



PLANNING COMMISSION AGENDA

Thursday, February 23, 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 January 26, 2012 and February 9, 2012.
5. Public Hearing/Discussion/Decision: Anderson Public Right of Way Vacation Request: a request to vacate a portion of public right of way of the Enterprise town site; between blocks six and seven.
6. Discussion/Decision: To amend portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions.
7. Staff Reports.
8. Adjourn.

PLANNING COMMISSION MINUTES
Thursday, February 23, 2012
Morgan County Council Room
6:30 PM

MEMBERS PRESENT

Trevor Kobe, Chairman
Roland Haslam
Al Lundgren
Brandon Anderson
Chris Hales
Darrell Erickson
Adam Toone

STAFF PRESENT

Charlie Ewert, Morgan County Planner
Teresa Rhodes, Planning Commission Assistant

MEMBERS ABSENT

COUNTY COUNCIL PRESENT

Tina Kelly
Howard Hansen

**** MINUTES ****

Call to order – prayer.

The prayer was offered by Chairman Kobe.

1. Approval of agenda.

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

2. Declaration of conflicts of interest.

There were no conflicts of interest declared.

3. Approval of minutes from January 26, 2012 and February 9, 2012.

Member Anderson moved to approve the minutes of January 26, 2012 with the noted minor corrections. Second by Member Toone. The vote was unanimous. The motion carried.

Member Lundgren moved to approve the minutes of February 6, 2012 with the noted minor corrections. Second by Member Anderson. The vote was unanimous. The motion carried.

4. **Public Hearing/Discussion/Decision: Anderson Public Right of Way Vacation Request: a request to vacate a portion of public right of way of the Enterprise town site; between blocks six and seven.**

Mr. Ewert presented his staff report (please see exhibit A)

The following was discussed:

- Prescriptive right of ways.
- Tax roll records
- Other right of ways in the area.
- Current Enterprise Area plan and futuristic view of the area.
- Structures in the right of way.
- Possible litigation.

Chairman Kobe noted that what is before the Planning Commission is not whether the right of way exists or not. The question is, is there good cause to vacate and is anyone adversely affected by it.

- Member Lundgren noted the county can vacate the right of way that may exist in that area. This paves the way for the Anderson to move forward.

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

Bryce Anderson (please see attached exhibit B for Mr. Anderson's comments) –

David Potter –

- He and his brother own the Potter Ranches which was originally part of this area which was owned by Producer's livestock.
- He noted they have the following concerns:
 - All these roadways that have been built upon were proposals for the proposed township.
 - Believes these errors are due to a survey overlap.
 - Nothing has been mentioned about Spring Hollow Creek which has a right of way that should remain undisturbed. They need to have a maintenance agreement for this right of way.
 - It is 30 feet to the back of the back of the Mortensen shed to the existing road.
 - There is still several private rights of ways in the area; one is Bill Mortenson, Spring Hollow Road, Potter Ranches.
 - Mr. Anderson has assured him nothing will change if this Right of way is vacated. He believed if this was spelled out in the agreement this would protect a lot of people in the area.
 - The Potter's have no objections to vacating the road way and putting one more home on that property as long as these private right of ways are protected. .
 - He would like to see the right of ways protected either in the motion or an addendum to the motion.

Larry Newton - Resident two doors south of the proposed property.

- No more than one dwelling in addition on that property.
- Wants to maintain the community exactly as it is and agrees with Mr. Potter to maintain private right of ways so that people can do what they want with their property.

Elwin Jensen –

- Most of the old rights of ways have been abandon and they are there because they were planned for ¼ acre lots and have essentially been vacated without any legal aspects.
- All private right of ways are to be taken privately.
- He would recommend that you vacate this and others to save a lot of grief and trouble.
- If Mr. Anderson wants to put a subdivision down there that is fine.
-

Mr. Anderson clarified that the re-zone they received only allows for only one more home.

Mr. Haslam – why all of a sudden are we addressing vacating. Mr. Anderson noted it was something staff said they may want to consider. The original reason was that they were told they needed additional frontage. It was recommended to put all the cards on the table

Kent Poll – lives just down the road here to represent water association.

Mr. Potter's comments are right on. Vacating this is not going to hurt anyone and he is in support of it.

Debbie Sessions

- Agree with what Mr. Jensen has said. This problem also exists in Peterson. Unless you are going to honor the ¼ acre lots then you really shouldn't be considering these rights of ways. They have been ignored for many years.
- Vacating other right of ways should be left to the courts. Listen to verify 0

Member Anderson moved to close the public hearing. Second by member Toone.

Member Lundgren moved to forward a positive recommendation to the County Council for the Anderson Public Right of Way Request, application #11.092 with the following six findings as stated in the staff report dated February 15, 2012 plus one additional as follows:

1. That good cause exists for the vacation.
2. That neither the public interest nor any person will be materially injured by the vacation.
3. That both the recent planning efforts and evolved land use action in the Enterprise area have rendered the future influence of the original Enterprise Town site obsolete.
4. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat (instead of leaving a remnant disconnected from the public right of way system) promotes a more orderly and organized system of public rights of way.
5. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat helps avoid the appearance that the County condones the location of existing private property lines.
6. That pursuant to State code, a public right of way vacation is not to be construed to impair any right-of-way or easement of any lot owner; or the franchise rights of any public utility.
7. Does not affect any private right of ways.

Second by Member Erickson.

Member Lundgren. While this is a legislative decision it is a simple decision. The County has no intent of building a road down there. The neighbors are not asking for that right of way to be preserved for future development and it appears that there is just no negative consequence and he believes it enhances personal property rights and further believes it is a good idea.

Member Erickson – initially he had a few thoughts of way into the future at some point there has to be a septic system built in this area and at some point that will need to have some sort of access. However in this case he sees no reason. We have allowed things to happen for 100 years and people have taken good care of it and built upon it and see no reason not to vacate.

Member Anderson, Hales, and Toone had no comments.

Member Haslam – Asked for clarification that this is the only right of way we are talking about vacating. It is the entire rectangle which includes Paul Mortenson. Member Anderson noted that one of the findings was the full vacation of public interest between block six and seven which would include the whole thing.

The Chairman called for a vote.

The vote was unanimous. The motion carried.

The commission took a five minute break.

5. Discussion/Decision: To amend portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions.

Mr. Ewert presented his staff report (Please see attached exhibit C)

There was discussion on flag lots.

Mr. Haslam noted when Mr. Crowell presented the planning commission with a survey last year it was noted the planning commission did not want flag lots, so why do we want this? Mr. Ewert noted that is a question for the planning commission to answer.

Member Erickson noted it does provide for more than a flag lot. He further noted that we cannot bind future access and deviation.

Chairman Kobe noted it is his understanding is that we are lowering the cost for infra-structure. Mr. Ewert noted with the new language being proposed in P-1-A it does not limit it to four.

Chairman Kobe asked if the public road count as part of the acreage for each of the lots. Mr. Ewert noted the public road is excluded; a private lane would be included. It was noted that this should be specified.

Member Toone asked if this would connect to a public road. Mr. Ewert noted easement shall connect to a public right of way.

Member Erickson asked why we have the language “*and estimating the private expenses therefore*” P-7. Member Anderson believed that was good to have in there because if we are asking these people to get into a private agreement that may be a good way to let them know right up front. If something is written it gives those owners what will be required up front. Mr. Erickson noted his concern is stating the cost; that would leave it open for someone could say \$10 and that would be ok.

It was suggested to strike sentence after the period.

Chairman Kobe noted he would put a minimum lot size on this.

Member Anderson had concerns with cutting roads all over the hills due to emergency access concerns, brush fires, what the overall look will be in the future.

Member lundgren moved to forward this ordinance to the County Council with the recommendation to approve it with the suggestions made by Chairman Kobe that

- **Be limited to four lots.**
- **The road is not included in any of those lots.**
- **Minimum lot size of one acre.**
- **Recommendation to delete the sentence in old paragraph 7, following "from any common area".**

The Chairman called for discussion:

Member Lundgren believed it was a good idea. The planning commission had spent way too much time on this and believed it needed to be moved forward.

Member Haslam-

- Did not agree with what was being proposed.
- In his opinion all this would be doing is creating flag lots. The planning commission originally did not want that in our County.
- Opposed to taking frontage off of a private road. There are individuals who have previously had to do this at their expense and now we are going to change it.
- Believed this needed to be brought in on the flexible subdivision ordinance.
- Does not believe that allowing everyone to start tooling off of Morgan valley drive with 1000 foot private lanes is not what the County wants.

Member Hales believed growth was inevitable and vital and he is for it.

Member Erickson believes it is time to get it moving on down the road. He agreed with Member Anderson about not including square footage. He would be more in favor of eliminating that out of the final draft but in favor of everything else.

Member Toone –

- Struggles with the indefinite length on it because extending that far up you are going to be getting into rural area and wild lands which are used rangeland and livestock.
- It if goes indefinitely you are going to have issues with livestock and development; especially when we state in our general plan how pro-agricultural we are as a county.
- Sees as a benefit because it gives property rights to owners.
- With regard to this being retroactive it is important to understand that there is always change.
- We are trying to make a good effort but can go ahead with most of it and struggle with the indefinite length of it.

- Does struggle with the issue of flag lots but to have someone landlocked is not right either.

Member Anderson –

- When we don't put a number on the length, it leaves it too open.
- The Commission has not addressed slope, or geotech.
 - Mr. Ewert noted that those will be addressed at the geological ordinance because every new development has to have a geological review.
- We have not talked about curb and gutter, there could be slides and it would be like Harriman where some of those things were not thought out well.
- Believed we are trying to push things too quickly.
- Thought this was part of the flexible subdivision ordinance. And believes it should be done with that.
- To take it out and throw everything out the door is poor planning.

Chairman Kobe asked if limiting the length would make a difference. Is concerned that slope has not been addressed. He asked if there was another ordinance that would also address this.

Mr. Ewert noted that private and public road have slope restrictions in the subdivision ordinance but this is called out as a separate thing being private lane; so slope is an issue.

Member Lundgren moved to amend his own motion to include the distance of 1000 feet and to leave the recommendation to delete the sentence in old paragraph 7, following "from any common area".

Second by Member Erickson.

The Chairman called for a vote on the amendment.

The vote was not unanimous with Member and Haslam against. Members Anderson, Lundgren, Hales, Erickson, and Toone for. The motion carried with a vote of five to one

The Chairman called for a vote on the motion.

The vote was not unanimous with Member Anderson and Haslam against. Members Lundgren, Hales, Erickson, and Toone for. The motion carried with a vote of four to two.

Member Haslam called for a hand vote. The vote remained the same.

6. Other Business.

Condition Use Permit noticing -

- Would planning commission feel comfortable if staff separated those out?

Snow Basin Work Group -

- Snow basin work group – Next meeting will be February 29th. The developer feels they are not getting much feedback. They have a proposed development agreement.
- Are interested in getting the full planning commission and county council in the loop so there are no snares. Would like to extend an invitation to the planning commission and county

- council to the next snow basin meeting. First hour will be economic impact, second hour transportation, third hour question and answer. No decision would be made at this meeting.
- Snow basin wants to make sure that all members of the planning commission and county council have a chance to voice their concerns.

Brandon Anderson noted one thing he has found with snow basin is they are going to own that resort way after it is developed and established. By doing so they are not going to cut corners.

Member Erickson - Economics of this is very positive to the county. The county is not losing much revenue. Thus far the financial part of this looks attractive.

Chairman Kobe took a moment to acknowledge and thank outgoing planning commission members Chris Hales and Brandon Anderson. He thanked the members for their dedication and service and presented each member with a clock and name plate representing their years of service to the county.

Member Tone would like staff and the commission to re-look at utility right of ways. Thinks it would be prudent to make an exception so that utility companies can put overhead above the road instead of cutting the road. To cut the road incurs a big expense for the county.

7. Adjourn.

Member Anderson moved to adjourn. Second by Member Anderson

Exhibit A - Agenda item #4 Public Hearing/Discussion/Decision: Anderson Public Right of Way Vacation Request: a request to vacate a portion of public right of way of the Enterprise town site; between blocks six and seven.

STAFF REPORT

February 15, 2012

To: Morgan County Council
Business Date: December 20, 2011

Prepared By: Charles Ewert, Planner

Re: **Anderson Public Right of Way Vacation Request**

Application No.: 11.092
Applicant: Brice and Heidi Anderson
Project Location: Approximately 2635 W. Old Highway Road
Zoning: R1-20 and RR-5
Acreage: Approximately 11,462 square feet
Request: A request to vacate an unused portion of the Enterprise Town site plat.

SUMMARY

In this application the Planning Commission is being asked to evaluate a request to vacate a public right of way. This public right of way is currently undeveloped, and has no public infrastructure on it. The key questions for the Planning Commission to evaluate are:

- Does good cause exist for the vacation? (State code requirement.)
- Is either the public interest or any person materially injured by the vacation? (State code requirement.)
- Does the original Enterprise Town site plat have significance for local infrastructure and land use planning? If it does, is there a benefit to vacating a portion of that right of way?
- Is it reasonable to only vacate a portion of a public right of way, creating a remnant disconnected from the public right of way system?

This analysis is intended to assist the Planning Commission through an evaluative review of the request prior to making a recommendation to the County Council.

BACKGROUND

The Enterprise Town site is one of the oldest planned communities in Morgan County. Historical documents show that the town site was platted with square blocks, lots, and rights of way prior to the 1880's. The old town site is still delineated on the County Recorder's plats, however lot configuration changes over the past 100+ year's time have been platted overtop of the old town site lines.

The official Enterprise Town site Plat can no longer be found in the County Recorder's Office. At this point staff's attempts to locate it in both State and Federal archives were unsuccessful. However, there is sufficient evidence in the record to convey that the town site plat does indeed exist. A search of the federal archives produced an 1873 survey of

Morgan County's Township 4 Section 2 (see Exhibit A). It clearly delineates the Enterprise Town site. Of further evidence, the current Recorders Plats still show the lots, blocks, and rights of way of the old town site because the standard of practice has been to leave them visible as a sub layer beneath current parcels, of which shapes and sizes have changed over time. And finally, there is sufficient evidence in the Recorder's Office that the alignment of Interstate 84 was created with influence from the original platted town site lines.

The creation of the old town site also created rights of way. These rights of way were most likely intended for public use, and provided access to exterior lots and blocks in the town site. Several roads in the area have been built in these old public rights of way, such as Old Highway Road, the initial parts of Spring Hollow Road, portions of blue sage road, 2500 West, and 2550 West (see exhibit B). Originally, according to the 1873 survey, roads were established in these rights of ways. Over time, as land ownership and land usages have changed, the need and usage of some of these roads has dwindled into abandonment. Currently, most of the rights of way of the original town site plat no longer have roads, but rather are now being used by adjacent land owners for private purposes. It also appears that several land owners have filed deeds for these grounds in an attempt to claim the ground as private property through the law of adverse possession. The property in question is one such property.

It is important to note for this topic of discussion that the law of adverse possession cannot be applied to public grounds or rights of way. It is likely that land owners who have attempted to claim these rights of way have done so believing that they were unclaimed private property and were unaware of their public origination. However, once a public right of way is established it cannot be removed or revoked without official action on the part of the public. There are specific procedures for vacating public grounds. Without evidence in the record that these procedures were ever executed it is likely that whatever public right of way existed in 1873 still exists today regardless of any private claim.

It is for this reason that the applicants have filed this petition. They desire that the County vacate any possible public interest in an 11,462 square foot portion of their property (see Exhibit C) that was part of the original Spring Hollow Road right of way – an unimproved portion of property to the Southwest of Old Highway Road – in order to plan for future subdivision improvements.

ANALYSIS

The request for vacation is fairly straight forward and when evaluated based solely on the boundaries of the Anderson property may seem a simple decision. Currently there are no road improvements that exist on the property. The public are restricted from accessing it as it is fenced and gated as equestrian pasture ground. There is a ditch that runs through the right of way that contains Spring Hollow Creek. There may be private water claims to the creek and potentially a private right of access across the right of way, but this should not affect the vacation of the public interest in the right of way.

Planned Communities in History. However simple the request may be relative to the boundaries of the Anderson property, the question about an over-arching community planning principle should be asked. The platting of rights of ways in a grid system was a tool used by early pioneers in an effort to create organized communities. The grid system plan is evident in many communities throughout the intermountain west, and is praised in the planning profession as exemplary community planning. The Enterprise Town site – and other town sites in Morgan – is an example of such early planning efforts. If the rights of ways are preserved it could assist the County in future planning of the area if the County desires it.

General Plan and Zoning. But despite these early efforts, the County may not desire to reintroduce the town site plat in future planning because the evolution of land uses in the Enterprise area may now render the plan of the original town site obsolete. Build out of the grid did not come to fruition as it has in other planned town sites and the uses of many rights of ways have become abandoned. Even though 1960's and 1970's zoning maps appear to be influenced by the

town site, it does not appear that current zoning (see Exhibit D) has a strong tie to it anymore. It is not clear when these changes were made. Additionally, the 2010 General Plan (see Exhibit E), which draws heavily from other recent area planning efforts, does not plan for the development of the area in the same manner the town site did, rather, it provides future land use plans that compliment current land uses. Because current plans were brought forth with much influence from the public of the Enterprise area, they probably have better public support than the planning efforts of the old town site plat.

Over the last 20-40 years the County has made a practice of platting subdivisions over the original town site plat and rights of ways. It seems apparent in these decisions that there has been little acknowledgement or understanding that the rights of ways of the town site plat still may exist, which would explain the reason there is no evidence that the rights of ways have been vacated prior to these actions. The latest document that staff has been able to locate that acknowledges the existence of the subject public right of way is a 1968 three lot subdivision plat titled "Enterprise Estates" (see Exhibit F). It calls out an 82.5' wide right of way. There is some question about the accuracy of this width, but because the subdivision only shows the right of way and does not formally dedicate it, we can use this information as an indication that a right of way does exist, the width of which is to be determined. On the Anderson vacation survey, this line is represented by the line titled "Existing Right of Way Line as Dimensioned."

Ordinance Evaluation. State and County codes give clear direction of the process required for a public right of way vacation request. This is identified as a legislative decision, meaning the County has broad discretion to make this decision. That State and County codes directing the process are provided as follows in italics. Staff's comments are provided in normal font.

UCA § 17-27a-609.5. Vacating a street, right-of-way, or easement.

...

(3) The legislative body may adopt an ordinance granting a petition to vacate some or all of a public street, right-of-way, or easement if the legislative body finds that:

(a) good cause exists for the vacation; and

(b) neither the public interest nor any person will be materially injured by the vacation.

The Planning Commission should determine whether there is good cause to vacate any public interest from the subject property. This decision should reflect on whether the right of way could prove useful to future transportation and land use planning, and balance that prospect with existing uses and planning efforts. The Planning Commission should determine whether the public or any individual is injured by a vacation of the right of way. At a minimum, the right of way could be seen as relevant to the uses of the Anderson property, the Mortenson property, and the Potter property (see Exhibit B). If indeed a public right of way is maintained there, then there is the potential for these surrounding property owners to use it for access to their properties, or even possible future development. A vacation could affect them. The Planning Commission should evaluate whether these land owners, or anyone else, is actually materially injured by the proposed vacation. The required public hearing will likely provide persons with particular interest on this matter, and may give the Planning Commission the necessary insight to make an appropriate decision.

...

(5) [Also adopted as MCC 8-12-63(F)] The action of the legislative body vacating some or all of a street, right-of-way, or easement that has been dedicated to public use:

(a) operates to the extent to which it is vacated, upon the effective date of the recorded plat, as a revocation of the acceptance of and the relinquishment of the county's fee in the vacated street, right-of-way, or easement; and

(b) may not be construed to impair:

(i) any right-of-way or easement of any lot owner; or

(ii) the franchise rights of any public utility.

This section of code indicates that if the right of way is vacated, existing private rights such as utility and other private easements will not be negated.

Physical Characteristics of the Property. The right of way runs through the easterly portion of the Anderson property. As can be seen in Exhibit C, the Anderson property line has been surveyed as being approximately 10 feet beyond an existing fence line on the southeastern boundary. The configuration of the proposed vacation is strictly limited to the surveyed area of the Anderson's property. The difference between the fence line and the survey line may lead to a lot line disagreement between the Andersons and the adjoining land owner that the County should avoid. Further, if this vacation is executed as proposed, it will leave a remnant of the old town site right of way on the neighboring property that does not connect to the existing public right of way system. The usefulness of the remnant right of way is questionable, and the public's retention of it may be useless.

For these reasons, the Planning Commission may find that if the right of way is to be vacated, it is more prudent to vacate all public interest from the legal description of both lots, excluding the public right of way of Old Highway Road (if any). Any possible lot line dispute will be required to be resolved prior to the property being subdivided in the future.

NOTICING AND PROCEDURE

The public right of way vacation request has been noticed in accordance with State and County requirements. Namely:

State Code:

17-27a-208. Hearing and notice for proposal to vacate a public street, right-of-way, or easement.

(1) For any proposal to vacate some or all of a public street, right-of-way, or easement, the legislative body shall:

(a) hold a public hearing; and

(b) give notice of the date, place, and time of the hearing, as provided in Subsection (2).

(2) At least 10 days before the public hearing under Subsection (1)(a), the notice required under Subsection (1)(b) shall be:

(a) mailed to the record owner of each parcel that is accessed by the public street, right-of-way, or easement;

(b) mailed to each affected entity;

(c) posted on or near the street, right-of-way, or easement in a manner that is calculated to alert the public; and

(d) (i) published in a newspaper of general circulation in the county in which the land subject to the petition is located; and

(ii) published on the Utah Public Notice Website created in Section [63F-1-701](#).

County Code:

8-3-13(H): Proposals To Vacate Or Amend A Public Street, Right Of Way, Or Easement: For any proposal to vacate some or all of a public street, right of way, or easement, the county council shall hold a public hearing, after receiving a recommendation from the planning commission, and give notice of the date, place and time of the hearing at least ten (10) days before the public hearing. Notice shall be:

1. Mail notice to the record owner of each parcel that is adjacent to, accessed by, or within three hundred feet (300') of the public street, right of way, or easement;

2. Mailed to each affected entity;

3. Posted on or near the street, right of way, or easement at least one county provided sign in a manner that is calculated to alert the public. The sign shall be of sufficient size, durability, print quality and location that it is reasonably calculated to give notice to those passing by;

4. Published in a newspaper of general circulation in the county in which the land subject to the petition is located;

5. Published on the Utah public notice website created in Utah Code Annotated section 63F-1-701.

REVIEWS AND RECOMMENDATION

Planning and Development Services has finished its review of the public right of way vacation request. The review was conducted with influence from the expertise of the County Surveyor and County Engineer. Staff recommends that if the Planning Commission can make the findings that good cause exists for the vacation, and that neither the public interest nor any person will be materially injured by the vacation, that the request is approved. Further, if the Planning Commission can make the aforementioned findings, staff also recommends that the public interest is vacated from the entire right of way between block 6 and 7 of the original Enterprise Town site Plat. This recommendation comes with the following additional findings:

Findings:

1. That both the recent planning efforts and evolved land use action in the Enterprise area have rendered the future influence of the original Enterprise Town site obsolete.
2. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat (instead of leaving a remnant disconnected from the public right of way system) promotes a more orderly and organized system of public rights of way.
3. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat helps avoid the appearance that the County condones the location of existing private property lines.
4. That pursuant to State code, a public right of way vacation is not to be construed to impair any right-of-way or easement of any lot owner; or the franchise rights of any public utility.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the Anderson Public Right of Way Request, application #11.092, with the following findings:

8. That good cause exists for the vacation.
9. That neither the public interest nor any person will be materially injured by the vacation.
10. That both the recent planning efforts and evolved land use action in the Enterprise area have rendered the future influence of the original Enterprise Town site obsolete.
11. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat (instead of leaving a remnant disconnected from the public right of way system) promotes a more orderly and organized system of public rights of way.
12. That providing a full vacation of the public interest in the land between block six and seven of the Enterprise Town site plat helps avoid the appearance that the County condones the location of existing private property lines.
13. That pursuant to State code, a public right of way vacation is not to be construed to impair any right-of-way or easement of any lot owner; or the franchise rights of any public utility.
14. List any additional findings...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the Anderson Public Right of Way Request, application #11.092, with the following findings:

1. It has not been demonstrated that good cause exists for the vacation
2. It has not been demonstrated that neither the public interest nor any person will be materially injured by the vacation.

3. List any additional findings...

SUPPORTING INFORMATION

Exhibit A: 1873 survey of Morgan County's Township 4 Section 2

Exhibit B: Aerial photography with plat overlay (with zoom)

Exhibit C: Anderson's proposed right of way vacation

Exhibit D: 1960's, 1970's, and 2012 zoning map

Exhibit E: Future Land Use Map of the 2010 General Plan

Exhibit F: Enterprise Estates Subdivision Plat

Exhibit B - Agenda item #4 - Comments from Bryce Anderson (Waiting for Mr. Anderson to send me)

County Remarks

Only 2 reasons to consider when looking at vacating a ROW.

1. Dose good cause exist to vacate?
2. Will any harm come to the county or landowners if vacation occurs?

1. Does good cause exist to vacate?

- We bought it, paid for it, closed via a title company; Taxes have been paid and collected for over 50 years on the parcel in question.
- I bought this parcel from Wynn's – the parcel in question has its own Tax ID number and my name on the deed. Wynn's bought it from Producers land and livestock. I bought this fair and square as did they.
- The whole reason we bought this land was for this section. The stream on it and without this section of ground, it would limit where we place our house (Which our Neighbors may not like) & force us to put in a road, which NO ONE wants us to do
- The County established precedent in planning over these in right of ways throughout the county...So, if you do not vacate this supposed ROW, that we are requesting, Are going to go and take all of these other ROW's back?
- We pay \$500/yr. in taxes just for that parcel, which is half of the vacation request – if my neighbor pays the same (I assume he would, same size parcel, etc.) that would be over \$50,0000 in revenue the county has collected on this supposed ROW alone. If you do not vacate our supposed ROW (Where there is not even 100% proof that a ROW exists, Due to the fact that the original patent cannot be found) do you really want to lose tax revenue from this specific parcel and incur cost of maintenance and liability?
- BTW - We could have just "Swept" this under the carpet and went to subdivision, since there is not 100% proof that a ROW exists. We asked what the "Right" move was and the "Right" thing to do. Staff said to vacate it. We did the RIGHT thing and spend thousands of dollars and researched to make sure we did not harm anyone.
- So as you can see, there is VERY good cause to vacate this property.

2. No harm to county or landowners-

- No harm to anyone or any entity will happen because nothing changes. No other interests are impacted by this. Per state statue the only thing released is the counties interest. Everything remains that same as it is today- fences, property lines, access to ditch, Utilities, anything else there, etc. – NOTHNG CHANGES (Same today as yesterday as tomorrow). Up until 6 months ago, no one thought this even existed. Thus no harm will happen to any private entity, because it never existed. It is completely hypothetical at this point.
- No harm to County interest. The reason being is there is not 100% evidence that this ROW exists (Due to the fact that the original patent cannot be found). If the county wanted to put a road through there today, they could not. They would still have to prove there is a ROW. So no harm would come to the County, because it does not definitely exist.
- Morgan County has planned and ignored these ROW lines for more than 100 years – there are hundreds of these instances throughout the county. That has set a very strong precedence in not heeding or wanting these ROW's in the county. Look at the map Charlie showed, just in Enterprise. These types of examples exist throughout the whole county.

As you can clearly see, the best, most reasonable route would be to vacate this supposed ROW, as it clearly demonstrates that there is good cause to vacate & No harm will be caused – Which are the ONLY 2 criteria or considerations when vacating a property. I am not asking for a refund of all the money I have spent in researching and buying this property– I am just asking for what is rightfully mine and my families. Something I acquired legally and lawfully from the Wynn's. I did my due diligence, closed through a title company, but of course they could not find it, due to the inaccurate recordings, and the fact that no one is 100% sure this ROW exists. I paid for all of this out of my own hard earned money.

Again, I just want what is rightfully mine. To this point I have been calm and tried to do the "Right" thing, by the county and by my neighbors. I have not hid one thing, I have been completely open. I ask you to do the same and do the "Right" thing and make it clear that what I bought and what is mine and vacate the ROW and parcel in question. Thank you for your time consideration.

Exhibit C - Agenda item #5 - Staff report Memo Discussion/Decision: To amend portions of sections 8-2 and 8-12 of the Morgan County Code pertaining to private lane standards in subdivisions.

Memo

TO: Planning Commission
FROM: Charles Ewert, MPA
Planner
DATE: February 16, 2012
SUBJECT: Private Lanes Text Amendment; File #11.070

On February 9, 2012, the Planning Commission requested staff to revise the proposed private lane text amendment to provide for alternative maximum length requirements. The Planning Commission favored the idea of restricting private lanes to 1,000 linear feet with the idea that it could be lengthened if no more than four single family dwelling lots were allowed frontage and access to the lane.

Some results of this change would provide for the following:

1. If the private lane is allowed in a higher density zone, it is possible to get more than four homes along it. The number of homes will be dictated by the amount of required frontage per lot. For example, a 1,000 foot long private lane in the R1-20 zone could potentially accommodate 20 lots (10 on each side), each having the required 100 foot width requirement. This number depends highly on the size and configuration of the subdivision.
2. For those subdivisions that may have very restrictive size and configuration limitations or are in a lower density zone with wider frontage/width requirements, the allowance of additional length could prove beneficial in accommodating a maximum of four homes. The limitation to the maximum number of homes allowed is a health, safety, and welfare consideration aimed at avoiding potential traffic complications in an emergency evacuation situation. An example of this is the allowance of a private lane in the MU-160 zone where the frontage requirement for one lot is a minimum of 1,320 feet to allow a longer road to accommodate up to four lots.
3. Limiting the allowed homes to access a private lane longer than 1000 feet also has an economic impact. The cost to benefit ratio of building a private lane in turn for such a limited number of lots is an economic discouragement from the proliferation of development into the rural back country of the County.

Staff also added the verbiage that requires all subdivision plats that contain a private lane to have a note stating that there is a private lane on the plat and that the County will not assume responsibility of it unless it is brought to full county standards first.