

**IRON COUNTY COMMISSION MEETING**  
**January 11, 2016**

Minutes of the Iron County Commission meeting convened at 9:00 a.m. January 11th, 2016 in Commission Chambers at the Iron County Courthouse, Parowan, Utah.

Officers in attendance included:

|                       |                        |
|-----------------------|------------------------|
| Dale M. Brinkerhoff   | Commission Chair       |
| Alma L. Adams         | Commissioner           |
| David J. Miller       | Commissioner           |
| G. Michael Edwards    | Deputy County Attorney |
| Jonathan T. Whittaker | County Clerk           |

Also present:

|                     |                      |
|---------------------|----------------------|
| Cindy W. Bulloch    | County Assessor      |
| H. Eugene Adams     | County Auditor       |
| Stephen R. Platt    | County Engineer      |
| Debbie B. Johnson   | County Recorder      |
| Nicole B. Rosenberg | County Treasurer     |
| Chad Nay            | Zoning Administrator |

**SYNOPSIS**

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**PLEDGE OF ALLEGIANCE**

Those assembled were led in the pledge of allegiance by Brenda Bybee.

## **INVOCATION**

An invocation was offered by David Miller.

## **APPROVAL OF MINUTES**

Alma Adams made a motion to approve the minutes of the December 14<sup>th</sup>, 2015 Iron County Commission Meeting and the minutes of the December 29<sup>th</sup>, 2015 Special Iron County Commission Meeting. Second by David Miller. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

## **REORGANIZATION OF COMMISSION ASSIGNMENTS AND APPOINTMENT OF COMMISSION CHAIR FOR 2016**

David Miller made a motion to appoint Commissioner Alma Adams to serve as the Chairman of the Iron County Commission for 2016. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

No other changes were made to commission assignments.

## **REVIEW OF BOARD APPOINTMENTS**

The commissioners reviewed board appointments among county boards. On the Accident and Safety Review Board, Jay Sissener was recommended to replace Rick Evans as the representative from the Sheriff's Department and Lori Starr to replace Michelle Madson from the Justice Court. The Ambulance Department representative was stricken as the department was dissolved in 2015.

On the Local Emergency Planning Committee (LEPC), John Higley was added, with Bruce Anderson as chair. Bruce Anderson was to suggest names for that committee. David Miller was included on the LEPC.

The Southwest Behavioral Health Board, which is comprised of commissioners from the region was updated as follows: Dale, Brinkerhoff, Iron County; Jim Matson, Kane County; Victor Iverson, Washington County; Michael Dalton, Beaver County; David Tebbs; Garfield County; Michael Deal, Executive Director; and Paul Thorpe, Director.

## **OPEN MEETING LAW REVIEW**

Michael Edwards, Deputy Iron County Attorney, gave a review of UCA §52-4 et seq.

## **DEPARTMENTAL REPORTS**

**David Miller, County Commissioner**, gave a report of the annual review of the management of the Utah Prairie Dog (UPD) for 2015. David noted that in the November of 2014, a federal judge ruled that the UPD no longer qualified to be managed by the US Fish and Wildlife Service (FWS) under the Endangered Species Act on non-federal lands. He noted that it was a landmark case, resulting in a cooperative effort between the State of Utah and the counties with the UPD. David expressed that the local communities and the State have the ability to work together for the health of the species and the rights of property owners better than the federal bureaucracy. He noted that over 2,600 dogs had been translocated, saving many dogs that would otherwise have been lethally removed. David explained that part of the plan was to reduce the 1,300 foot required buffer zone around all known colonies, removing nearly 55,000 acres of private property from the burden of that regulation. He reported that the counts of prairie dogs were well above the minimum numbers as counted on protected property. David noted that a very positive shift in the paradigm is that property owners have made requests to have dogs translocated when they could have used lethal methods to remove them. This represents a desire to preserve the species under the new management organization.

David Miller reported on visiting with Utah Attorney General Sean Reyes regarding the Indigent Defense Council, public lands concerns, and the UPD on the

Cedar City Airport. Because Congress has no authority over the UPD on non federal land, local authorities are challenging the efforts the FWS is making to exert jurisdiction on the Cedar City Airport property in regard to the UPD.

David Miller, reported that a meeting to discuss a potential groundwater management plan for Area 73, covering Cedar Valley, roughly from Kanarrville to Enoch. David noted that the State had noted that the amount of appropriated water rights exceed the water recharge in the aquifer. He noted that the aquifer had dropped as much as 120 feet in some areas. David noted that much of the snow and rain that fall in Iron County enters the Sevier and Virgin River basins, leaving Iron County. In an effort to safeguard the water that enters Iron County's watersheds, a Notice of Nuisance had been declared on United States Forest Service managed lands due to the quantity of conifer trees in the watershed, diminishing the aquifer recharge to the community.

**Dale Brinkerhoff, County Commissioner**, reported on the progress of the Public Safety Building. Dale explained that in 2010, the State of Utah approached Iron County to construct a building to house 5 different state agencies in Cedar City, including Adult Parole and Probation, the Drivers' License Division, Dispatch Communication, Highway Patrol and Task Force. Dale noted that Iron County agreed to the arrangement, subject to the reimbursement covering the debt service plus a variable on the operation and maintenance costs. He noted that after the State of Utah made concrete offers, Iron County felt comfortable asking for a Community Impact Board (CIB) loan in the amount of \$3,000,000 to pay for the building. Dale noted that in the intervening period, construction costs increased appreciably, and there was currently a shortage of contractors. These factors had led to the project being over budget. He explained that CIB agreed to loan an additional \$700,000 on the project and extend the payback period from 20 years to 25 years, keeping the payments within the rent service revenues and not costing Iron County any money. Dale explained that at the end of the debt service, the building reverts to Iron County, with the rents paid becoming a good source of revenue. He noted that at today's rate, the revenues would be about \$230,000 per year. Dale concluded by explaining that the Public Safety Building would be located East of the Iron County Jail and West of the Gold Cross ambulance building on 2000 North Street in Cedar City.

**Joyce Evans, Fair Manager**, reported that the 2015 Iron County Fair was a success. Joyce noted that the fair brought in more money than was budgeted. She explained that the biggest complaint about the fair was the rodeo. Joyce noted that the efforts had therefore shifted to changing to a Professional Rodeo Cowboys Association (PRCA) rodeo. She explained that because the price was above \$10,000, a full bidding process was required to engage a PRCA rodeo contractor.

Joyce Evans then discussed purchasing used, elevated bleachers from Parowan High School for \$8,000 or \$9,000. Joyce explained that she had received an additional \$20,000 in restaurant tax. David Miller expressed that if the bleachers were in the budget, it would make the events much more accommodating. Joyce Evans noted that the elevated nature of the bleachers, and the fact that they would accommodate around 200 additional patrons would help the fair. Joyce estimated that to purchase comparable bleachers new would cost \$25,000. Dale Brinkerhoff asked Joyce Evans to bring this matter back before the Commission after researching the price for a comparable set of new bleachers.

**Alma Adams, Iron County Commissioner**, reported that he had received good news regarding the workers compensation premium Iron County pays. Alma explained that because of fewer claims, the premium was reduced from \$84,444 to \$75,546. Iron County workers compensation experience was 42% better than average, with Washington County being the only county in Utah with more favorable statistics. Alma congratulated Iron County employees for being careful in the workplace. He noted that such safe practices save taxpayers money and Iron County lost time.

Alma Adams discussed cyber liability. Alma explained that Johnnie Miller from the Utah Counties Indemnity Pool (UCIP) recommended increasing Iron Counties coverage from \$1 million per employee to \$4 million per incident. Alma explained that such a change would cost \$6 per employee per \$1 million of coverage, an increase of \$5,600. He expressed that it might be a good idea. David Miller noted that there are several hundred thousand attempted hacks on federal computers daily, and that hackers also target local governments. In particular, Alma Adams explained that Johnnie Miller emphasized the departments that house sensitive personal data, such as Human Resources, Sheriff and the Health Department. Alma Adams asked Jon Whittaker to place it on the January 25, 2015 agenda.

### **PUBLIC COMMENTS**

Bruce Washburn, a resident of Cedar City, stated that he was pleased regarding the Open Meeting Law Review. Mr. Washburn expressed concern that the statute was not being followed regarding postings of minutes. He noted that often the links to the meeting audio on the Utah State Public Notice Website ([www.pmn.utah.gov](http://www.pmn.utah.gov)) do not always work. Mr. Washburn also explained that sometimes the posted minutes are missing pages, with some of the pages upside down. He asked that these items be remedied so that citizens may be able to follow the Iron County Commission.

Brenda Bybee, a resident of Iron County, requested that the Information Technology (IT) department support the County Clerk better. Brenda also requested that IT and the Building Department work together to make more available the minutes and agendas regarding Planning and Zoning and County Commission. She expressed that such actions would reduce confusion and conflict in the future.

Brenda Bybee expressed that she would be impacted by the Rural/Agricultural-20 (RA-20) rezoning, and that she was not in favor of being rezoned RA-20. Brenda reflected that the importance to her of liberty and equal rights paralleled the heritage of her husband's family. She quoted Parley P. Pratt from 1845 saying, "the Lord designs to lead us to a wider field of action where there will be more room for the saints to grow and increase, and there will be no one to say we crowd them, and where we can enjoy the principles of liberty and equal rights." Brenda stated she was impressed with Iron County thus far.

William Pressgrove, a citizen of Iron County, stated that he was opposed to all zoning laws. William cited the Utah Constitution, Article 1, Section 1, noting that he had an inalienable right to his life, liberty and property. He expressed that tables of uses, as defined by zoning laws, pit neighbors against each other. William expressed that neighbors should care for one another, not look for potential zoning violations. He suggested that planning and zoning personnel could become a board of appeals. William concluded by expressing that current zoning laws and personnel constitute an oligarchy.

Tom Glencoe, an owner in Area 2 under consideration for rezone to RA-20, expressed appreciation for all of the county staff who sacrificed to move the zoning changes forward. Tom expressed that the RA-20 zone represented the best compromise, and that grandfathering in existing uses would help assuage existing owners being affected. He concluded by expressing support for the proposed RA-20 zoning changes.

Butch Creamer, a resident of Iron County, expressed concern about grandfathered uses. Butch noted that the RA-20 zone increased density and reduced agricultural uses. He explained that the new RA-20 zone reduced agricultural uses to 12 and industrial and commercial uses to 34. Butch noted that during the October 2015 Planning and Zoning meeting, 3 of the 6 board members stated that property rights were being taken away. He expressed that the new RA-20 zone does not protect property owners. Many of his neighbors had expressed concern about the level of industrial and commercial development around them. Butch noted that commercial uses were increased under A-20, and asked how that protected property owners. He explained that he purchased A-20 land to escape from the suburban lifestyle. Butch expressed concern about inconsistent tier

planning. He asked for a true land management plan. He recommended forbearance until a proper land management plan was in place. Butch concluded by asking the commissioners to reconsider the whole project.

**DISCUSSION AND ACTION REGARDING REZONING VARIOUS A-20 PARCELS TO RA-20 AND R-5**

Reed Erickson, Iron County Planner, explained that of the 6 areas to be considered for rezone to RA-20, all but Area 4 were the same. The boundaries of Area 4 were updated based on public comments and direction from the Iron County Commission. Reed explained that some of the areas of concern in Area 4 were removed.

Reed Erickson explained that criteria are set for making zone changes. Reed outlined the reasons for the zone changes. In the fall of 2015, 36 uses were added to the Agricultural 20 (A-20) zone. He noted that these uses were more expansive. Underlying these changes was a discussion of creating a Residential 20 (R-20) zone that would address the issue of neighborhoods adjacent to commercial agricultural uses. Reed explained that a main source of complaints had historically been that of residents complaining about heavy agriculture. He gave examples of bailing at night, or pumps running 24 hours a day. Reed estimated that 80-90% of Iron County was zoned A-20. He explained that this conflict had created a need to identify enclaves of higher concentrations of residences that were not large agricultural areas. These were mostly 20 acre parcels with homes on them that were not viable for commercial agriculture opportunities. Reed noted that these areas were more conducive to living a rural agriculture lifestyle. He summarized that these reasons were the impetus for the R-20 zone.

Reed Erickson noted that the RA-20 zone, which was created later, added 11 uses that were not in the R-20 proposal. Reed explained that those 11 uses were the uses that citizens expressed the most concern about. He estimated that most of the concerns that citizens originally had with the R-20 zone were addressed with the RA-20 zone with the 11 additional uses. Reed expressed that the process had been productive; creating a zoning proposal that would accommodate those primarily rural agricultural areas, while differentiating from the more commercial agricultural areas. He explained that zoning rules allowed property owners to know what can be done with their property in the future. Reed noted that this was the concern Mr. Creamer addressed, because the anticipated use of the property would change with a zone change. Reed expressed that, under the RA-20 zone, most uses that an individual would have anticipated are still available. He noted that heavier, commercial agriculture would not be a good fit for RA-20. This was why the areas proposed to be rezoned to RA-20 had been winnowed down to 6, with revisions to Area 4.

Reed Erickson then read Iron County Code §17.12.060, which gives criteria for approving zoning changes. Zoning amendments must be consistent with the General Plan. Factors to be considered are: the effect of the proposed amendment on the character of the surrounding area; consistency with the goals and policies of the General Plan; consistency with the uses of nearby and adjoining properties; the stability of the property for the uses requested and their suitability for the existing uses identified by the General Plan; whether a change in use will unduly affect the uses of nearby or adjoining properties; and the overall community benefit of the proposed amendment. Reed expressed that the Planning Commission had done a good job evaluating these criteria. He noted that the Planning Commission had tried to balance the needs and desires of the land owners involved. David Miller expressed gratitude to the Planning and Zoning Department, and to the citizens that diligently attended both Planning and Zoning and Iron County Commission meetings.

Reed Erickson explained that these changes were not the final change to be made to the zoning ordinance. He noted that storage of flammable materials had arisen as a point to be clarified, among others. There would always need to be refinements.

David Miller made a motion to adopt the proposed RA-20 zone for Area 1 as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

David Miller made a motion to adopt the proposed RA-20 zone for Area 2 as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

David Miller made a motion to adopt the proposed RA-20 zone for Area 3 as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

David Miller made a motion to adopt the proposed RA-20 zone for Area 4, with the refinements as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

David Miller made a motion to adopt the proposed RA-20 zone for Area 5 as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

David Miller made a motion to adopt the proposed RA-20 zone for Area 6 as explained. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

**APPROVAL OF ANNEXATION INTO CEDAR CITY OF PARCELS OWNED BY RONALD BERKEY AND B & H DENTAL, LLC A.P.N. D-978-3 AND D-978-2-978-3-1**

After a brief discussion, David Miller made a motion to approve the annexation of A.P.N. D-978-3 and D-978-2-978-3-1, owned by Ronald Berkey and B & H Dental, LLC. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

**APPROVAL OF TRANSFER OF 2002 INTERNATIONAL DUMP TRUCK FROM THE ROAD DEPARTMENT TO THE LANDFILL DEPARTMENT**

The commissioners considered the request to transfer a 2002 International dump truck, VIN# 1HTGGAET82H408255 from the Road Department to the Landfill. Dale Brinkerhoff made a motion to approve the transfer of said dump truck as explained. Second by David Miller. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

**APPROVAL OF THE 2016 SOUTHWEST UTAH PLANNING AUTHORITIES COUNCIL (SUPAC) MEMORANDUM OF UNDERSTANDING (MOU)**

David Miller made a motion to approve the 2016 Southwest Utah Planning Authorities Council (SUPAC) Memorandum of Understanding (MOU), including the \$60.00 annual membership dues. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

**PERSONNEL**

Leslie Bishop, HR Director, presented the name of Daniel Westwood as Full Time Appraiser as a new hire in the Assessor's Office. Leslie explained that this new hire was a backfill from a Reduction in Force action years earlier. The hire date would be effective January 8, 2016. Dale Brinkerhoff made a motion to approve the backfill hire of Daniel Westwood as Full Time Appraiser, effective January 8<sup>th</sup>, 2016. Second by David Miller. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

Leslie Bishop presented changes to the Iron County Family and Medical Leave Act (FMLA) policy. Leslie explained that Iron County's policy was modernized, reflecting same sex and common law marriages. She noted that some definitions were also updated. Dale Brinkerhoff made a motion to approve the updated FMLA policy.

Second by David Miller. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

**DISCUSSION AND ACTION REGARDING PENDING LITIGATION (MELANIE HABIBIAN AND PAROWAN PROPERTIES V. IRON COUNTY)**

Michael Edwards, Deputy County Attorney, explained that Melanie Habibian and Parowan Properties had requested a reasonable accommodation of the Iron County Planning Commission several years ago for a group home for residents with disabilities. The entity originally was called Shiloh Ranch, and their reasonable accommodation was denied. The same individuals asked later, under the name Kiva Pointe, and their reasonable accommodation was denied. Kiva Pointe was requesting a reasonable accommodation for 48 students. After that, they sued Iron County in federal court claiming a violation of the Americans with Disabilities Act (ADA). Michael noted that that lawsuit had been pending for some time, and that Iron County had been engaging in settlement negotiations. Michael requested that the meeting be closed per UCA §52-4-205 to discuss pending or imminent litigation.

Dale Brinkerhoff made a motion to close the meeting per UCA §52-4-205 to discuss pending or imminent litigation. Second by David Miller. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

(Closed Portion)

Alma Adams, Iron County Commission Chairman, reopened the meeting to the public.

Dale Brinkerhoff made a motion to enter into an agreement with Melanie Habibian and Kiva Pointe for reasonable accommodation of 28 persons, with no financial obligations nor attorney fees to be paid in association with the agreement. Part of the agreement is a release of all claims made against Iron County. Further, the motion changes Line A, Page 2 of the agreement to change the word "students," to "residents." Also, under Item C, the 2<sup>nd</sup> to last word should be "with," not "for." Second by David Miller. Voting: Alma Adams, Nay; Dale Brinkerhoff, Aye; David Miller, Aye.

**CLOSED SESSION UNDER UCA § 52-4-205 TO DISCUSS THE CHARACTER, PROFESSIONAL COMPETENCE OR PHYSICAL HEALTH OF AN INDIVIDUAL**

David Miller made a motion to close the meeting per UCA §52-4-205 to discuss the character, professional competence or physical health of an individual. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.

(Closed Portion)

Alma Adams, Iron County Commission Chairman, reopened the meeting to the public.

**ADJOURNMENT**

David Miller made a motion to adjourn. Second by Dale Brinkerhoff. Voting: Alma Adams, Aye; Dale Brinkerhoff, Aye; David Miller, Aye.



Signed: Alma L. Adams, Chairman



Attest: Jonathan T. Whittaker, County Clerk

