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# SPANISH FORK CITY

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## PLANNING COMMISSION AGENDA

WEDNESDAY, JANUARY 5, 2005

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**Planning  
Commissioners**

**6:30 P.M.**

**Agenda Review & Training**

David Lewis

**7:00 P.M.**

**1. Preliminary Activities**

- a. Pledge of Allegiance**
- b. Minutes:**

Ted Scott

**2. Public Hearing(s)**

Paul Bradford

**A. Geneva Rock Conditional Use Permit**

Applicants(s): Brent Smith - Geneva Rock  
Zoning: I-2  
Location: 525 West Arrowhead Trail

Del Robins

Sherman Huff

**B. Construction & Development Standards, Policy 39**

Applicants(s): City (Chris Thompson)  
Zoning: N/A  
Location: City wide

Chris Wadsworth  
City Council Rep.

**3. Other Business -**

- A. Utilities - Presentation by UMPA
- B. Residential Treatment Facilities - Discussion

**4. Adjourn**

**\*\*Planning Commissioners if you are unable to attend a meeting please let us know ASAP.  
Thanks**

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The public is invited to participate in all Planning Commission Meetings. If you need special accommodations to participate in the meeting, please contact the City Manager's Office at (801) 798-5000.

# *Spanish Fork*

## *Planning Commission Staff Report*

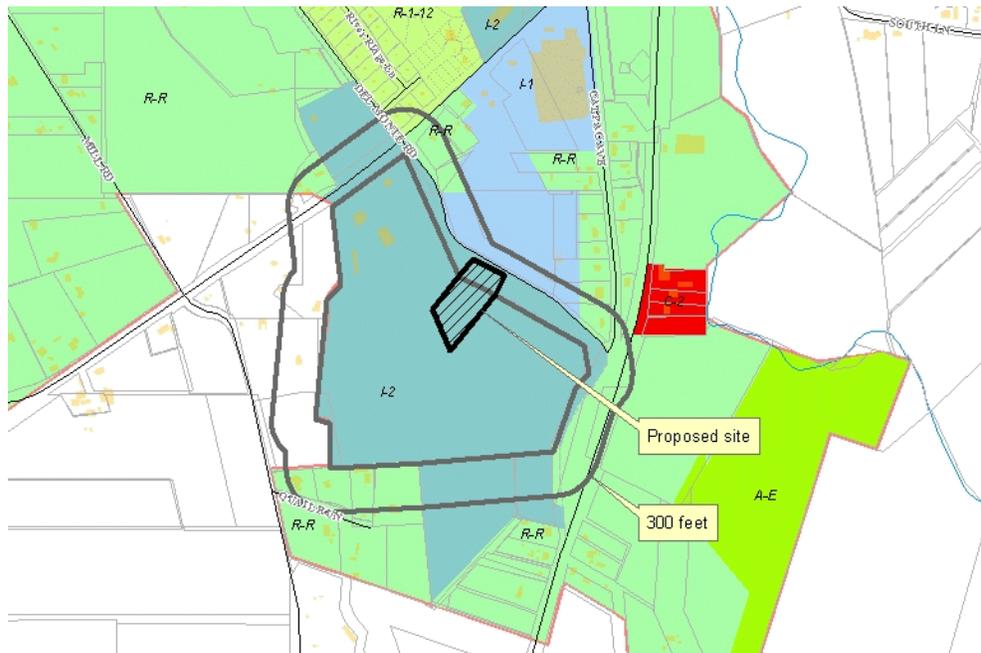
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|------------------|--|----------------------|-------------|
| <b>To:</b>       | Planning Commission  | <b>ID#</b>           | 04-04       |
| <b>From:</b>     | Emil Pierson, City Planner                                   | <b>Zoning</b>        | I-2         |
| <b>Date:</b>     | January 5, 2005  | <b>Property Size</b> | 14.59 acres |
| <b>Subject:</b>  | Geneva Rock Conditional Use Permit -<br>Concrete Batch Plant | <b># Lots/Units</b>  | N/A         |
| <b>Location:</b> | 525 Arrowhead Trail  | <b>Units/Acre</b>    | N/A         |

**Public Notices: 300 feet notification 7-days prior and newspaper 14-days prior**

### **Background**

The applicant(s), Geneva Rock (Brent Smith), is requesting Conditional Use Permit approval to have a concrete batch plant at the H.E. Davis property. In 17.12.080 of the Zoning Ordinance it states “certain uses have characteristics that may have a greater impact on the adjoining properties, surrounding neighborhood, or community as a whole than do other permitted uses in the specific zoning district. These uses require a more comprehensive review to determine whether the proposed use at a specific location is appropriate, or whether the use can be made compatible by placing certain conditions on its operation that mitigate or eliminate potential detrimental impacts”.

The property is shown in the General Plan as Medium Industrial (northern section) and Residential 1 unit per 5 acres (southern section) and is currently zoned Medium Industrial (I-2).



### **Analysis**

**History:** This site was approved for a concrete batch by

the City Council for CPC concrete products on August 1, 2000. The conditional use permit was approved for a limited time frame (three seasons) then CPC was to come in for permanent facilities which they never did and is no longer in the concrete business.

#### Zoning Ordinance

According to the City Zoning Ordinance 17.20.120 C - the I-2 medium industrial zone allows for the manufacturing of concrete (concrete batch plant) with a conditional use permit.

Topography: The topography of the site should create a buffer that would make the batch plant nearly invisible from the road because the batch plant will be in a “hole” that is south of the shop building. There is 15 to 20-foot berms on three sides of the proposed site.

Electrical Power: The plant would use City Power this service would need to be extended at the expense of the applicant from the south side of Arrowhead Trail.

Air Quality: A permit from the Division of Air Quality will need to be issued and the batch plant will need to meet all city and state air quality regulations (see conditions #2, 3, 4, 5, 9).

Water, Sewer, PI: The project will be using City water and must meet the Utah Division of Water Quality requirements. All buildings constructed at the site will need to connect to the City’s sewer system. All landscaping will also need to be connected to the City’s pressurized irrigation system. The water, sewer, pressurized irrigation services will need to be extended at the expense of the applicant from the north side of Arrowhead Trail (see conditions #10, 14).

Sound Levels: The applicant has also stated to reduce any noise during early morning and evening hours, all backup alarms on loaders and other plant equipment will be switched over to the OSHA approved visual alarms (strobe lights) (see condition #1 & 6).

Lighting: There are no plans for additional lighting at the site except security lighting on the plant and for possible night operations.

Traffic and Access: According to the traffic study completed for the start of the project the plant will have 8 mixer trucks making about 4 trips daily and 4 deliveries of sand and gravel and one for cement will occur daily. At full capacity the applicant expects on approximately 20 ready mix concrete trucks hauling about 6 loads each per day or 120 total at the peak of the plant. This is based on current and expected demand. See the attached traffic study for additional information.

The entrance into the site is from Del Monte and the applicant has stated that they are willing to limit the access points onto Del Monte (see site plan). The current roadway is approximately 30-feet of asphalt it has no curb and gutter. For safety reasons the city staff is recommended that curb, gutter, and sidewalks be installed from the access point into the site to Arrowhead Trail and also along Arrowhead Trail.

The applicant has stated that they will have all their trucks go from the site onto Del Monte (not use Cal Pac) then go east or west on Arrowhead and their trucks will not go north across Arrowhead Trail (see condition(s) #2 , 9, 11, 15, & 17).

Hours of Operation: The applicant has stated their hours of operation will be 6:00 a.m. to 6:00 p.m. Monday through Friday and Saturday from 6:00 a.m. to 4:00 p.m (see condition #1).

Landscaping: The applicant is proposing to re-vegetate any areas which need to be replaced because of new grading the berm along Del Monte.

### **DEVELOPMENT REVIEW COMMITTEE**

The DRC reviewed this request at its December 15<sup>th</sup> and 22<sup>nd</sup> meetings and discussion took place regarding the following:

1. Traffic including access into and out of the site and the intersection of Del Monte and Arrowhead Trail,
2. Noise including the effects it could have on adjacent properties,
3. Utilities including water, sewer, power, and pressurized irrigation,
4. Development potential on the remaining property,
5. Landscaping including re-vegetation,
6. Fire protection,
7. Transportation routes including directions, and
8. hours of operation.

### **Development Review Committee Minutes: December 15, 2004**

Mr. Brent Smith said Geneva Rock is requesting a conditional use permit to install a permanent concrete batch plant on the property at Arrowhead Trail and Del Monte Road. He presented and reviewed a traffic report prepared by Horrocks Engineering. Photos of the area were also reviewed.

Mr. Heap asked if the access will be paved. Mr. Smith said the access is graveled and they will pave it if required. Mr. Pierson said the access was required to be chip sealed. Mr. Davis said it is sealed.

Mr. Oyler asked if there was a time limit on the prior temporary permit for a batch plant. Mr. Pierson said December 2003 was the deadline to become a permanent, rather than temporary, batch plant.

Mr. Heap asked concerning restrooms and parking for the employee of the batch plant. Mr. Smith said there are port-o-lets on the property. They can hook up to the city sewer if required. Mr. Baum pointed out the location of the sewer line.

Mr. Oyler said he is concerned that a permanent batch plant will make it difficult to develop the property in the future. Mr. Davis said they intend to develop the property at some point in the future. Mr. Oyler said he just wants Mr. Davis to be aware that a permanent batch plant may make it difficult to develop property in the area if residents are concerned with noise and dust. Mr. Davis said he does not see it as a problem.

Mr. Pierson said there have always been concerns and complaints if mud is being tracked onto Arrowhead Trail Road. As more properties in the area develop the problem will escalate. The traffic study did not take into consideration the surrounding property being developed.

There have also been drainage problems in some areas. Mr. Smith said they will resolve the drainage issue. They will install curb and gutter if required. He asked if the berm is to remain.

Mr. Oyler said berm should remain in place. Mr. Nielson said the embankment in some areas has caused visibility concerns. Mr. Pierson said they have the required sight distance. Mr. Davis concurred. The berm was placed where it is to allow visibility. However, they can modify the berm if needed. Mr. Smith concurred.

Mr. Oyler asked for the C.P.C. requirements. Mr. Pierson reviewed the hours of operation and the process if additional hours are needed. The area is to be watered to control the dust and no dirt or mud is to be tracked onto city streets. Mr. Davis said they have surfaced much of the area to reduce dust and mud problems. Also, the area is watered at least once a week.

Mr. Pierson said he was informed by Mayor Barney that water puddles in areas when it snows or rains. He suggested cleaning up the area and he proposed a curb and gutter to help with drainage. Mr. Pierson continued reviewing the C.P.C. requirements. Mr. Christofferson asked if he can do the V.E.O. since he is certified. Mr. Pierson concurred.

Mr. Heap said requirements for utilities to and through the property will need to be reviewed to make sure they meet those requirements. Mr. Oyler said the ordinance requirements are to be met.

Mr. Pierson made a **motion** to table this item until the next Development Review Committee meeting to allow time to review the C.P.C. and utility requirements. Mr. Banks **seconded** and the motion **passed** with a unanimous vote.

Mr. Pierson said the public hearing for the Planning Commission will be held January 5, 2005 and the applicant needs to meet with the neighbors prior to that date. The request will not come before the City Council unless the decision is appealed.

#### **Development Review Committee Minutes: December 22, 2004**

Mr. Pierson said this item was tabled due to utility and other concerns. Mr. Smith said he talked with Mr. Heap concerning the utility hook ups for water, sewer and power. They are willing to complete the utility hook ups as required. Mr. Pierson said if they are going to be there for a long time then the utilities should be installed.

Another concern is the bend in the road. Mr. Nielson said before the permit is finalized a drawing with the curb and gutter layout and the grading needs to be provided and approved.

Mr. Broadhead asked if a storm drain is needed. Mr. Nielson said sump pumps should be adequate.

Mr. Pierson asked if there are plans for lighting on the property. Mr. Smith said they will have night lighting for security reasons.

Mr. Oyler asked Mr. Smith if he had concerns in the event that the surrounding property is developed into a residential area in the future. Mr. Smith said his lease is for 20 years and negotiations may be needed in the future if the surrounding property is developed. He said he thinks it can be worked out.

Mr. Nielson said a quit claim deed on the roadway area should be obtained to clean up the deeds in area. Mr. Baker made a **motion** to approve the Geneva Rock Conditional Use Permit subject to the following findings and conditions (see recommendation):

## **RECOMMENDATION**

### **FINDINGS**

The Planning Commission must make the following findings prior to granting a conditional use permit:

1. The proposed use is consistent with the policies of the City's General Plan and the purpose of the zoning district in which the site is located.  
**Finding: The proposed use is consistent with the General Plan and the Zoning District I-2 does allow for a concrete batch plant through a Conditional Use Permit process.**
  
2. The proposed use will not be materially detrimental to the health, safety, or general welfare of persons residing or working within the neighborhood of the proposed use, when consideration is given to the character and size of the use and hours of operation.  
**Finding: The use will not be materially detrimental to the health, safety or welfare of the residents because of the conditions that will be placed on the use.**
  
3. The proposed site is adequate in size and shape to accommodate the intended use, and that all requirements for the zoning district, including but not limited to: setbacks, walls, landscaping and buffer yards are met.  
**Finding: That site is adequate in size and shape to accommodate the batch plant and the setbacks and earth berms should buffer nearby residents.**
  
4. The proposed site has adequate access to public streets to carry the type and quantity of traffic which may be generated by the use, and that on-site circulation is adequate to permit driveways, parking, pedestrian ways, and loading requirements in a manner which is safe and efficient.  
**Finding: That the traffic impact study that was completed by Stantec has stated that the traffic generated by this use will only slightly impact the intersection of Arrowhead Trail and Del Monte and Geneva Rock has stated they will not use Cal Pac.**
  
5. Adequate conditions or stipulations have been incorporated into the approval of the Conditional Use Permit to insure that any anticipated detrimental effects can be minimized.  
**Finding: That the conditions placed on Geneva Rock should resolve any anticipated detrimental effects from the concrete batch plant. Pertaining to air quality, noise, water, and traffic.**

### ***APPROVE***

Make the motion to **APPROVE the Geneva Rock Conditional Use Permit located at 525 West Arrowhead Trail** subject to the following condition(s):

1. Hours of operation for the concrete plant will be 6:00 a.m. to 6:00 p.m. Monday through

Friday; and 6:00 a.m. to 4:00 p.m. on Saturdays. No operation will take place on Sundays. Extended and night time hours will be allowed as demanded by circumstance and approved by the City Planner. Night hours to exceed four (4) consecutive nights require approval of the Planning Commission.

2. To ensure that the Spanish Fork Fugitive Dust and Emissions Ordinance (Chapter 9.36) is met for the site, the site owner shall be in compliance with this section. This includes, though is not limited to the following portions of this Chapter highlighted below:
  - a) As per 9.36.010(2), The site owner shall control the site in order to keep dust and other types of particulates to a minimum by such measures as wetting down, covering, landscaping, paving, treating, or by other reasonable terms.
  - b) As per 9.36.010(4), The applicant/plant owner shall maintain control of the establishment premises or plant premises, including fugitive dust and emissions maintenance of controlled access roads by paving, oil treatment, or other suitable measure.
  - c) As per 9.36.010(5), The applicant shall not cause, suffer, allow or permit operations likely to give rise to airborne dust without taking the following precautions to prevent particulate matter from becoming airborne:
    1. All unpaved roads and other unpaved operational areas, which are used by mobile equipment, shall be water sprayed as needed because of the weather and/or chemically treated to substantially reduce fugitive dust. Records of treatment shall be made available upon request and shall include a period of two years ending with the date of the request.
    2. The truck haul road shall be paved or treated to prevent dust and shall be periodically swept or water sprayed clean as dry conditions warrant. Records of cleaning of paved roads shall be made available upon request and shall include a period of two (2) years prior to the date of request.
    3. Water sprays or chemical dust suppression spray shall be installed at the following points to control fugitive emissions (if necessary): all conveyor transfer points. The spray shall operate whenever dry conditions warrant.
    4. Storage piles shall be watered or chemically treated to minimize generation of fugitive dust as dry conditions warrant.
3. To ensure that the Spanish Fork Fugitive Dust and Emissions Ordinance (Chapter 9.36) is met by the proposed concrete plant operations, the site owner and operator shall be in compliance with the fugitive emissions and fugitive dust standards as set by the Utah Air Quality Board. To ensure this, the following is required:
  - a) A current Division of Air Quality (DAQ) Approval Order shall be maintained by the operations at all times. A copy shall be at the site during operations.
  - b) The operator must maintain compliance with the conditions of the Approval Order. A violation of the Division of Air Quality regulations will result in the Conditional Use Permit being reviewed and possibly revoked.
4. An initial visible emission observation (VEO) compliance inspection shall be performed on the concrete plant within 60 calendar days of approval by the Planning Commission of the plant equipment at the project site. The testing for VEO's will follow EPA 40 CFR Part 60, Appendix A, Method 9. A copy of the testing shall be submitted to the City for review.
5. As per the operator's Division of Air Quality Approval Order, visible fugitive dust

emission from haul-road traffic and mobile equipment in operational areas shall not exceed 20% opacity. Visible emissions observations for traffic sources shall use procedures similar to Method 9. The normal requirement for observations to be made at 15-second intervals over a six-minute period, however, shall not apply. Six points, distributed along the length of the haul road or in the operational areas, shall be used. An opacity reading shall be made at each point when a vehicle passes the selected points. Opacity readings shall be made ½ vehicle length or greater behind the vehicle and at approximately ½ the height of the vehicle or greater. The accumulated six readings shall be averaged for the compliance value. These six readings shall make up single report.

6. A violation of the City Noise Ordinance will result in the Conditional Use Permit being reviewed and possibly revoked.
7. The conditional use permit will be reviewed annually by the City Planner to ensure all conditions are being met.
8. All buildings located on the site will meet the requirements of the International Building Code.
9. Roads into and out of the concrete plant operation will be sprinkled by water trucks to control dust. A road shall be installed and maintained from the entrance way around the batch plant area to be either asphalted or layered with asphalt grindings for dust control. No dirt or mud shall be tracked onto public streets. Concrete plant operations shall use the east entrance only.
10. The buildings and facilities on the site will connect to the city utilities (services) at the applicant's expense.
11. That the sight triangle from Del Monte into the site be increased as per the Engineering Department.
12. That the concrete operation's signs be approved by the City Planner and a sign permit is obtained from the City.
13. All testing required by the City shall be at the expense of the applicant with the selection of the testing firms at the sole discretion of the City.
14. Spanish Fork City municipal code, zoning ordinances, and construction and development standards must be met.
15. The applicant install curb, gutter and sidewalk on the south side of Arrowhead Trail with UDOTs' approval and Del Monte also have curb, gutter and sidewalk installed on the west side of the road.
16. That the applicant bond for any off-site improvements.
17. Quit-claim to City the proposed westerly public right-of-way.

***DENY***

Make the motion to **DENY** the **Geneva Rock Conditional Use Permit located at 525 Wet Arrowhead Trail** for the follow reason(s):

***TABLE***

Make the motion to **TABLE** the **Geneva Rock Conditional Use Permit located at 525 Wet Arrowhead Trail** for the follow reason(s):

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**17.20.120. I-2 Medium Industrial.**

This district is intended to provide for employment related uses including light manufacturing, assembling, warehousing, and wholesale activities. Associated office and support commercial uses are allowed. Uses that emit moderate amounts of air, water, or noise pollution may be considered as conditional uses. Residential uses are not allowed.

**A. Permitted Uses:**

1. Manufacturing and assembly of finished products except animal and marine fats and oils, ammunition, and those manufacturing uses listed as conditional uses.
2. Wholesale trade businesses except explosives or automobile wrecking or salvage yards.
3. Lumber and building material yards.
4. Contractor warehouse and storage yards.
5. Trucking and warehousing.
6. Research, development, and testing services.
7. Automotive service, paint and body work, other consumer goods repair.
8. Municipal facilities required for local service.
9. Trade or business schools.
10. Office supply, copying, printing businesses.
11. Offices.
12. Restaurants.
13. Financial institutions.
14. Retail businesses
15. Telecommunication towers not taller than sixty (60) feet.

**B. Uses Subject to Conditions (as described in Chapter 17.28.050):**

1. Seasonal sales and special events.

**C. Uses Subject to Conditional Use Permit (see Chapter 17.12.080):**

1. Manufacture of concrete products.
2. Outdoor commercial recreation facilities.
3. Drive-in theaters.
4. Commercial kennels, animal shelters, and veterinary hospitals with outdoor boarding or exercise facilities.
5. Telecommunication towers taller than sixty (60) feet.
6. Self-storage warehouses and/or recreational vehicle storage.

**D. Accessory Buildings and Uses (see Chapter 17.28.050):**

1. Caretaker's residence.

**E. Development Standards (see Table 2):**

**F. Design Review (see Chapter 17.12.050):**

**G. Landscaping, Buffering, Walls (see Chapter 17.28.030):**

**H. Signs (see Chapter 17.28.010):**

**I. Parking (see Chapter 17.28.020):**

(Ord. No. 13-96, Enacted, 11/06/1996); (Ord. No. 05-02, Repealed & Re-enacted, 08-06-2002); (Ord. No. 15-03, Amended, 12/16/03)

# Geneva Rock Map



1 Inch equals 549 Feet

## Legend

### Roads

— Not Paved

— Paved

— Rivers

■ Buildings

□ Property Lines

▬ Spanish Fork Boundary

### Zoning

■ A-E

■ C-1

■ C-2

■ C-D

■ C-O

■ I-1

■ I-2

■ I-3

■ R-1-12

■ R-1-30

■ R-1-6

■ R-1-8

■ R-1-9

■ R-1-6

■ R-3

■ R-O

■ R-R

■ S-C

■ UV-C

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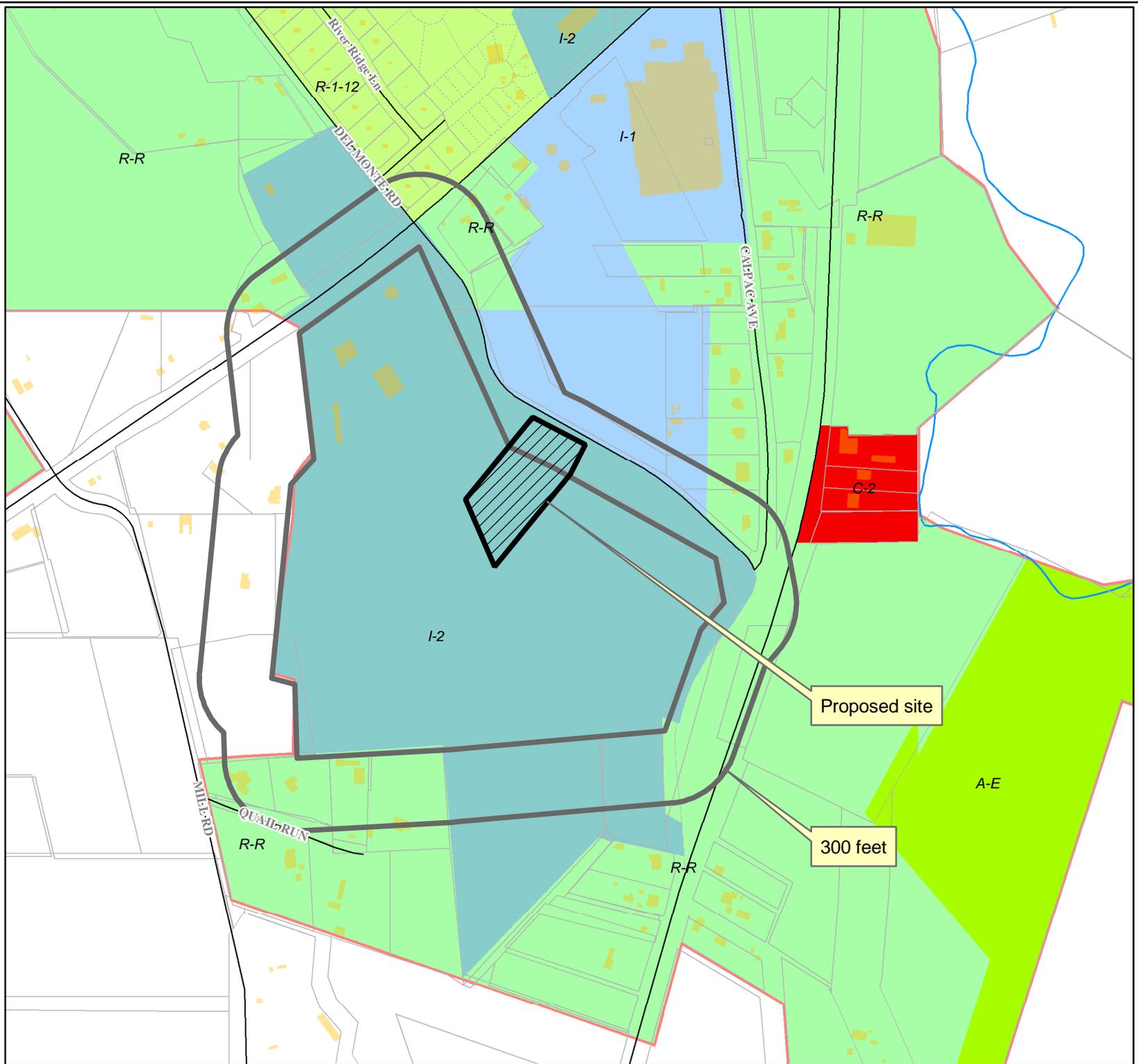
9/29/2004



Geographic Information Systems

**Spanish Fork City GIS**  
**40 South Main Street**  
**Spanish Fork, UT 84660**  
**(801) 798-5000**

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**To:** Brent Smith  
Geneva Rock



**From:** Jayson Cluff, P.E.

*MEMORANDUM*

**Date:** December 14, 2004

**Subject:** Geneva Rock Mixing Plant - Del Monte Road, Spanish Fork

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The purpose of this memorandum is to address traffic issues related to the proposed Geneva Rock mixing plant in Spanish Fork along Del Monte Road. The site is located just south of the Arrowhead Trail Road as shown in Figure 1.

The site is expected to operate eight mixer trucks which will make about four trips per day for deliveries. Also, approximately four deliveries for sand and gravel and one for cement will occur each day. The trips will be spread evenly through the day, so the peak hour traffic is expected to be 10 vehicles per hour (vph) total in and out. The current traffic on this portion of Del Monte road is also very small. A recent traffic count during the PM peak hour only recorded one vehicle. Arrowhead Trail Road carries an average daily traffic volume of about 5,000 vpd. Based on these low existing traffic volumes and low additional new trips from the site, traffic operations are not expected to be a problem.

Access to the site will be at the location shown on Figure 1. This access is 300 ft south of the next access to the north. This spacing is sufficient for traffic operations. A large berm is located adjacent to Del Monte road on each side of the site access. This embankment obstructs visibility and may cause a sight distance problem for the access. Heavy trucks exiting the site should have a minimum sight distance of 500 ft. The final design of the access should ensure that all AASHTO or Spanish Fork City sight distance requirements are satisfied.

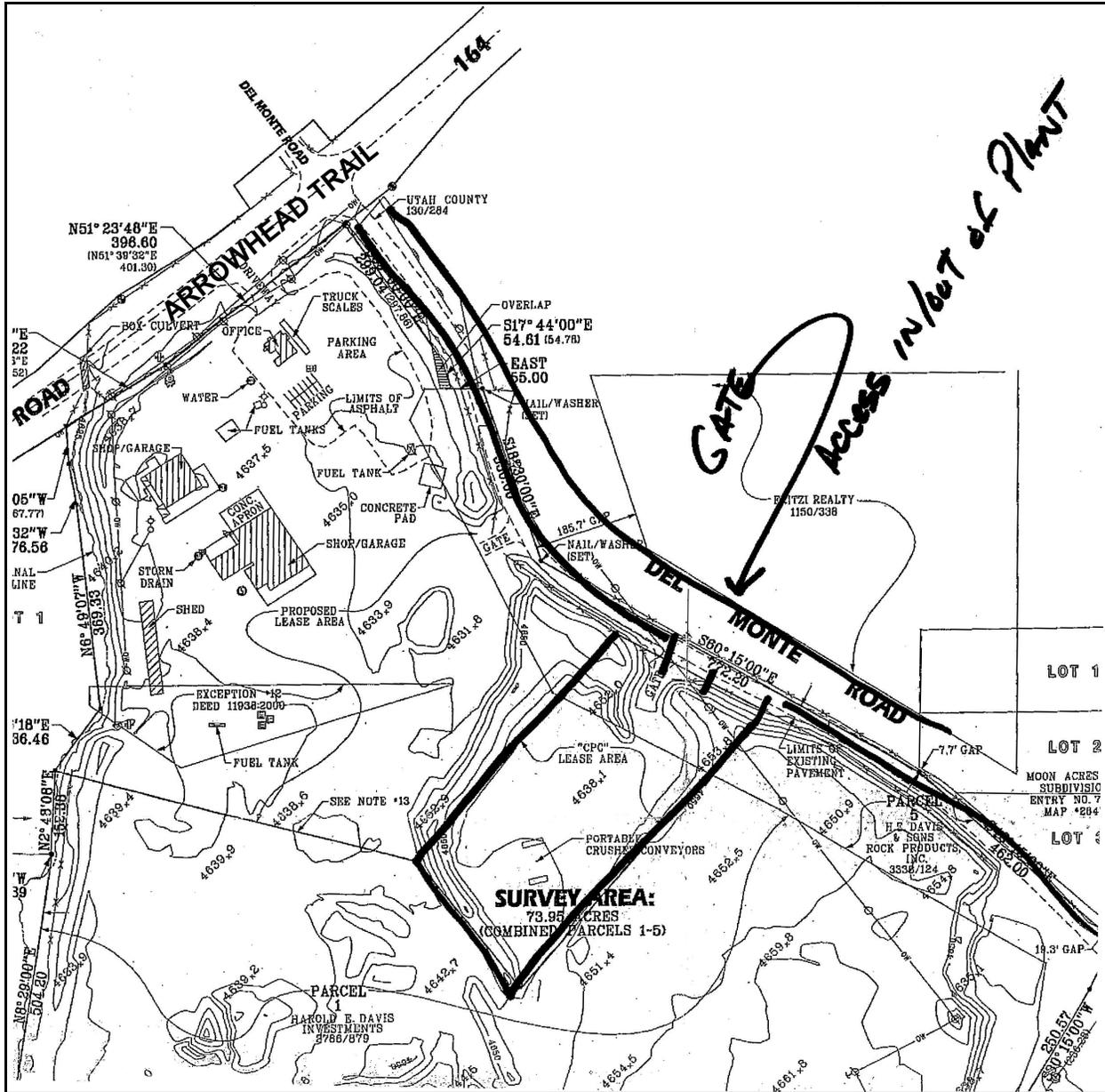


Figure 1: Site Location

cc: file

**ORDINANCE NO. \_\_\_\_\_**

ROLL CALL

| VOTING   | YES | NO |
|--|-----|----|
| MAYOR DALE R. BARNEY<br><i>(votes only in case of tie)</i> |     |    |
| MATTHEW D. BARBER<br><i>Councilmember</i>                  |     |    |
| PAUL M. CHRISTENSEN<br><i>Councilmember</i>                |     |    |
| SETH V. SORESENSEN<br><i>Councilmember</i>                 |     |    |
| CHRIS C. WADSWORTH<br><i>Councilmember</i>                 |     |    |
| EVERETT KELEPOLO<br><i>Councilmember</i>                   |     |    |

I MOVE this ordinance be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE ZONING  
ORDINANCE DEALING WITH RESIDENTIAL FACILITIES FOR PERSONS  
WITH DISABILITIES AND RESIDENTIAL TREATMENT CENTERS

WHEREAS, Spanish Fork City has adopted a zoning ordinance setting forth various permitted uses subject to conditions in order to protect the health, safety and welfare of the residents of the City; and

WHEREAS, a residential facility for persons with a disability is one such use which requires a certificate issued by a medical professional which allows evaluation tools of the ICAP and MMPI which fails to include the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is also a widely recognized tool; and

WHEREAS, residential treatment centers also have the same requirement; and

WHEREAS, clarification of medical providers to include other mental health professionals is also appropriate given the diagnostic tools which include the ICAP, MMPI, and DSM; and

WHEREAS, residential treatment centers are required to be owner occupied; and

WHEREAS, the Division of Child and Family Services prohibits residential treatment center from being owner occupied; and

WHEREAS, the Spanish Fork City Planning Commission held a public hearing on the 4<sup>th</sup> day of February, 2004 whereat public comment was received; and

WHEREAS, the Spanish Fork City Council held a public hearing on the 2<sup>nd</sup> day of March, 2004 whereat public comment was received; and

WHEREAS, in order to protect the health, safety and welfare of the residents of the City it is necessary to make various changes in the zoning ordinance;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork Council as follows:

I.

Section 17.28.050(A)(5)(b)(ii) of the Spanish Fork Municipal Code is hereby amended to read as follows:

individuals placed in a level 1 facility shall produce, through the operator of the facility, a certificate issued by appropriate medical or other licensed mental health professional ie: LCSW, D.O., Ph.D., or M.D. and based upon professional evaluations such as the ICAP, MMPI, DSM, and/or such other resources as may be available to the medical or other licensed mental health professional, which certificate shall indicate that the person is not violent, nor a direct threat to the safety or the property of any other person at the time of placement. Production of the certificate required by this section shall be a prerequisite to the obtaining of the business license required by this chapter. Each new resident shall also provide said certificate in order for the facility to be eligible to renew its business license.

II.

Section 17.28.050(D)(7)(a)(ii) of the Spanish Fork City Municipal Code is hereby amended

to read as follows:

individuals placed in a level 1 facility shall produce, through the operator of the facility, a certificate issued by appropriate medical or other licensed mental health professional ie: LCSW, D.O., Ph.D. or M.D. and based upon professional evaluations such as the ICAP, MMPI, DSM, and/or such other resources as may be available to the medical or other mental health professional, which certificate shall indicate that the person is not violent, nor a direct threat to the safety or the property of any other person at the time of placement. Production of the certificate required by this section shall be a prerequisite to the obtaining of the business license required by this chapter. Each new resident shall also provide said certificate in order for the facility to be eligible to renew its business license.

### III.

Section 17.28.050(D)(10) of the Spanish Fork City Municipal Code is hereby amended to read as follows:

Any residential treatment facility located in a residential zone must be supervised 24 hours a day 7 days a week which shall include, but not necessarily be limited to, house parents who are on site 24 hours a day, and video monitoring in all common areas , including entrances and exits. Other surveillance measures may be included which are designed to protect the health and safety of residents therein.

### IV.

Section 17.28.050(E)(1) of the Spanish Fork City Municipal Code is hereby amended to read as follows:

All residential facilities for persons with a disability, residential facility for elderly persons, residential treatment center, supervisory care facility, and assisted living facility must meet these requirements.

### V.

Section 17.20.020(C)(6) of the Spanish Fork City Municipal Code is hereby amended to read as follows:

Residential treatment center must meet minimum conditions of 17.28.050.

VI.

Section 17.20.030(C)(5) of the Spanish Fork City Municipal Code is hereby amended to read as follows:

Residential treatment center must minimum conditions of 17.28.050.

VII.

This ordinance shall take effect 20 days after passage and publication.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK,  
UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
DALE R. BARNEY, Mayor

ATTEST:

\_\_\_\_\_  
KENT R. CLARK, City Recorder

F:\ORDBOOK\ORD----

## THE CITY COUNCIL, PLANNING COMMISSION AND THE BOARD OF ADJUSTMENT

State law establishes the law as far as cities and towns are concerned. The Utah State Code calls for municipalities to establish three “official” bodies to deal with land use issues. The most obvious of which is **the legislative body** that is either the **City Council** or the town board. Their primary responsibility in land use is to set policies (the general plan) and to enact ordinances (the zoning and subdivision ordinances) that will control, to at least some extent, development and land use within municipal boundaries. The elected members of the city council or town board have the final say on land use matters except for those designated to the board of adjustment.

**The Planning Commission** is an advisory board to the city council. They are established by city/town ordinance and are now required by state law. The number of members and length of terms is set by each municipal ordinance. The state law does require that they meet at least once a month. Their meeting date, time, and place should be published once a year and, like the legislative body, they are subject to the open meetings law. (Utah Code §52-4-1) The planning commission is responsible for the creation of the General Plan, the Zoning Ordinance, and the Subdivision Ordinance. Once they have agreed by a majority vote, the document is passed on to the legislative body for final approval. They also deal with amendments to any of these documents and usually with conditional uses.

It should be noted that while the state law requires that the Planning Commission deal with all of these issues before they are given to the city council or town board for final approval, the legislative body has the final say. In other words, the council is required to get the planning commission’s advice, but it is not required to take that advice. The Planning Commission is always an advisory board; every decision they make either automatically goes to the legislative body or can be appealed to either the city council or, in rare occasions, to the Board of Adjustments. While the Planning Commission can recommend an ordinance or an amendment to an existing ordinance, it does not become law until the legislative body takes the appropriate action.

A municipality is usually well served when a Planning Commission and a council work in harmony with one another. A lot of time and energy can be saved if both bodies have the same vision of the community and are able to make sound decisions based on that common vision. However, we all know that it does not always work that way.

**The Board of Adjustment** is the third body within a municipality that deals with land use. This body usually has the greatest need for training and is the body most likely to be sued. Without going into detail, remember that the responsibilities of the board of adjustment, according to state law, are **Administrative Appeals**, **Special Exceptions**, and **Variances**. The city/town can also assign the board to hear nonconforming uses and appeals of conditional uses. They are not required to meet except as needed but it is important that any question that is the responsibility the board not be sent elsewhere. Variances, for example, will never be heard by either the planning commission or by the city council or town board. This board is not an advisory board. A decision of the board of adjustment is appealed only to the district court, never to the city council or the mayor.

All three bodies are bound by the law. The law that governs a city/town consists of federal and constitutional law, state law, and municipal ordinances. A legislative body, through due process, is able to delete, add, or amend municipal law as long as it does not conflict with state and federal law. Nevertheless, it does not have the right to ignore or modify the law on a case-by-case basis. (A recent court case in Utah stated that close enough wasn't good enough, and required that the city council respect its own laws.)

Even though the Board of Adjustment has the power to grant variances, their ability to do so is governed by very narrowly defined law. The board that grants variances without acknowledging the five criteria the law establishes, is acting illegally.

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

The Utah Supreme Court decision of Chamber v. Smithfield City (714 P2d 1133) contains the standards of case law for granting variances, including no self-created hardships, no grant of special privilege, and the limited use of variances. This means that if the variance request is self-created then the *Board needs* to deny the request.

## Bits and Pieces often Overlooked

It has been stated that “politics” is nothing more than putting two or more people in a room and asking them to make a decision.

1. **Follow the adopted General Plan**
  - A general plan provides a framework, philosophy, direction for the city
2. **Don't ignore or bend the rules, or try to change them (particularly when the issue is surrounded by controversy)**
  - Change the rules prior to the controversy...the worse case is usually what happens in most land use cases
3. **Follow the Zoning Ordinance**
  - The Zoning Ordinance implements the General Plan; it is the rule book and needs to be followed in all cases
  - Changing the rules in the middle of the game only leads to a loss afterwards; it can be a very expensive rule to learn
4. **A lot of discussion takes place on an issue but when the motion is made no findings or justification is given**
  - Always give a reason why you ruled the way you did...never leave people wondering why you voted...roll count at the end
5. **Don't ask the public for their opinion or if they are in favor or against the project**
  - You need to make the tough decisions, be strong
6. **Don't ignore the advice of staff (attorney, public works, city manager, etc...)**
  - Use them, make them earn what they are paid, they have backgrounds
7. **Don't make a comments you will be sorry for later; it always bites later**
  - **Remember who you represent:** you, your family, the city (including the Mayor, Council and staff), and **ALL** residents (past, current, and future)
8. **Don't make a decisions based on emotion or Public Clamor, and ignore procedural and substantive due process.**
  - In Davis County v. Clearfield City – Citizens opposition is insufficient basis for denial—lack of any credible evidence in support of articulated reasons.

## **How to Avoid or Tame Controversy**

1. Help everyone understand the big picture (past, present, and future of the community)
2. Educate and inform the residents on the subjects they don't understand take additional time explaining the issue prior to hearing from the general public
3. Remind the citizens that you there to represent every aspect of the community and that you represent "what is best about government".
4. Work towards a win-win situation for everyone involved if possible
5. Be a strong leader...direct and guide
6. Listen and have respect for opposing opinions and views
7. Don't be afraid to table an item and request additional information. Unwise or unclear decisions are often made because a lack of information was not presented at the meeting it also shows the citizen you care about the issues.
8. Don't ever assume....make sure every issue is covered prior to making a decision (dot the I and cross the T) and then give the reason

### **Ethics:**

1. Keeping an open mind and being willing to hear from and consider many points of view
2. Avoiding "inside information" either on the giving or receiving end
3. Avoid using the "personal" experiences as your only point of reference in making decisions
4. Assuring that meetings are conducted in such a way that allows for all citizens to participate and have an equal voice
5. Remembering that as an official commissioner of the city, you are representing and, thereby, helping to establish the credibility of city government.

### **"Political" Responsibilities (ULCT)**

1. To represent the public good
2. To strike balance between individual property rights and the public good
3. To allow citizens to have an active role in the planning processes of their community
4. To ensure that planning is done in a reasonable and legal fashion
5. To protect Constitutional rights such as "due process", and fair and equal treatment

## When is a Project Vested? By Sydney Foncesbeck, ULCT

At what point is a developer vested, in other words, at what point is the developer entitled, by right, to build despite changes in the ordinance? Although there has not been a ruling that specifies an exact point in the application process that entitles the developer to be vested, we do have some fairly clear guides. (It is important to note that the developer must be in the application process, not just have title to the land. In other words, the time of purchase does not determine vested rights.)

The issue was first addressed in Western Land Equities v. City of Logan (1980), where the Supreme Court held that **"an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling countervailing public interest."** Generally the application must be in general compliance with the standards and requirements of the existing ordinance. In most municipalities, if an application is seriously inadequate in meeting the requirements of an ordinance, the municipality refuses to accept it, and thereby, the application has not been officially made.

The exception that the Western Land Equities case allows for is the presence of a "compelling countervailing public interest". This generally means that if the development will somehow damage or endanger some aspect of public concern, then it is not protected by the findings of this case. An example might be building on a municipalities water shed or in a well-head protection area. The Courts, however, define this very narrowly by requiring that the municipality prove that the development would actually do harm.

In 1988 a second case added another exemption to the question of vesting. Scherbel v. Salt Lake City ruled that **if a zoning change is pending at the time of application, the developer has no vesting.** A pending zone change would have to actually be in process, not just something talked about or suggested. But if the Planning Commission or the Council is actually working on a Zoning Ordinance or an amendment to it, the developer cannot "beat it out" by rushing in with an application.

To avoid controversy on this subject, it is often wise to enact a moratorium or a Temporary Zoning that allows the municipality to refuse all applications for building or subdivision permits. It provides clear evidence that a change is in process and will prevent a flood of applications in response to publicity about possible changes. A Planning Commission may recommend that the Council enact a moratorium, but only the Council may do so.

Such a vote needs to be on an agenda, does not require a public hearing, requires a simple majority vote, and can be no longer than six months in duration. (Utah Code 10-9-404)