning Commission in compliance with Utah Code Annotated section 17-27a-205.
3. After public hearing the governing body may:
  - a. Adopt the zoning ordinance

**STAFF RECOMMENDATION**

First and foremost, in order to ensure that development does pay for itself in a manner more efficiently measured in accordance with fiscal impact studies, staff recommends that the County complete the development of a new impact fee analysis. If such an analysis can sufficiently address road improvement projects and plan for their related costs in a timely manner, then the impact fees may be increased to better accommodate development paying for itself. This will not completely cover the cost of improvements along existing roadways needed due to expanding development patterns, but it will help supplement the problem.

In order to facilitate the subdivision of property into divisions of three lots or less, Staff recommends that the Planning Commission forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding alternative improvement requirements for subdivisions along existing County streets based on the following findings:

6. That the amendments are necessary to clarify ambiguous language in the subdivision ordinance.
7. That the amendments provide alternative improvement requirements for certain types of low-impact subdivisions which are reasonable and practical given their proportionate impact.
8. That the amendments are necessary to provide objective evaluative criteria from which to evaluate the allowance of alternative improvement requirements.
9. That the amendments are necessary to identify specific plan submittal requirements.
10. That the amendments are not detrimental to the County's health, safety, and welfare.

**MODEL MOTION**

Sample Motion for a Positive Recommendation – "I move we forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding the county initiated text amendment regarding alternative infrastructure improvement requirements, application 12.034, based on the findings presented in the Staff report dated May 17, 2012:"

1. List any additional findings and conditions...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation for the proposed land use regulations text amendments regarding the county initiated text amendment regarding alternative infrastructure improvement requirements, application 12.034, based on the following findings:”

1. List any additional findings...

**SUPPORTING INFORMATION**

- Exhibit A: Proposed ordinance changes
- Exhibit B: Currently Adopted Road Standards
- Exhibit C: Roadway Functional Classification Map
- Exhibit D: Current Ordinance Excerpts
- Exhibit E: Engineer’s Memo

