

LA VERKIN CITY PLANNING COMMISSION

Regular Meeting

Wednesday, May 28, 2025, 6:00 pm.

City Council Chambers, 111 South Main Street

La Verkin, Utah 84745

Present: **Chair** Allen Bice; Commissioners: Hugh Howard, Matt Juluson, Kyson Spendlove, John Valenti, Sherman Howard, Richard Howard; Staff: Derek Imlay, Fay Reber, and Nancy Cline; Public: Mr. Tim Anderson (Attorney), and Chase Stratton (IRP).

A. Call to Order: Chair Allen Bice called the meeting to order at 6:00 pm.

The invocation and Pledge of Allegiance were given by Richard Howard.

B. Approval of Agenda:

The motion was made by Commissioner Matt Juluson to approve the agenda, second by Commissioner Kyson Spendlove. Sherman Howard-yes, Hugh Howard-yes, Juluson-yes, Bice-yes, Kyson Spendlove-yes. The motion carried unanimously.

C. Approval of Minutes: May 14, 2025, regular meeting.

The motion was made by Commissioner Sherman Howard to approve May 14, 2025, regular meeting, second by Commissioner Matt Juluson. Hugh Howard-yes, Bice-yes, Sherman Howard-yes, Spendlove-yes Juluson-yes. The motion carried unanimously.

D. Reports:

No Reports.

E. Business:

1. Discussion and possible action to recommend to City Council the Interstate Rock Product Critical Infrastructure Materials Protection Area.

Commissioner Bice informed the public that tonight no action would be taken to recommend it to the city council. Chase Stratton would discuss what IRP is asking the city for with the Critical Infrastructure Materials Protection Area (CIMPA) and Mr. Anderson would get time to speak on their behalf.

Fay Reber explained that this is a public meeting but not a public hearing. Chase Stratton would do his presentation, then Mr. Anderson would give his clients' concerns to the commissioners. The commissioners could ask questions throughout the presentation. There will be no comments from the public in this meeting. The next meeting next week is with the city council, and they will have a similar meeting where Chase and Mr. Anderson will give their presentations. This would be the city council's first-time hearing of the CIMPA. No comments will be allowed at that meeting either. On June 11th there will be another public meeting for the planning commission, and they will discuss and make a recommendation to the city council that night. When the city council gets that recommendation, they will send out notice of a public hearing on the matter and that is when the public can make their comments. The Public Hearing should be July 2nd. After the public hearing the city council will discuss the topic and they could make an decision to approve it, approve it with changes, deny it or decide to continue the discussion at the next meeting.

Chase Stratton gave a history of Interstate Rock Pit. It began in the 1970's for sand and gravel extraction. In the 1980's they expanded to where the cottonwood hollow land is now, in the 1990's they moved to the land that they are currently extracting from. They have been mining that same area from over 30 years. The whole time we've been mining the pit; it has been for sand and gravel purposes. We haven't been mining any other kind of

minerals out there, raw gravel, for general construction purposes. In those 30 years they never had a cement batch plant or asphalt plant there. IRP had a meeting with the citizens a week ago. They showed them their maps and the future of IRP. They plan on mining for 15 years in the same spot, then moving to a different location on their land for the next 15 years. In 30 years, both those locations will be mined out. He discussed the elevations that would be the end result of the mining after 30 years. They are not digging a pond; the elevation will be about 10 feet lower than the road going to the bridge. The reason they are asking for protection is simply to ensure they can continue to mine that area. They don't want any additional uses like a batch plant or asphalt plant they only want to extract sand and gravel. The reason they want protection is that it offers that zoning can't be changed without their sign-off. That's probably one of the most relevant ones to them, because they had that happen to their Hurricane City pit. Hurricane City had just one industrial zoning about 15 years ago, and then they decided they needed two industrial zonings, a light industrial and a heavy industrial. Their pit was already doing mining that was only permitted in heavy industries, yet they zoned them light industrial. Then about four or five years ago they had to go through this whole re-zoning, trying to get it re-zoned to what it should be so that they are not a non-conforming grandfathered use but they are a permitted use with the correct zoning. When they did that, they had a lot of outcries from citizens and property owners around them even though they had all moved in after they had been mining there for so long that they had to give a lot of concessions in that re-zone process just to make sure that their pit stayed going forward in the future. If they had had this protectionary, which it came out like a year after they went through that whole process, if the state code came out, and then if they had had that though, because of a city's arbitrarily zoning them into something they shouldn't have been zoned into, they could have actually kept all of their rights that should have been kept. There are other protections like being a little harder for eminent domain.

Fay Reber wanted to clarify that chase used the term "mining" but it's actually an extraction pit.

Chase explained that the state of Utah has made a distinction between mining and this material extraction. The last six years they kind of made this distinction. For so long, their mining operations have been covered by MSHA. MSHA is the Department that oversees and regulates that extraction that they are doing of sand and gravel. They have mining in the name of that agency. And for the longest time, it was considered mining. He kept referring to it as mining, but it is just a critical infrastructure material extraction for sand and gravel.

Fay clarified that he mentioned they have no intention of establishing a concrete batch plant or an asphalt plant. But how do we know that they won't transfer this property to somebody else, and then that entity that comes in would try to establish a concrete batch and an asphalt plant.

Chase responded that one day, his ownership group in the future might want to sell it and it goes to someone else and that other person might want to do it, or even 30 years down the road, his owners want to put an asphalt plant there. The only thing he could say is they don't plan on doing it right now, and this protection policy actually doesn't give them the right to do it. The same way they would have to go about it today. They would have to first come to La Verkin City to ask them to create a new zoning designation that could have those uses permitted in them, and once the city created that zoning, then they have to ask for a zone change, and if the city granted that zone change, then after that, they would have to get a permit from the Division of Air Quality saying that they could actually put an asphalt plant in. From what they know and what the state code says, is that process is the same today as it would be after they got a protection area. A protection area does not grant them any rights inherently to have a batch plant, or an asphalt plant. For some reason the citizens think they want this protection area to have those uses, as far as state code reads, to our understanding, our legal counsel, that doesn't grant them those rights. The zoning right now is a residential agriculture one. It's a zone that already has just been there on the property, and they are grandfathered in.

Fay asked what he knew about the new legislation with House Bill 355.

Chase responded the new language says that if somebody has been historically using that property as a critical infrastructure material of use, then any of the uses that might be auxiliary to that use, as in processing concrete batch plant or asphalt batch plant, if those uses are existing, and have been existing on the operation, then they would get that, what they call a vested critical infrastructure material of use. And with that vesting, it gives some protection. But since they don't have a ready-mix batch plant, since they don't have an asphalt batch plant, that House bill, in effect, it doesn't give them the right to do new operations, it just protects current operations.

Fay commented that this is where the confusion with the public has come in. It says that they can continue with those uses if they are vested. And in order for it to be a vested use, it has to be an existing use. A batch plant or concrete plant are not existing or legal in that zone. They don't meet the definition of vested use. So that language in the new code that would allow them to continue to operate and expand are not applicable to a concrete or asphalt plant in La Verkin.

Commissioner Juluson wanted to know since the current zone is residential agriculture and IRP is grandfathered in with a non-conforming use could the HB 355 apply to them and allow them the batch plants.

Fay explained that what they are currently doing is a legal non-conforming use. The batch plants are an illegal use now and they do not currently operate one. So, under the new state law they are not vested uses.

Commissioner Bice added that the city of La Verkin is an approved use city and if its not an approved use then it is not legal. It cannot happen without the city council changing the code.

Tim Anderson introduced himself and also Amanda Todd who is a real estate lawyer at his firm. They represent the Bakes. They would like the city to reject the proposal of the CIMPA. He pointed out the State law has evolved to giving more protection to the owners of critical infrastructure and taking away from the property owners that live next to those areas. His opinion was that Interstate bought the property 50 years ago not to only mine for sand and gravel but to build houses there. That their 30-year plan is to be a real estate business and build houses on this property. IRP have agreed to have La Verkin Main Street run through their property and an Elementary school to be there. He also brought up that as of 2019 they had to record on the plates with the county the notice of the pit with any property within 1000 feet of the pit. They have not disclosed the pit. It is his opinion that they are not a pit but a real estate site. That would make them unable to receive a protection or be deemed a critical infrastructure area because in 30 years they will be building houses. He also pointed out that they could reject the protection because of public safety concerns. La Verkin master street plan has several roads planned to go through the pit where there are asking for the protection to be. He suggested the solution to the public safety hazards of the roads was to put the Main Street Road on IRP property. It would help with the congestion and give a secondary access to the neighborhoods which is required when the Bakers sell their 151st piece of land. If they don't put the Main Street Road then if the elementary school is built then the Toquerville kids will have to walk on highway 17. It's already in the cities master plan and that the road should be built. This is another reason to turn down the protection agreement because of this public safety hazard. He suggested not granting the permit and giving up the power to plan the community that IRP will be building. Mr. Stratton said he didn't want that batch plant "right now" and he couldn't speak for the owners of the company in the future. Mr. Anderson suggested a development agreement to allow IRP to only be able to have the sand and gravel extraction and no other development ever.

Derek Imlay commented that he understood 80% of their argument was putting in Main Street so the developers they represent, the Bakers, could continue to build with that second road access.

Mr. Anderson replied there are two reasons one is the road and two is that they are really a real estate company because of the agreement in May.

Derek was concerned that concerns are for the developer to get their second access for Toquerville and not the concern for La Verkin city.

Mr. Anderson replied that the road would be for La Verkin also.

Derek continued to say he was concerned they are using this as a way to get the Main Street road put in because the developer is limited. They have had many conversations with them. He was concerned with La Verkin city needs because he works for La Verkin city and not Toquerville city concerns. They are using the pit as an excuse to get the road put in. His opinion was their main concern was getting the developer the second access to continue their development now and not wait for the road to be put in when IRP is done extracting.

Amanda Todd commented that they are benefiting the developer of Trail Ridge estates but also La Verkin city. Having the Main Street Road go in would protect La Verkin elementary students if the school ever goes in. Mr. Stratton said they wanted protection to stop La Verkin from getting eminent domain to put the road in. They now would have to walk on the highway.

Mr. Anderson added it would be beneficial for emergency services to have access to the new Main Street.

Fay commented that if they granted the CIMPA that does not mean they can't condemn property for roads. It would require more work from the city to prove its needed.

Commissioner Spendlove commented that the argument about the kids getting to school safely, if a school gets built, the city council just approved the first portion of what's going to be considered the Zion Corridor Trail, which will be connected right there next to the school. It will run down, it will have a separate location for students, just like on 600 North and Hurricane, though a separate location for people to travel next to that highway safely and get to the other side of that bridge. I think there are alternate paths, there are being in place, but it can be a concern.

Mr. Anderson added that if protection was granted to condemn the property for a road it would take a normal citizen to complain multiple times about noise, smell or other problems for anything to get done. They would have to hire a team of lawyers to meet the statutes requirement of proof. The power would be taken away from the community.

Commissioner Hugh Howard commented that if all IRP wants is an assurance the city won't change zoning would that be hard to do. Draft a document with that safety for them.

Fay commented he believed IRP had already agreed to the road. If they drafted a document saying they wouldn't extend their plant and agreed no batch plants would go in even if they sell the property maybe then we can negotiate a development agreement that we follow those points that will then apply to anybody that they might sell the property to.

Commissioner Bice added that he believed it would be a subdivision one day. After they extract the sand and gravel it would be foolish to leave it alone. This agreement is only about the sand and gravel pit and this offers protection for what they have always been doing. His opinion with the 77 citizens that showed up, was that they needed protection to keep the pit operating as they have for years. It didn't seem right to him that a crowd can take away their right to use their property the way they have been. This isn't a sword for them to abuse anyone with. It's a shield to protect them to continue to do what they're doing.

Fay added that even if they didn't approve of the CIMPA they can continue doing business they are doing now.

Commissioner Sherman Howard added he has been doing construction and been around it for quite a while now. It's pretty common for somebody to use their property to be able to benefit from the excess that they have to make it a subdivision.

Commissioner Bice added that the county dump is scheduled to do as soon as its full.

Commissioner Spendlove commented that he lives down in that area. It's never caused problems for him. He understood concerns for public health and safety. But again, Mr. Stratton was clear on stating the requirements that the initiative has to go through when it comes to regulated by MSHAW, the environmental quality, Utah State environmental quality that's also overseeing this location. So there's a lot of hoops that are jumped through for MSHAW. It will continue to be updated, if not even stronger in the future. The citizens are already being protected.

Commissioner Bice added that it becomes null and void if there is a public safety concern.

Fay Reber read the policy on public safety that said they are protected unless there's a direct correlation with the public health safety that's one exception though it talks about public health safety and welfare the same thing is true, Public nuisance kinds of issues, the city wouldn't be able to interpret its ordinances in a way or draft new ordinances in a way that would bring within that umbrella of the nuisance language what they're doing out there unless there's a threat to the public health. So those two areas talk about public health under the CIMPA Act. He outlined the schedule of the next few meetings with the Public Hearing tentatively on July 2nd.

F. Adjourn:

The motion was made by Commissioner Hugh Howard to adjourn, second by Commissioner Sherman Howard. Hugh Howard-yes, Bice-yes, Spendlove-yes, Juluson-yes, Sherman Howard-yes. The motion was carried unanimously at 7:00 pm.

11 Jun 25

Date Approved



Planning Commission Chair

