

COUNTY OF INYO PLANNING COMMISSION

MINUTES OF OCTOBER 28, 2009 MEETING

COMMISSIONERS:

WILLIAM STOLL
CYNTHIA LITTLE
SAM WASSON
RICHARD WHITE
PAUL PAYNE

FIRST DISTRICT (CHAIR)
SECOND DISTRICT
THIRD DISTRICT (VICE-CHAIR)
FOURTH DISTRICT
FIFTH DISTRICT

Inyo County Planning Commission
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STAFF:

MIKE CONKLIN
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PLANNING DIRECTOR
PUBLIC WORKS DIRECTOR
COUNTY ADMINISTRATOR
PLANNING COMMISSION SECRETARY

TANDA GRETZ
JOSHUA HART
ADENA FANSLER

SENIOR PLANNER
SENIOR PLANNER
ASSOCIATE PLANNER

The Inyo County Planning Commission met in regular session on Wednesday, October 28, 2009, in the Board of Supervisor's Room, Administrative Center in Independence, California. Chair Stoll opened the meeting at 10:00 a.m. These minutes are to be considered for approval by the Planning Commission at their next regularly scheduled meeting.

ITEM 1: ROLL CALL - Commissioners: Cynthia Little, Paul Payne, William Stoll, Sam Wasson, and Richard White.

Also present were: Susanne Rizo, Deputy County Counsel; Mike Conklin, Planning Director; Tanda Gretz, Senior Planner; Adena Fansler, Associate Planner; and Secretary, Sharon Birmingham.

Absent:

Kevin Carunchio, County Administrator
Ted Pedersen, Public Works Director
Josh Hart, Senior Planner

ITEM 2: APPROVAL OF MINUTES (Action Item) – Approval of Minutes from September 23, 2009.

MOTION: Moved by Commissioner Wasson and seconded by Commissioner White to approve the minutes from September 23, 2009.

The Motion passed unanimously.

ITEM 3: ADDITIONS/DELETIONS TO THE AGENDA – Opportunity for the Commission to add or delete an item on the Agenda.

There were none.

ITEM 4: PUBLIC COMMENT PERIOD – Opportunity to address the Planning Commission on any planning subject that is not scheduled on the Agenda.

There were none.

ITEM 5: CONDITIONAL USE PERMIT No. 2009-03 & RECLAMATION PLAN No. 2009 01/SORRELLS (Public Hearing & Action Item) - The applicant, Charles Sorrells, proposed to mine sand, gravel, and aggregate on 2.7 acres for a period of 5 years for the purposes of constructing County approved private access driveways to a future 40 acre subdivision. An estimated 7,700 cubic yards of material will be removed. The site is located on already disturbed privately owned land, approximately 6 miles east of Shoshone on State Route 178 and Chicago Valley Road, Section 14, Township 22 North, Range 7 East, M.D.B.& M. (APN 046-100-03).

Adena Fansler, Associate Planner, presented the Staff Report to the Commission.

Chair Stoll opened the public hearing at 10:05 a.m.

Charles Sorrells, applicant, spoke in support of the proposed project and agreed to all Conditions of Approval and the amount of the Financial Assurances and indicated he was happy with the recommendations provided by staff.

Chair Stoll closed the public hearing at 10:07 a.m.

MOTION: Moved by Commissioner Payne and seconded by Commissioner White to adopt the Final Negative Declaration of Environmental Impact and certify that the provisions of CEQA have been met; make certain findings with respect to and approve Conditional Use Permit No. 2009-03 and Reclamation Plan No. 2009-01/Sorrells with the conditions of approval recommended in the Staff Report.

The Motion passed unanimously.

ITEM 6: VARIANCE No. 2009-02/DYER (Public Hearing & Action Item) – The applicant requested a variance from the Inyo County Zoning requirement that requires homes in the R-2 (Multi-Family Residential) Zone to be located a minimum of five feet from side property boundaries. The applicant for the property located at 258 East Center Street, in Big Pine, requested that an already-constructed second story enclosed porch, which is located 2-1/2 feet from the east property line, be allowed to remain. The property is designated Residential Medium High Density (RMH), 7.6-15 dwelling units per acre. This item was heard on September 23, 2009 and continued to today to allow staff to coordinate with the Building & Safety Department for further information.

Planning Director, Mike Conklin informed the Commission that the structure did not meet the minimum standard of fire resistivity. The applicant has withdrawn their request for a Variance and that the structure will be removed; therefore, there is no need for a public hearing or action on this item.

ITEM 7: VARIANCE No. 2009-03/LEE'S FRONTIER (Public Hearing & Action Item) – A request for a variance from front yard setback requirements in order to construct a patio seating enclosure at Lee's Frontier, the Chevron gas station & store/deli located south of County of Inyo

Lone Pine at 1900 S. Main Street. The property is designated RC/Retail Commercial under the General Plan, and zoned C-2/Highway Services & Tourist Commercial.

Tanda Gretz, Senior Planner presented the Staff Report to the Commission.

Chair Stoll opened the public hearing at 10:12 a.m.

Dan Dickman, Building Designer and representative for the applicant, spoke in support of the proposed Variance. Mr. Dickman told the Commission that Mr. Keller wanted to provide better service and upgrade the kitchen to the building. Mr. Dickman provided diagrams to the Commission for their review. Pictures of the area were also provided.

The Commission had few questions relating to the construction of the patio and the glass to be used. The Commission also reminded Mr. Dickman of the Lone Pine Architectural Design and Review Board approval that would be needed.

Planning Director, Mike Conklin, informed the Commission that at the time a Building Permit is requested that the project would “trigger” approval from the Lone Pine Architectural Design and Review Board.

Mr. Dickman indicated that he was aware of the approval needed from the Lone Pine Architectural Design and Review Board.

Chair Stoll closed the public hearing at 10:30 a.m.

MOTION: Moved by Commissioner Payne and seconded by Commissioner Wasson to approve Variance No. 2009-03 with the alternative affirmative findings provided by staff.

The Motion passed unanimously.

ITEM 8: ZONE RECLASSIFICATION No. 2009-04 & CONDITIONAL USE PERMIT No. 2009-05/BATCHELDER (Public Hearing & Action Item) - The project proposed to rezone three parcels in the community of Laws from M-1 (General Industrial & Extractive) to M-2 (Light Industrial). The proposed change in zoning would allow industrial uses that are usually considered cleaner/less intrusive than the heavier industrial uses allowed under the current zoning. In addition, setback requirements are smaller for the proposed M-2 zone than for the existing M-1 zone. This project does not propose any new uses for any of the three properties.

Tanda Gretz, Senior Planner, presented the Staff Report to the Commission.

Commissioner Little questioned the properties not in compliance.

Ms. Gretz indicated that the approval of the Conditional Use Permit would bring the properties into compliance.

Chair Stoll opened the public hearing at 10:35 a.m.

George Batchelder, applicant, spoke in support of the proposed project.

Chair Stoll closed the public hearing at 10:36 a.m.

MOTION: Moved by Commissioner Little and seconded by Commissioner White to adopt the proposed Resolution, recommending that the Board of Supervisors:

1. Adopt the Negative Declaration of Environmental Impact and certify that the provisions of the California Environmental Quality Act have been met;
2. Make certain Findings with respect to, and approve, Zone Reclassification #2009-04/Batchelder subject to the Conditions of Approval as recommended in the Staff Report.

The Motion passed unanimously.

ITEM 9: **WILKINSON APPEAL (Action Item)** – The Environmental Health Department denied requests from Gavin Wilkinson for two septic systems for five-bedroom residential developments on his property east of Lone Pine. The denial was based on Inyo County Code (ICC) Section 18.78.120, which indicates in part that an accessory use, such as a septic system, is permitted when located on the same lot as a lawfully existing principal use to which it is incidental and subordinate. The subject property is zoned Rural Residential, with a ten-acre minimum lot size and a mobilehome overlay (RR-10-MH), and designated by the Inyo County General Plan Land Use Element Rural Residential (RR). Mr. Wilkinson appealed the decision of the Environmental Health Department to the Planning Commission per ICC Section 18.81.030.

Marvin Moscovitz, Environmental Health Director, presented the Staff Report to the Commission. Mr. Moscovitz told the Commission that currently a mobile home exists on the property which he believed to be uninhabitable. The current septic system is old and there were no records pertaining to it.

Chair Stoll asked Mr. Moskovitz whether both septic systems were sized for 5 bedrooms.

Also, Mr. Moscovitz explained that an Application for a Building Permit must be prepared prior to obtaining permission to install a septic system.

Gavin Wilkinson, appellant, addressed the Commission and provided a brief history of his property. A 46 page document (marked and entered as Exhibit 1) was provided to the Commission for their review. Mr. Wilkinson went over the steps in building a house, to include the steepness of areas of his property and the need for additional septic systems. Mr. Wilkinson requested a temporary use be applied for the installation of two septic systems. Mr. Wilkinson informed the Commission that at this time the exact location of his house is unknown due to the unknown location of the septic systems which is due to the terrain of his property. The mobile home currently located on the property is for storage only to prevent damage to building materials. Mr. Wilkinson indicated that he did not know the current condition of the existing septic system and would like to install a new septic system for the new house. Mr. Wilkinson plans on having two dwelling units on the property and this is the need for the second septic system. Mr. Wilkinson's intention is to abandon the existing septic system once the new ones are installed. Mr. Wilkinson indicated that due to the delay in applying for a Building Permit this could become a loan issue. He also anticipates building in the spring of 2010 if he is allowed to install the 2 septic systems.

Planning Director, Mike Conklin, provided the step by step process in obtaining an application for a Building Permit in relation to the building of a home.

The Commission expressed concerns with debris and critters damaging the pipes.

Environmental Health Director, Marvin Moscovitz, informed the Commission that Mr. Wilkinson had not applied for a building permit for the property and therefore could not allow for the 2 septic systems as there was no accurate location for the home(s) to be built.

The Commission requested information as to plans and to what level of detail for the application of a building permit were needed.

Mr. Moscovitz informed the Commission of the essential requirements being adequate percolation, trench holes, adequate soil and setback requirements.

The Commission asked the Environmental Health Director the allowance for wells prior to the application for a building permit.

Mr. Moscovitz provided that wells were permitted prior to the application for a building permit for vegetation purposes and landscaping of the land.

Chair Stoll opened the public hearing at 11:40 a.m.

Mike Johnston, local realtor, spoke in support of the appeal indicating that if a well was allowed so should be a septic system and did not see the septic system as an accessory use.

Chair Stoll closed the public hearing at 11:43 a.m. and took a short recess.

Chair Stoll reconvened the meeting at 11:53 a.m.

Chair Stoll re-opened the public hearing at 11:57 a.m.

Chair Stoll inquired as to how long it would take Mr. Wilkinson to begin construction of his home.

Mr. Wilkinson indicated that all he would need would be 6 months.

MOTION: Moved by Commissioner Payne and seconded by Commissioner White to allow Gavin Wilkinson to install 2 septic systems on his property and to apply for a building permit within 6 months.

The Motion passed 4-1. Commissioner Little voted no.

Commissioner Richard White recused himself from Item 10 as he owns property affected and removed himself from the Commission.

ITEM 10: **NON-CONFORMING BUILDINGS WORKSHOP** – Inyo County Code (ICC) Section 18.78.280 indicates in part that a non-conforming building destroyed by more than 50 percent shall not be restored except in full conformity with the Zoning Ordinance. Staff believes that the ICC's direction is quite clear, and that permitting reconstruction of non-conforming residences would be contrary to the intent of the Code. At its regular September 23, 2009

meeting, the Commission directed staff to identify and evaluate several alternatives to the ICC's regulations regarding non-conforming buildings.

Mike Conklin, Planning Director, presented the Staff Report to the Commission. Mr. Conklin informed the Commission that the alternatives would require an ordinance change. Mr. Conklin reviewed each alternative with the Commission.

Chair Stoll opened the public hearing at 12:05 p.m.

Cheryl McDermott, local realtor, spoke to the interpretation of the existing section.

Mr. Conklin informed the Commission that there is no interpretation of the existing code section in that it is law.

Ms. McDermott preferred alternative 1, however it does not fully resolve the issue of 50% or less. Ms. McDermott presented the Commission with some alternative language to review and requested that she be part of the process of amending the Inyo County Code section. Ms. McDermott also informed the Commission on how difficult it has been for homeowners to sell and/or repair their homes. Ms. McDermott mentioned a prohibition on the repair of homes.

Mike Johnston, local realtor, spoke to the Commission in making the code clear on the issue of non-conforming properties. Mr. Johnston's concern is mixed use; as he feels it should be re-defined and would like to assist so the code can be used and will work. Mr. Johnston also spoke on the demand for housing and less demand for commercial in today's economy. Mr. Johnston agreed with alternative 4 as it would solve the problem.

Chair Stoll closed the public hearing at 12:25 p.m.

Commissioner Payne informed the Commission on deteriorated homes along highway 395 with absentee landlords.

The document presented by Cheryl McDermott was marked and entered as Exhibit 1.

Mr. Conklin advised the Commission that any decision made would effect the county in it's entirety.

Commissioner Wasson requested that staff consult with the City of Bishop as to their plan and incorporate comments made today and prepare maps and further details in determining which zones would be effected.

MOTION: Moved by Commissioner Wasson and seconded by Commissioner Payne to continue the workshop to December 2, 2009 and direct staff to incorporate ideas from today's meeting, provide maps, and further details of those properties effected.

The Motion passed unanimously.

Chair Stoll recessed for lunch at 12:45 p.m.

Chair Stoll reconvened the meeting at 1:45 p.m. with Commissioner White present.

Chair Stoll recused himself from Item 11 as he felt he had a conflict by performing work for County Counsel, Randy Keller and removed himself from the Commission.

Vice-Chair, Commissioner Wasson, presiding as Chair.

ITEM 11: AMENDMENT TO RECLAMATION PLAN No. 91-4/ STRATCOR, U.S. TUNGSTEN CORPORATION (Pine Creek Mine) PINE CREEK MINE (Public Hearing & Action Item) - The applicant, Bishop Tungsten Development, LLC proposed to retain the Mill Building and its remaining equipment, the Clarifier, the Crusher Building, the Dumper, a number of Storage Tanks, the Avalanche Dikes, the Snow Shed and the sealing of the Mine Portals and Powder Magazine by steel doors and/or fencing instead of back-filling. The site will then be utilized as a historical resource. The project is located on the eastern slope of the Sierra Nevada Mountains approximately 7 miles west of the community of Rovana in Inyo County, Section 8, Township 7 South, Range 30 East, M.D. B. & M. (APN 009-300-02, 009-300-04, 009-300-05 and 009-300-06).

Adena Fansler, Associate Planner, presented the Staff Report to the Commission.

Presiding Chair Wasson opened the public hearing at 1:52 p.m.

Lynn Oliver, geologist from the United States Forest Service, spoke in support of the Planning Department's recommendations.

Gregory Tenorio, representative from the State Office of Mine Reclamation (OMR) supported the denial of the Amendment to the Reclamation Plan. Mr. Tenorio informed the Commission that mining had ceased and therefore the only permitted activity is reclamation. By law, the site had become abandoned. To date, no posting of financial assurances have been made. Any mining activity on site is in violation. Mr. Tenorio commented on Ms. Fansler's ability to comply with the Surface of Mining and Reclamation Act (SMARA) regarding this mine. Mr. Tenoria also commended Ms. Fansler for her very well written staff report that included the very detailed history layout. Also, Mr. Tenorio indicated that OMR is not against mining but only requests that procedures be followed.

Doug Hicks, General Manager of Bishop Tungsten and part owner, was in agreement to the recommended financial assurances indicated within the Staff Report. Mr. Hicks requested that an additional condition of approval be added to have the site listed on the Historic Preservation list within a 2 year timeframe. Mr. Hicks also directed to OMR that OMR was outside of their authority and expertise in commenting that there is no historical value. Mr. Hicks told the Commission that the applicant is Avocet Tungsten, Inc. The mine went idle in 1990 and the law passed afterward requiring an Interim Management Plan if the mine is considered idle and if there is no plan then the mine would be considered to be abandoned.

David Pruitt, geological engineer, questioned OMR regarding SMARA and the definition of mining as it relates to the mining of underground and commented that SMARA did not relate to tailings, and mill sites.

Beth Hendrickson, representative from OMR, spoke to the Commission about the definition of mining and SMARA and how it relates to all or any part of mining pursuant to Public Resource Code 2735.

David Tanksley, private citizen, spoke to the Commission regarding SMARA, and about a section of SMARA that has exemptions to include mill site operations, and zone classifications.

Greg Tenorio, representative from OMR, told the Commission the definition of SMARA operations pursuant to Public Resources Code 2729 which includes work incident to underground mining operations.

Chair Wasson took a short recess at 2:15 p.m.

Chair Wasson reconvened the meeting at 2:28 p.m. and still in public hearing.

Doug Hicks, General Manager of Bishop Tungsten and part owner, told the Commission that the Staff Report did not go back far enough. Mr. Hicks informed the Commission as to some of the reclamation activities that have already taken place. Mr. Hicks also told the Commission that an application for a Conditional Use Permit had been submitted relating to a hydro project.

Marked and entered as Exhibit 1: 70 page document provided by Mr. Hicks

Marked and entered as Exhibit 2: 2 page document provided by Mr. Hicks dated December 4, 2007 from national Trust for Historic Preservation.0

Lynn Goodfellow, spoke in support of the amendment to the Reclamation Plan. Mr. Goodfellow told the Commission to save the mine for the good of our country.

David Tanksley, private citizen, informed the Commission that status had not changed in 29 years. The materials were strategic materials. The intent was to sell ore again or mine. Also, regarding the USFS comment letter, their vision did not correspond to the County.

Jim Scott, resident of Bishop, indicated that the lead agency status could be taken away from Inyo County.

Susanne Rizo, County Counsel, advised the Commission that if SMARA is applied improperly the lead agency status could be taken away.

Chair Wasson closed the public hearing at 2:55 p.m.

MOTION: Moved by Commissioner White and seconded by Commissioner Payne to adopt the Final Mitigated Negative Declaration of Environmental Impact and certify that the provisions of the California Environmental Quality Act (CEQA) have been met pursuant to Section I; make certain findings pursuant to section II; and approve Amended Reclamation Plan No. 91-4/Stratcor, U.S. Tungsten Corporation (Pine Creek Mine) subject to conditions pursuant to section III; and establish a financial assurance in the sum of \$680,453.36 for the amendment to Reclamation Plan 91-4/-and the completion of the remaining reclamation measures required by Reclamation Plan #91-4 and direct staff to collaborate with the mine operator for review of the conditions of approval.

The Motion passed unanimously.

Chair Stoll returned to his position as chairperson.

COMMISSIONERS' REPORT/COMMENTS – Commissioner Wasson requested information on the Los Angeles Department of Water & Power's (DWP) solar energy projects.

PLANNING DIRECTOR'S REPORT – Planning Director, Mike Conklin, reported on the DWP's solar energy projects proposed for Inyo County. Also, the Hooper project for the Rovana area is moving forward, and the Natural Resource Advisory Committee acknowledgment letters have been sent out and he discussed parameters for its members.

CORRESPONDENCE-INFORMATIONAL – There were none.

ADJOURNMENT - There being no further business, Chair Stoll adjourned the meeting at 3:37 p.m. to reconvene in regular session on Wednesday, December 2, 2009 at 10:00 a.m. in the Board of Supervisors Room, Administrative Center, Independence, California.

Prepared by:

Approved: December 2, 2009

Sharon M. Birmingham

Sharon M. Birmingham,
Secretary To
Inyo County Planning Commission