



STAFF REPORT

To: Summit County Council (SCC)
Report Date: Thursday, January 19, 2011
Meeting Date: Wednesday, January 26, 2011
Author: Kimber Gabryszak, County Planner
Don Sargent, Community Development Director
Project Name & Type: Chamtech Long Term Temporary Use Permit
Type of Item: Appeal of Planning Commission Decision

EXECUTIVE SUMMARY: The appellant, Anthony Sutera on behalf of Chamtech Enterprises, is appealing the November 17, 2010 Eastern Summit County Planning Commission (ESCPC) denial of a long-term Temporary Use Permit (TUP) for a military and law enforcement training operation in Echo (Sawmill) Canyon in Eastern Summit County.

The ESCPC held public hearings on the application on August 18, 2010, October 20, 2010, and November 17, 2010. At the November 17, 2010 hearing, the ESCPC voted five (5) to two (2) to deny the Chamtech TUP.

Staff recommends that the SCC discuss the appeal and vote to choose from the options outlined in Section G of this report: approve the appeal and reverse the ESCPC decision, deny the appeal and uphold the ESCPC decision, remand the item to the ESCPC, or continue the decision to another date with specific direction to the appellant and Staff on information needed to render a decision.

A. Project Description

- **Project Name:** Chamtech Enterprises long-term TUP appeal
- **Applicant(s):** Anthony Sutera
- **Property Owner(s):** Mike Schultz, Sawmill Ranch, LLC
- **Location:** Portions of Sections 28, 27, 26, 23, 22, and 21, Township 4 North, Range 5 East
- **Zone District & Setbacks:** AG-160, N/A
- **Adjacent Land Uses:** Vacant, grazing
- **Existing Uses:** Vacant, grazing
- **Parcel Number and Size:**
 - NS-1268, 640.00 acres
 - NS-1269, 640.00 acres
 - NS-1270, 340.00 acres
 - NS-1277, 276.54 acres
 - NS-1276, 316.46 acres
 - NS-1275, 316.46 acres

B. Community Review

This appeal has been noticed in the Summit County News on the county council agenda as an appeal. Since appeals are not public hearings, notices have not been mailed to adjacent property owners. The public process has included an appropriately noticed public hearing before the ESCPC on August 18, 2010, a work session on October 6, 2010; another noticed public hearing on October 20, 2010, and a continued public hearing on November 17, 2010.

C. **Background**

The appellant originally requested approval of a military and law-enforcement training operation on just over 2500 acres in Eastern Summit County, located in Echo Canyon off of Interstate 80, east of the I-80 and I-84 junction, up Sawmill Canyon.

The appellant proposed training of various law enforcement groups, military groups, and business executives, as outlined in their attached project documents. The types of activities proposed included ATV training, sniper training, use of specialized communications equipment, surveillance, and counter surveillance techniques. The appellants did not intend to utilize explosives, chemicals, drones, or other aircraft, nor conducting high-volume shooting or high volume shooting ranges. Machine guns, tanks, and other high impact and high noise equipment were also not to be utilized. Activities proposed were to be low intensity and focused on survival and wilderness activities for small groups.

The proposal did not include the construction of any new dwelling, office, or other occupied buildings on the property, utilizing only the existing cabin on parcel NS-1277. As this cabin did not have space to house all of the instructors and participants (an average of 8-12 each week), the appellants intended to use the cabin for housing of several instructors, with most of the students camping outdoors and others utilizing area hotels, such as those in Coalville. Smaller structures including sniper targets and restrooms were proposed.

The appellants proposed that the operation run year round, daily from 7am-6pm, with one night a week available for "night fire training" until 10:00pm and closed one week a month for maintenance.

D. **Identification and Analysis of Issues**

At the October 6, 2010 work session, the applicants provided a Project Plan, addressing many of the issues brought up in the August 18, 2010 public hearing (exhibit H). At the October 6, 2010 and October 20, 2010 meetings, additional information was requested. **Please note that most of the issues outlined in this section of the report were resolved throughout the ESCPC review process; information on these resolved issues is included only to provide the SCC with background on the project and process. For the convenience of the SCC, Staff has highlighted in yellow only those items that were not addressed to the ESCPC's satisfaction.**

Access and Traffic

Access was one of the primary concerns throughout the process, and the appellant was directed to clarify that issue before the remaining issues could be addressed.

The area is accessed by Sawmill Canyon Road, a narrow dirt road that usually requires the use of an AWD vehicle. Sawmill Canyon Road was a public road until the early 1980s, when the road was abandoned and made a private road. In the following years, there were legal challenges by adjoining property owners concerning permitted uses, more specifically whether the private road was only for livestock and personal use, or whether commercial uses were permitted. The case eventually reached the Utah Supreme Court, who determined that the case should be remanded to the lower courts; this was never done, so the final status of the road has been unclear.

The applicants retained an attorney to further research the history and legal status of the road, who provided a written opinion on this matter (Exhibit G). Additionally, in the midst of the public hearing process, the County Attorney's office confirmed that the access appeared to legally meet the requirements of the County, and that any disputes over access legality would be a civil dispute outside of County purview.

Concerning impacts to the road, the participants of each training session would have assembled in Salt Lake City upon arrival and then been transported to the site, which would have meant additional traffic on the access road at the beginning and end of each session. Public comment expressed concern with this increased traffic and impacts both to the road and to nearby agricultural grazing operations.

Fire and Emergency Access

The North Summit Fire District (NSFD) expressed concern over both the limited emergency access available to the property, and the increased danger of wildfires from human causes. That area is known to have a higher wildland fire danger from natural causes such as lightning strikes, and the proposed shooting, vehicular, and camping activities in a dry area with limited water availability will increase the risk of wildfires. The appellant provided the following information:

- No cooking would be done on the site, to minimize fire danger
- Participants and instructors were to be aware of fire danger from ammunition and would take steps to minimize the danger when utilizing firearms.
- The appellant identified two potential landing sites on the property for the AirMed helicopter which is based in the Snyderville Basin, for more serious medical emergencies.

The North Summit Fire District and the Fire Warden provided comments including the requirement of emergency plans, contact lists, access notification, and other mitigation methods to ensure that fire personnel have adequate access to the property and that notification and response will occur in a timely fashion.

The ESCPC discussed the access issue, expressing concern, and discussing the access language articulated in Section 11-2-5.D of the Eastern Summit County Development Code:

Remote locations: Development in remote locations that will adversely and unreasonably affect the firefighting or emergency service capability of a fire district or special service district within which it is located to provide adequate service to the majority of the people located within the district, is inappropriate and will not be approved by the County.

For emergency access, North Summit EMS stated that they were amenable to the usage of AirMed for major emergencies; however had concern over ambulance access for more minor emergencies, as road improvements would have to be done for ambulance to provide service. As a result, early in the process, the North Summit Fire District (NSFD) stated that road improvements would be required for fire and EMS responders to access the site. Later on, after discussions with the appellant, NSFD stated that they could instead approve the project fire protection plan with the understanding that ambulances and fire trucks could only make it as far as the entry gate. While brush trucks could access the site for minor brush fires, major fires support would have to be provided by air at the cost of the appellant. This was consistent with several other existing developments in similar terrain of Eastern Summit County such as the Echo Creek Ranches, Toll Gate Ranches and Rockport Ranches subdivisions.

The ESCPC members were not fully comfortable with this determination, and discussed access at length (minutes attached).

Service Providers

Staff sent the application out for review to many service providers including:

- Utah Division of Wildlife
- Utah Division of Water Quality
- Utah Department of Environmental Quality
- Wasatch / Cache National Forest
- US Army Corps of Engineers
- County Sheriff
- County Engineer
- County Weed Department
- Eastern Summit County Fire and emergency districts
- Wildland Fire District
- All Eastern Summit County municipalities (Coalville, Kamas, Oakley, Henefer, Francis)
- North Summit School District
- Utilities (Questar, Rocky Mountain Power)

Of these providers, the majority returned no comment. Of those that did return comment, the County Engineer and various utility providers did not see impacts to their areas of concern.

The remaining Service Provider concerns as well as public concerns are included below.

Water Quality

The Utah Division of Water Quality (DWQ) expressed concerns with the potential for lead to build up and then contaminate the area water systems. Staff requested information from DWQ on methods to minimize or completely avoid this contamination and build up, and received comment requesting concentration of shooting at specific targets to allow collection of bullet fragments and disposal off site.

The appellants responded with the following information concerning lead mitigation:

- Shooting would be very low volume for sniper training, and there would not be high volume shooting for any other reasons at any time.
- Targets would be constructed of material backed by thick concrete for the bullets to sink into, so that bullet fragments would be caught rather than scattered.
- Target bases would be lined with concrete to catch any shrapnel, which would be cleaned regularly.
- Shooting would only occur at those designated targets and all casings and discharge material would be removed regularly.
- The appellant intended to utilize drinking water from springs on the property, and therefore had a personal interest in ensuring a clean water system.

Sanitation and Water

The existing cabin has a septic tank, in addition to which the appellant proposed the construction of outdoor restrooms with an additional septic tank for waste management. Staff contacted the Summit County Health Department concerning this topic; the Health Department required several separate restroom/shower combinations, similar to those constructed at KOA campgrounds and scout camps, hooked into a septic tank.

There are several springs on the property and water rights for livestock. The appellant did not propose cooking on the property, as participants would carry rations and water, and any cooked food would be purchased from local restaurants or hotels prior to or following training activities.

During the process, the ESCPC requested additional information on water rights and availability. The appellant proposed leasing water rights, and conducted tests on the suitability of the water for human consumption. . The property owner was in the process of exchanging water rights to culinary use to serve the needs of the operation.

County Sheriff

The Summit County Sheriff provided Staff with comment that they had no opposition to the operation as proposed. They did, however, state that they would not allow the appellant to have access to the Sheriff's emergency frequencies for radio use, and that the appellant would need to utilize other methods to contact them.

Shooting

Public comment was received expressing concern over the impacts of the proposed shooting activities. These concerns included:

- Impacts to sheep and cattle that graze on nearby properties
- Lead buildup in the water supply of Echo Town
- Impacts to wildlife that may negatively impact the ability of nearby properties to lease hunting rights

The appellant responded with the following information:

- Shooting activities were to be very low volume, with only a few shots fired each day.
- All firearms were to be equipped with sound mufflers / silencers. As part of the sniper training, the students must attempt to hide the source of the shot and so gunshot noise would be muffled.
- The methods described previously would be utilized to prevent lead contamination.
- The muffling and minimal shooting levels would minimize wildlife disturbance.
- Cattle and sheep would still range the training area, so impacts to livestock were not anticipated.

- A goal of the training is to have participants learn to move in the wilderness without disturbing wildlife, since disturbed wildlife can negatively identify a participant's hidden location.

Wildlife

Staff submitted the proposal to the Utah Division of Wildlife (DWR) for review, and also sent a public notice to them since they own adjacent property. The Utah State office of Public Lands Policy Coordination provided written comment on the project, expressing concern over the following:

- Disruption of wildlife birthing and/or brooding activities.
- Disruption of migratory patterns.
- Displacement of animals into less favorable habitats.
- Loss of quality habitat through vegetation removal, fragmentation, or erosion.
- Increased stress on wildlife during critical time periods, which could lead to lower birth and survival rates.
- Impacts to adjacent Cooperative Wildlife Management Units (CWMU)
- Public safety during the hunting season

The appellant met with DWR on Monday, October 18, 2010 to address potential mitigation measures of wildlife impact. As a result of this meeting, DWR stated that their concerns were lessened, and provided Staff with comments requesting that the appellant continue communicating with DWR if the project is approved, and to work with DWR on timing and intensity of various activities to mitigate impacts in the more sensitive habitats. DWR requested that this be added as a condition of approval.

Explosives, chemicals, and aircraft

Public concerns and Service Provider concerns were received concerning the potential for use of explosives, chemicals, heavy artillery, tanks and similar vehicles, and aircraft. The appellant stated that none of these items would be utilized in their training.

Other issues

Other issues raised through the public process that the applicants have attempted to address in the Project Plan and response include:

- Petroglyphs and preservation
- Security measures
- Tracking of students
- Information on types of students
- Weed management plan
- History and legality of the existing cabin
- Parking and winter access

Planning Commission Requests

At the October 6, 2010 work session, the ESCPC gave the appellant the following list of items to address:

- Better definition of the types of people that would be participating in which training courses, i.e. which people can take sniper training.
- Clarification of the footprint of training activities, particularly the locations where sniping would take place.
- Clarification on fire mitigation – the current plan is too vague.
- Better address the wildlife issues.
- Address staging areas, locations, access, year-round.
- Identify the community benefit as outlined in the Temporary Use Permit criteria.
- Create a summary of the proposal, in chart or other visual form, for the public.

At the October 20, 2010 hearing, the applicant addressed the items and the ESCPC again requested the following additional information from the appellant which the appellant provided a response at the November 17, 2010 hearing (attached):

1. Additional information and/or support of the requisite skills and experience of the applicants to ensure the activity will be conducted in a safe and orderly manner.

The appellant provided training certificates, awards, and travel verification, along with a letter from a training consultant that would provide services at Chamtech.

2. A final draft of the Fire Prevention and Emergency Response Plan for the project supported by the associated emergency service providers.
The Fire Warden and North Summit Fire District (NSFD) reviewed the plan and found it to be satisfactory.
3. Clarification of the water rights associated with the property and proposed use.
The appellant provided water right conveyance forms and water sample testing forms. The then property owner had applied to the State for a water exchange agreement to allow the proposed use to have culinary water access; the property has since changed hands and the new owner will have to obtain the exchange agreement.
4. Justification that the proposed use will not be a burden on public services and will provide a community benefit.
The appellant provided a written summary of how the proposed use would provide a community benefit.
5. Identification of the winter staging area and associated parking of vehicles.
The appellant provided a written outline of the staging area and process. However, did not provide a site plan. It was unclear how the shuttle system would work, how passengers would be transferred from the SUV / airport shuttle to snowmobiles without either parking on the side of the road or parking on adjacent property, and how and where vehicles would be stored on Chamtech property.
6. Information on insurance, including quotes and proposed coverage.
The appellant summarized their plan for fire insurance, but have not included quotes or details.

E. **Consistency with the General Plan**

The Eastern Summit County General Plan has the goal of protecting the rural agricultural culture. While a military / law enforcement training area may initially seem contrary, this particular application may have been able to conform to this goal through:

- Minimal disturbance of the property with very few improvements
- Continued use of the property for ranching / grazing
- Noise reduction and environmental protections to be put in place

The continued use of the property for ranching also supported another General Plan goal: “ways must be found to help the farmer stay on the land.”

With appropriate conditions to guarantee the applicant promises, the General Plan goals of natural resource protection, economic development, and protection of the rural and open environment may also have been met by this application.

F. **Findings/ Code Criteria and Discussion**

During the process, questions arose regarding the difference between a Conditional Use Permit (CUP) and a Temporary Use Permit (TUP), and whether a TUP must be considered an allowed use with conditions as CUPs must. The County Attorney’s office provided an outline of the legal differences (attached). In short, a CUP is an allowed use with conditions, and can only be denied if the impacts cannot be mitigated reasonably. A TUP is not processed the same way; TUPs are not considered allowed uses, and can only be approved if the use is determined to be appropriate on a temporary basis. It is important to note that TUPs are not intended to be permanent and run with the land, like CUPs.

Section 11-4-7 of the Eastern Summit County Development Code delineates between short term TUPS as those that shall occur for sixteen (16) days or less, and long term TUPs as those that occur for longer durations, without specifying a maximum time period. The appellant was requesting a two (2) year TUP, with the potential for extension in the future.

The intent of the Temporary Use Permit section reads as follows:

Purpose: Upon compliance with the provision of this section, a temporary use approval may be granted, upon reasonable conditions necessary for the protection and preservation of the public health, safety, and welfare. This Section is intended to provide a process and procedure for reviewing and approving, approving with conditions, or denying a temporary use, or limited duration activity that will provide an overall benefit to the community for the time frame during which it is permitted to exist. The use must be consistent with the intent of the General Plan and this Title.

Section 11-4-7(B) also outlines the criteria for a TUP:

1. The proposed use shall be appropriate, on a temporary basis in the particular location, taking into account the nature of the use, its relationship to surrounding land uses and its impact on the natural environment.
Staff's recommendation was that, if approved, this type of use be processed as temporary to ensure the ability to remove the activity if impacts are too great. The use did not include large permanent structures which would make it easier if the use must cease. Also, with conditions sufficient to guarantee the restoration and clean up of any damage such as lead buildup and erosion, this use could be appropriate on a temporary basis.
2. The proposed use shall be in general compliance with the Development Evaluations Standards in Chapter 2 of this Title.
The proposal did not include any major development, such as roadway installation or the building of structures. The proposed shooting targets and restrooms would have been required to meet Planning and Health Department requirements, and any improvements beyond these would be required to both a) obtain at a minimum an amendment to this TUP, and b) comply with the Development Evaluation Standards.
3. The proposed use will not be in violation of any county, state, and federal laws.
To Staff's knowledge, the proposed use would not have been in violation of any laws. Various State agencies were contacted about the proposal, and no negative comment was received concerning legality of the proposal.
4. The applicant shall present evidence to show approval of the landowner for the particular use, unless the land is owned by the applicant and, in such case, the applicant shall submit proof of ownership.
The appellant proposed utilizing property owned by Tyland, Inc., and approval was provided. Currently, the property is under new ownership, and the new owner Mike Schultz, Sawmill Ranch, LLC has provided landowner approval. The proposed use entirely surrounds the 40 acre parcel NS-1277-B, however, and approval has not been given by this property owner. Conditions should be placed on any approval to ensure that activities do not take place on NS-1277-B.
5. The applicant shall demonstrate that he possesses the requisite skills and experience to ensure that the particular activity will be conducted in a safe and orderly manner.
The appellant submitted written summaries outlining the applicant backgrounds, however this is a relatively new organization, and is the first area of this type that they are proposing. Staff had not yet found that the applicants met this criterion, and requested ESCPC discussion.
6. The site shall be returned to its original condition, or, when significant disturbance has occurred, to a condition approved by the Planning Commission.
The appellant did not propose the construction of any roads or structures beyond restroom facilities and sniper targets, however, a bond was recommended to ensure that any access road damage would be repaired, any areas damaged by ATV use or other activities would be reclaimed, and all lead from shooting would have been collected to avoid lead buildup and water

contamination.

7. The use shall not adversely affect, in a significant manner, the public health, safety, and welfare. *Staff requested further ESCPC discussion on this criterion, more specifically to determine if there were adequate conditions that could mitigate potential impacts to surrounding ranch operations, wildlife, and increased fire risk.*

At the November 17, 2010 hearing, the ESCPC voted 5:2 to deny the TUP, based upon criterion #7, finding that there would be adverse affects in a significant manner to the public health, safety, and welfare due to increased fire risk and inadequate fire and emergency access.

G. **Recommendation(s)/Alternatives**

Staff recommends that the SCC discuss the appeal, and choose from one of the following options:

OPTION A:

Vote to **approve** the appeal and **reverse** the decision of the ESCPC, approving the Temporary Use Permit with the findings and conditions below:

Findings

1. The application complies with the criteria in Section 11-4-7 of the Eastern Summit County Development Code, as articulated by the ESCPC.
2. The application complies with the Eastern Summit County General Plan.

Conditions

1. The approval is good for two (2) years from the date of this meeting, or for an alternative length of time as determined by the SCC.
2. Any modification to the use shall require a public hearing and amendment to this TUP.
3. No use of explosives, heavy artillery, tanks and other heavy vehicles, or high-volume gunfire is permitted by this approval.
4. No automatic extension is built into this TUP; any additional time shall require a public hearing, an amendment to this TUP, and additional conditions as determined by the SCC. Approvals of any extensions are not guaranteed and shall be subject to the Development Code in effect at the date of TUP amendment.
5. The applicants shall submit cost estimates for cleanup, and shall post a bond sufficient to ensure that clean-up occurs in a thorough and timely manner.
6. The applicants shall comply with all requirements of the North Summit Fire District and Fire Marshall concerning emergency access and fire management.
7. The applicants shall continue to work with DWR to modify the location and timing of activities as needed within sensitive wildlife habitats.
8. All other Service Provider requirements shall be met.
9. Signage shall be placed at regular intervals around the boundary of the property sufficient to notify hunters and other potential trespassers of the use of the property.
10. Signage shall be placed around the boundary of parcel NS-1277-B to ensure that activities do not take place on that property.
11. Mitigation methods for lead collection shall be implemented prior to shooting activities.
12. All gunfire shall be muffled.
13. The hours and timeframe of operation shall be as determined by the SCC.
14. Any other conditions as required by the SCC.

OPTION B:

Vote to **deny** the appeal and **uphold** the decision of the ESCPC to deny the Temporary Use Permit with the findings below:

Findings

1. The application does not comply with the criteria in Section 11-4-7 of the Eastern Summit County Development Code, as outlined in this report; and / or,

2. The application does not comply with the Eastern Summit County General Plan, as articulated by the ESCPC.

OPTION C:

Vote to **continue** the appeal to another meeting, with specific guidance to Staff and the appellant on information necessary to help render a decision.

Option D:

Vote to **remand** the appeal to the ESCPC, with specific guidance to the ESCPC on addressing additional information needed to clarify the application and/or the ESCPC denial action.

EXHIBITS:

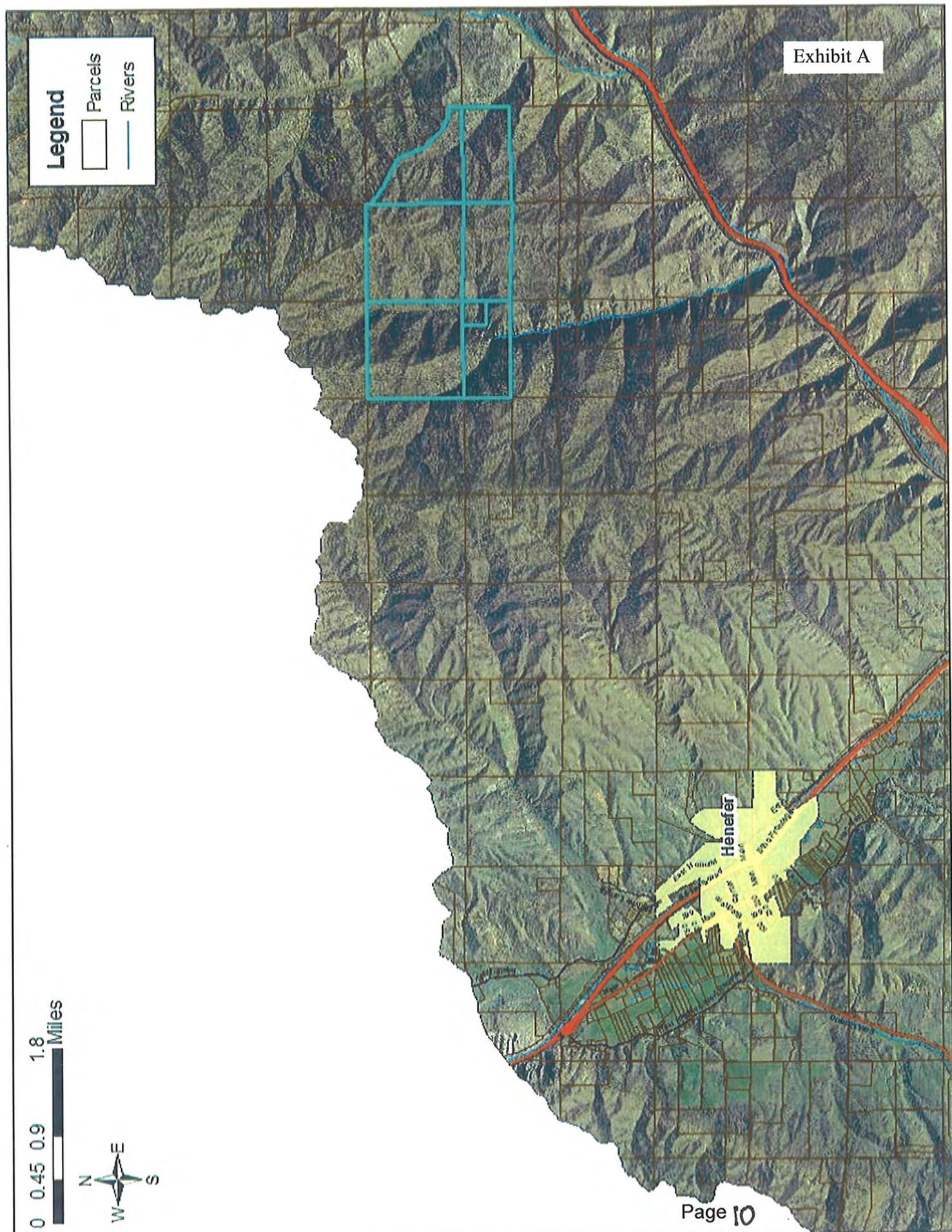
Exhibit A – Location Map	(page 10)
Exhibit B – Zoning Map	(page 11)
Exhibit C – October 20, 2010 ESCPC minutes	(pages 12-26)
Exhibit D – November 17, 2010 ESCPC minutes	(pages 27-40)
Exhibit E – Appellant Appeal Documents	(pages 41-42)

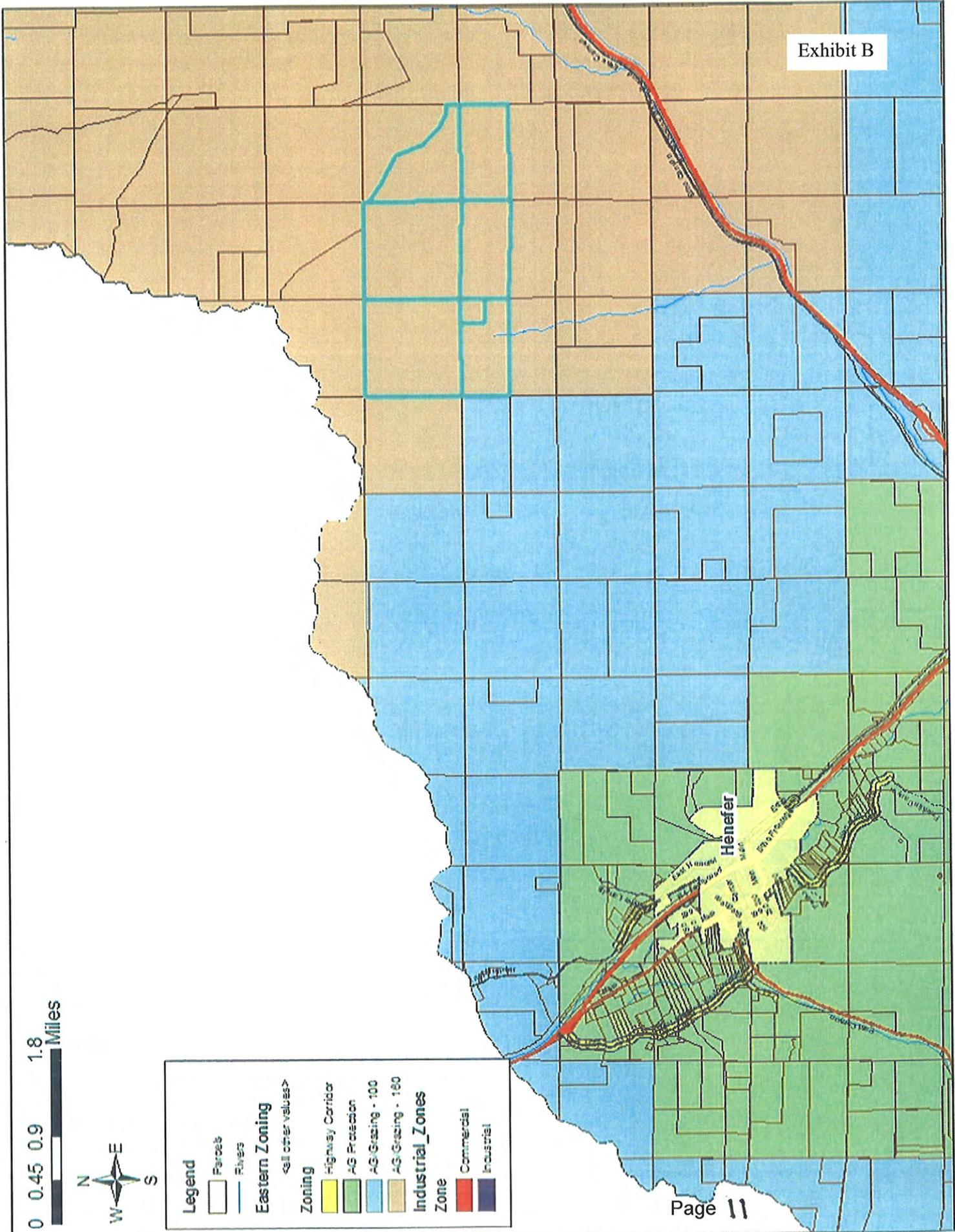
Provided on attached CD:

- Exhibit F – Aerial
- Exhibit G – Service Provider Comments
 - *Fire Warden*
 - *North Summit Fire District*
 - *Sheriff*
 - *State Division of Water Quality*
 - *State Division of Wildlife*
- Exhibit H – CUP vs. TUP memo
- Exhibit I – Written Public Comments
- Exhibit J – Legal Opinion on Access
- Exhibit K – Staff summary of Code Criteria
- Exhibit L – Applicant Original Project Plan
- Exhibit M – Applicant First Response
- Exhibit N – Applicant Final Response

Legend

- Parcels
- Rivers





are, this is where we would like to be, and this is how we are going to get there. He said there will be timelines established as to what they would like to have accomplished by a certain date.

Mr. Lewis stated that he and Engineer Kent Wilkerson will be meeting with the officials from the local eastside municipalities. They will be seeking input as to what these municipalities would like to see on this plan. Once this meeting has taken place, they will bring these ideas back to the Planning Commission in a Work Session. Mr. Lewis said that before this meeting takes place, he would like to know if the Planning Commission has any points of emphasis that they would like to have shared at the meetings. There were no ideas forthcoming.

- **REGULAR ITEMS**

- 1. **General Public Input**

Chair Houston opened the General Public Input session for comments. There were no comments made and the Public Input Session was closed.

- 2. **Public Hearing and possible recommendation of approval of a Long Term Temporary Use Permit for Chamtech Enterprises, Sawmill Canyon, northeast of the Town of Echo, Anthony Sutera, applicant. – Kimber Gabryszak, County Planner III**

Chair Houston explained the Public Hearing procedure to the audience. She announced that Community Development Director Don Sargent is filling in for Planner Kimber Gabryszak.

Director Sargent reminded the Planning Commission that the last time they saw this application was at a Work Session two weeks earlier on October 6. He began with a summary of the application, taking into account the concerns expressed at that meeting.

1. The location is in Sawmill Canyon north of Interstate-80 near Henefer.
2. The long term Temporary Use Permit (TUP) will be discussed as they review the application.
3. Mr. Sargent outlined the activities that are proposed to take place.
 - ATV training
 - Sniper training, with the possibility of around 20 shots per day (The gun shots would be muffled.)
 - The use of specialized communications equipment
 - Surveillance/counter surveillance techniques
 - Survival in combat skills

He said the activities which will *not* be included are:

- The use of explosives
- The use of chemicals
- Drones or other aircraft
- High volume shooting or shooting ranges

- Machine guns, tanks or heavy artillery

Mr. Sargent displayed location, zoning and aerial maps. He listed the concerns that were expressed at the October 6th Work Session.

- A better definition of who the students are, and the qualifications required to take the outlined courses.
- It was felt that the footprint and the portion of property where the sniper training will take place should be reduced and moved.
- A more detailed fire mitigation plan is needed.
- The impacts to the wildlife. Mr. Sargent stated that the Division of Wildlife Resources (DWR) has requested that the applicants work with them in indentifying specific areas of activity. He reported there is a DWR representative in attendance at this meeting to answer any questions.
- The year round staging of the vehicles.
- That the community benefits are identified and outlined.

Mr. Sargent said the TUP is a provision in the Code that is utilized to consider some of the uses that are not listed elsewhere. A TUP is processed essentially the same way that a Conditional Use Permit (CUP) would be processed. He said a benefit of a TUP is to allow an applicant the opportunity to determine if the use will work in the proposed location. A TUP gives the Planning Commission and the County an out, if it doesn't work. If it doesn't work, the TUP can simply go away by not being renewed. If the use does work, the Code can be changed to allow it as a permanent use. In that case, the applicant can submit an amendment for a Code text change requesting additional language allowing the use. The steps for this change to occur would be the following:

- The applicants submit an application for a Code text change.
- There would be a review and recommendation by Staff to the Planning Commission.
- The Planning Commission would hold Work Sessions and a Public Hearing. They would send a recommendation to the County Council.
- The County Council would hold Work Sessions and a Public Hearing and make a decision to allow or deny a Code text change.
- If the Code text changed is approved, the applicants would next seek a CUP from the Planning Commission.

Mr. Sargent compared the nature of a TUP and a CUP. He stated that Staff feels that a TUP is appropriate for this application, given the uncertainty of this activity. He briefly reviewed what the Code requires for a TUP.

1. It must be appropriate on a temporary basis,
2. In a particular location,
3. Taking into account the nature of the use and the surrounding land uses, and
4. The impact on the natural environment.

Mr. Sargent outlined the action options that were listed in the Staff Report. Photographs of the area were shown. He asked Attorney Helen Strachan to address the issue of the access road.

Ms. Strachan stated that at the October 6th meeting, she gave a summary of what her opinion was concerning the road access. She said that not only is that her opinion, but it is also the opinion of the Utah Supreme Court. She stated that in the Supreme Court decision of Gillmor vs. Wright (documented in 1993), it is quite clear that the applicants have access over the Sawmill Canyon Road.

Ms. Strachan said the case was remanded back to Trial Court to determine the scope of the use of the road; however, the case was dropped and the use was never determined. She said it is not in the purview of the Planning Commission or of the Summit County Attorney's office to make this decision. She referred the Planning Commission to the Staff Report which contains several legal opinions that the applicants have legal access to the road.

Chair Houston thanked Director Sargent and Attorney Strachan. She disclosed that she used to be related to the landowner 25 years ago. She turned the time over to the applicants.

Eric Hernandez thanked the Planning Commission for their time. He said they have a Power Point presentation which will explain their activities. Before the presentation, Mr. Sutera listed the things that Chamtech does:

1. Train U.S. soldiers
2. Train federal agents
3. Train people to be safe in foreign countries in a non-intimidating atmosphere

He listed the things that Chamtech will not do:

1. Train terrorists
2. Train militia
3. Train any skinheads or racists groups
4. Train people for sport

Mr. Sutera said that the F.B.I. and the U.S. Marshall's office are among others that they have as customers in the technology field. They train these customers in the use of their equipment.

The applicants presented a graph showing the types of, the description of, and who can take the training. Mr. Sutera said there will be three skill levels for each course: beginner, intermediate, and advanced. He emphasized the students will be given instructions, followed by practice, followed by more instructions. He further emphasized only the military or federal agents will be permitted to take the long range high elevation marksmanship, or sniper training. If someone tries to take this course that is not affiliated with the U.S.

Military or a federal agency, their names will be referred on to the appropriate authorities for investigation.

Mr. Hernandez stated that keeping the training in one area is beneficial to the students. It will save them time from commuting to the site from Salt Lake City and back. Commissioner Brown verified that the ATV training would not take place on the access road, but will be on the private roads within the property. Mr. Hernandez said Chamtech will provide a weekly report to the Sherriff of all of the students that are not affiliated with the military or a federal agency.

The applicants said at the last meeting, the Planning Commission was concerned with shooting across the road. They have revised the target area; shooting will *not* take place across the road that leads into Ms. Gillmor's property. They will use a road that is on Mr. Woolstenhulme's property only. This road will be gated with a security check point. Only Chamtech personnel and clients will have access to this road. The road leading to Ms. Gillmor's property will be unaffected by either gates or by shooting. The landowner Kendall (Tiny) Woolstenhulme explained the distance from this road to the public access road. He said at this location, there will never be an issue for Ms. Gillmor, her guests, or her cattle. A map was shown demonstrating the footprint of the sniper area.

Mr. Sutura said they have been speaking with Eric Hale of the Park City Fire Department who oversees the emergency medical services for Summit County. They have worked out an ongoing plan with him. Mr. Hale has had some good ideas concerning the transportation of non-life threatening injuries for both winter and summer seasons. As it is only three miles from the property to the gate below, any non life threatening injuries would be transported on a stretcher attached to either an ATV or a snowmobile. Life threatening emergencies would be evacuated by Air Med, which has their GPS coordinates.

Mr. Sutura said that the Division of Natural Resources (DNR) also wants to have an ongoing plan with them. He said the Planning Commission could ask the DNR representative in attendance any questions they may have.

Mr. Sutura stated they have been working with the Summit County Fire Warden, Bryce Boyer and Brett Jones from the North Summit Fire District. Fire Warden Boyer reported he had worked with the applicants during the day and a lot of his concerns have been addressed. The applicants are considering having a water truck on site. He said the applicants have incorporated more fire prevention methods than most shooting ranges have. A staging area in case of a fire emergency has been established. It will be either the cabin or the sniper platform.

Mr. Sutura explained the targets will be setup on a slide. It will be a 12' by 12' area filled with sand. The target measures one and one-half yards by three yards. The target will capture the bullets and the sand will capture any stray fragments. This will mitigate any possible spark that may start a fire.

Commissioner Ure asked who will be there to put the fire out. Mr. Sutera answered there will be someone at the gate with a radio whenever there is live fire. That person will be equipped with two different types of fire extinguishers (A and B) for any type of fire that may start. Commissioner Clyde asked about the site location for the storage of fuel. Mr. Hernandez said they will be required to dig about three feet down, and the tank will be covered with a non-flammable material. Fire Extinguishers will be located to the side of the fuel storage. He said they believe that five gallons of fuel will be enough for their needs. The ATVs are presently covering about 150 miles on a full tank of gas. They won't be driving that many miles during the three days of training. They will be re-supplying the fuel each time they bring in a new client.

A video was shown explaining the need for this operation. Mr. Hernandez summarized by saying they wish to add to the training that the military can provide. He said he has been through what these men and women are going through. He and Mr. Sutera want to make it safer for them in a very specific way.

Chair Houston opened the Public Hearing.

BRUCE BAIRD stated that to imply that the military and the F.B.I. don't know how to train their personnel, but that these people do, is insulting. He wished to make seven points.

1. He agrees with Attorney Strachan in some ways and in some ways he disagrees with her. She said the road access isn't an issue for the Planning Commission. He said this is wrong. This is something the Commission needs to consider.
2. She is correct in that the scope of the access is left unclear; however, it is clear what is allowed. The Supreme Court has said that the highest and best use of this property is grazing and agriculture. The only issue is whether hunting with permits increases the burden on the landowners. He said there is no question that this will fail when challenged in Supreme Court. If the Planning Commission takes this step before this is resolved, it will draw the County into litigation.
3. The access the applicants are proposing will violate Ms. Gillmor's right to access her property, due to the need to pass through security gates.
4. He was in Herriman last week. The entire National Guard and two fire districts couldn't protect the people against this fire. He said the applicants are still working on the fire plan as late as today. The Commission cannot approve this application without knowing what that fire plan is.
5. There is no way to know what is happening behind the gates. They must trust the applicants that they are doing what they say they are doing. He has never heard of a TUP being granted without being able to confirm what is happening, especially by this type of people.
6. He referred to exhibit F in the Staff Report, which he had submitted. He said these people are not real. They have said they have current customers such as the F.B.I., SOCCOM, and others. He said the applicants claim they are training people. Mr. Baird said he wants to see the contracts. The Planning Commission needs to know

what Chamtech is currently doing. What is the impact of this training, and where is this taking place.

7. Mr. Baird said the TUP was essentially created by Summit County to accommodate the Olympics. He said that is why there is a 16-day clause. The TUP requires that there are benefits to the community. On page 49 of Chamtech's report, they list some of these benefits. He said that he will cover the bullet points listed there.
 - *Increased employment benefits for jobs such as emergency medical technicians and fire personnel.* Mr. Baird said the only reason these jobs would increase is if Chamtech should create a need by getting people hurt or burning the place down.
 - *An increase of revenue from the operation was listed.* Mr. Baird said the entire revenue is but a drop in the bucket compared to one day at any of the ski resorts.
 - *An alternative source of revenue for the landowner.* Mr. Baird said that certainly the landowner will make some money, but the applicants should not threaten to develop this property if it is not approved. He said that is like saying that the Commission is on the side of the terrorists if it isn't approved.

Mr. Baird said that Chamtech claims this will bring notoriety to Summit County. He said in the dictionary notoriety is associated with infamy and disrepute.

STEVE PETERSON said he is the neighbor to the north of this property. He said that a CUP isn't a given right. The Planning Commission needs to consider what will happen to the neighboring properties. There will be dust six months of the year and mud for the other six months. He said this will put a burden on the Gillmor's and Dennis Wright. This will also affect the water supply for the livestock and the wildlife. He said the applicants may mean well, but this is not the property for this activity. They should choose property that does not cross over other's property.

Mr. Peterson said he is removed enough that he doesn't worry about the bullets, but his concern is the fire danger. He said these people are from the city. They won't know how to take care of a fire. Everyone knows what Herriman looks like now. If his property burns, the National Guard won't come and reseed his land. This the wrong piece of property.

BRAD WOLFE is one of the owners of the 40-acre parcel. He said they have owned this parcel for 41 years. They have given permission to all to cross their property including Mr. Woolstenhulme; however, they will not give permission to Chamtech to cross their property. If Chamtech posts signs to warn trespassers, they request that the land is surveyed to be certain of the boundaries.

Mr. Wolfe said because they have been denied access to their property for the past 30 years, they request that current photographs of the land is taken, so they can ascertain the future, if there is any damage to their property. He said there is a copy of an e-mail from Brett Jones in the Staff Report suggesting that the road is widened to between 12 to 16 feet to allow fire

fighting vehicles. Mr. Wolfe said they do not give permission to anyone to make any improvements to their road.

He said they need assurance that they will be held harmless if anyone is hurt on their property. He objected that the public notice shows their property is included in the Chamtech application. They request (again) that their name is removed from that list. They don't wish to be associated with this application.

The applicants have indicated that they intend to get water from two streams located north of their 40 acres. He said they deny permission to allow any kind of piping through their property for water to be delivered to the cabin. If piping has already been put in, it was done without their permission, and they ask that it be removed and that any damage be repaired.

Mr. Wolfe said they made a request to the County Attorney's office to ascertain if the applicants have the legal right to cross their road. The County Attorney's office has replied that it is not their role to provide that information. Mr. Wolfe said they don't believe there is legal access through their property. He said they were not party to the law suit concerning the Gilmore's and the Wright's access road and they are not bound by that decision. Until it is proven to them there is a legal right for Chamtech to cross their road, they will not permit it. He thanked the Planning Commission for their time.

DENNIS WRIGHT asked if there is any water legally available for this operation. He said just because there is a spring on the property, doesn't give the right to use the water however they want. There is an exchange application that must be processed to make it legal.

Chamtech has said that there will be no ATVs on the main access road; however, they will have to use a snowmobile during winter months on the main roads. He said this is about the same as an ATV. He asked who is liable if there is an accident on the road that is on somebody else's property. Mr. Wright said that Chamtech should present the contracts of those they are working with, such as the U.S. Marshall.

SAM APLANALP stated that he comes as a concerned citizen. He has come to these meetings for a couple of years. He thanked the Planning Commission for their work. He said he is a real estate salesman and works with Staff. They have always treated him with respect.

Mr. Aplanalp stated that many historians may argue that the founding fathers weren't concerned for religious freedom alone, but also for the right to own property and do with that property as they choose. He said that everyone here most likely believes in personal property rights.

He said it is a good thing that has happened. An application was brought before this Commission. He said that many hours have been spent on discussion. There are some gray areas that still remain. He urged the Commission, that if there is a gray area, to error on the

side of property rights. He said that although he knows Mr. Woolstenhulme, he has no ties to this property and he has nothing to gain by speaking in favor of it.

He said that "Tiny" has the right to use his property and that right should be respected. He believes the applicants should be given a chance to try to make a go of it. He has done most of this training and he did it here in Summit County at the Boy Scout camp. He said that although there isn't sniper training, there are shooting ranges. Commercial hunting is happening on in the neighboring properties. He said the Planning Commission should respect the right of the applicant to do with his property what he wishes.

KIRK SMUIN said he knows both Anthony Sutera and "Tiny" Woolstenhulme. For Mr. Baird to say, "this type of people" is very disrespectful. The applicants have been respectful the whole time.

FRANK CATTELAN has lived in Echo for 63 years. They have had fires in Echo and some were pretty serious. It took an airplane to fight one of the fires to save their homes. He said that there are historical buildings located in Echo, which he described. He is concerned about these buildings, and if there is enough water to fight a fire. He isn't sure how they would get the water to the fire. He stated that by the time any fire fighters arrived at the scene, the fire would be out of control.

Mr. Cattelan said there are a lot of cattle in that area. One ranch has 500 head, another has about 1,000 head. A fire would go up this canyon pretty fast. He asked who Chamtech would train with the severity of the recession. He doesn't believe this would be an asset to the County.

SHEILA WILLIAMS said there has been talk of expanding the water and sewer. She asked if this application should pass, would that be taken care of before operation began.

ATTORNEY KRISTEN VASQUEZ said she would like to address some of the concerns that have been expressed tonight.

1. Who's liable for an accident on the easement? She said that could be answered with insurance negotiations and identifying the injured party. They would seek to insure around situations such as this.
2. Obtaining insurance and water rights, and other items like this cannot proceed until they have the right to use the property. They have gone through the process as far as they can go.
3. She said that she can't address how the military trains people. But if this wasn't needed, there wouldn't be facilities like Chamtech. She said this is essentially continuing education for the military and law enforcement. Many businesses have continuing education for their employees.

NICHOLAS WOLFE said there seems to be some gray areas on the access that needs to be resolved. He said he is a volunteer fireman for the South Summit Fire District. He sees benefits of additional fire management. This would allow the fire districts to be able get to know the area better than they presently do. He said that fires happen for various reasons. Some are manmade, some are not. He said there are probably not many people who would use this property for reasons other than agriculture. He agrees that the landowner has the right to use his property.

KENDALL "TINY" WOOLSTENHULME said he is the property owner. He appreciates the concerns that others have about their property. He said that currently commercial hunting is taking place on the Gillmor's property; it is not used strictly for agriculture. The road has been used for commercial hunting as recent as last year. He will do whatever the County requires to make this legal and right.

BLAKE FRAZIER said that he is a friend of Mr. Woolstenhulme. He said he isn't going to speak in favor or against the project; however, property rights need to be maintained. There are some issues that still need to be resolved, but if the low impact training fits the mold, it should be allowed.

Mr. Frazier said he doesn't see a lot of difference between this application and commercial hunting. In fact, it seems this project will have less impact and will be under greater supervision. He said it is funny that some of the people, who have spoken here tonight against this application, are fighting the system to develop property in a different location. He said if it fits, and the mitigation can take place, the project should be allowed to go forward.

STEVE PETERSON said that all landowners believe in property rights, but everyone who is affected in this case, is affected because someone else's rights pass through theirs. They all knew what they had when they purchased their property. There were rules at the start. Mr. Peterson said that the Wrights and the Gilmors will be affected, but what that affect is, is unknown. He asked who will supervise what happens up there.

KIRK SMUIN commented on the wild life. He said he runs a couple hundred head of cattle. He also hunts. The cattle have little effect on the wildlife; there will be some effect, but not like what has been described.

CHARLES GROWER is a concerned citizen. He said it doesn't mix well when people who drink alcohol also use gun powder. It is deadly. He is concerned about alcohol on the premises. He is a member of a hunting club in New York. Before he joined the LDS church, he and this group drank alcohol while hunting. He said the corporate execs will bring alcohol to the premises. To them, drinking is just a way of life. He said there are other accesses to the property. Why can't those be used?

At 8:50 p.m. Chair Houston closed the Public Hearing.

COMMISSION QUESTIONS AND COMMENTS

Commissioner Henrie said the Staff Report explains what Chamtech wants to do. He said the applicants have downplayed their activities. Sniper training has been renamed to be high elevation marksmanship, but he still has several concerns.

He said as he went through the Staff Report, some of his concerns have been addressed, but it seems that some of the items are a smoke screen. He noted that although seeking a TUP, Chamtech wants this to be a permanent operation. He understands the reason and the benefits of why they are seeking a TUP, but their intent is not temporary; it is permanent. He said this concerns him.

Commissioner Henrie said the actual use of the land doesn't concern him. There can be mitigations made for access, fire, and water. It can be made a safe place for the activity they are doing. He is still concerned about what someone will do once they have been trained. That is not measureable.

He thinks it is confusing that Chamtech claims to have clients, but they have only been in business for five months. Mr. Sutera answered they sell video cameras and other technology devices and train the customers on how to use the equipment. Commissioner Henrie said it is misleading to say that they are working with the FBI or other federal agencies, when all they are doing is selling products to them.

Commissioner Henrie said he sees no evidence of support from the U.S. Marshall's office, or any branches of the military. He said the letters they have provided from the Sandy Police Department or Special Ops were not actual letters of endorsement. There is no one saying they understand Chamtech, they know the personnel, or that they have a need for and will use this training. He said the military has their program, their own property, and performs their own training. He said Chamtech is saying they want to train military personnel, because the military isn't doing a good enough job.

Mr. Hernandez responded that it is extremely hard to get support from a state or the U.S. Government. He said there is no government agency that will give a letter saying they fully support a commercial enterprise. Mr. Sutera added the government doesn't want the liability of showing any preferences. He said there is a government website showing everything the government purchases, from a bottle of water to training programs. He said on that website there is a training solicitation that goes out about every other week. There are several that Chamtech has missed, because the application hasn't yet been approved.

Commissioner Henrie said the 40-acre parcel is also a concern to him. The owners of this parcel are saying they will refuse to allow access across their property. They will also refuse the applicants the use of other items, such as the water that flows through their property. Attorney Strachan responded by saying that she has spoken to Brad Wolfe, who is the legal representative to Blue Horizons LLC, the property owners. The Supreme Court decision

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doesn't mention this property. She said she has no idea why this property was not mentioned in this case. Attorney Strachan said the applicants have the right to use the road.

Commissioner Henrie stated that the lack of endorsements ties into his concern that the applicant has the requisite expertise and the skills. There is no one that is attesting they have this skill set. He said that sometimes something may look like and baa like a sheep, but it is smells like a wolf. He said if they shoot bullets and train people to ride ATVs that is one thing, but if the military won't give comment that is another. The lack of comment means they aren't military; they are not law enforcement.

Commissioner Henrie said they have addressed a lot of his concerns, but not all. He said that he has not heard of other companies providing this training. He has only heard of militia and racist groups training. Ms. Vasquez said that she could address some of Commissioner Henrie's concerns. As she proceeded to the microphone to do so, Mr. Baird objected saying this is violation of due process; the Public Hearing has been closed. It was explained that Ms. Vasquez is part of the applicant's team. Mr. Baird responded that the applicant or their team should not be able to walk up to the microphone without being asked a direct question. This is a violation of due process. Mr. Baird's objection was noted.

Ms. Vasquez said there are several companies throughout the United States that offers this type of training for both the military and for different government agencies. She said if requested, she can put together a list of similar companies.

Commissioner Ure said he still has concerns about fire mitigation. Do they have fire extinguishers next to the shooting range? He said they are still shooting across a road. Somebody who may be lost might inadvertently circumvent both of the gates and comes into the middle of the shooting range. Mr. Hernandez said a gate will be placed on both ends of the road, and someone will be at both locations. He said there is visibility of 300 yards. This would allow them to see who is coming in.

Commissioner Ure asked Staff who will ensure that the conditions are being met. Mr. Sargent said that Staff would conduct periodic inspections. All independent entities such as fire and wildlife will do their own inspections. The neighboring properties also will alert them if there is anything amiss.

Commissioner Ure asked why Mr. Woolstenhulme hasn't already filed for water rights. Mr. Woolstenhulme said that he has water rights through the previous owner. He said there is water that was developed when the cabin was originally built; however, some of the piping needs to be repaired.

Commissioner Hanson said she has spent a lot of time thinking about this. She has done some of her own research on the liability issue. Her attorney has said that if someone is injured on another's property, the landowner *cannot* be sued.

Commissioner Hanson said she can't imagine that the applicants would spend so much time and effort if they weren't sure that they were going to be successful; that they have the experience that will lead to success. As far as references, she said that she can't give a former employee a reference on company letterhead, because it is a liability issue; therefore, she understands why Chamtech can't get letters of recommendation. She understands when you are selling things to companies you are building relationships that may be beneficial in the future.

Commissioner Hanson said that fire is a huge concern. The idea of a water truck onsite is a great idea. There is nothing that can mitigate all of the fire concerns. Both humans and Mother Nature come into play. She would like to see an abundance of fire extinguishers.

Year round parking and public access, especially during the winter months, have not been addressed. Where will they park the snowmobiles, snowcats and other vehicles? She stated that everyone who has acreage have trespassers on their property with guns. There is only so much you can do to protect others; you can't protect every situation. She is glad that they are trying to gate the shooting area and post signage.

Commissioner Hanson stated that the neighboring properties allow commercial hunting to be on their land. Although it is supposed to be a seasonal activity, there are outfitters on the property year round. She believes the only difference between Chamtech and a commercial outfitter is the commercial outfitters don't have to go through the application process. Who is regulating the outfitter's fires and who is shooting guns? Who is regulating if they are drinking and shooting? She doesn't see the difference between what is already going on and what is being proposed.

She believes that what is being proposed will not disturb the wildlife. She isn't concerned about who is there for sniper training. There are no background checks for the hunters. Mr. Woolstenhulme has the right to do what he wants with his property as long as there is minimal impact to the neighbors. The argument could be made that his neighbors are negatively impacting him by allowing commercial hunting on their property.

Commissioner Clyde said that he dislikes this application less with each meeting; however, he said that he has the following concerns:

1. This particular site may not be the best choice, but if another site was chosen, he would still be uneasy.
2. This would place an undue burden on public services without generating many taxes. One emergency response will exceed the amount of taxes paid on this property.
3. How will Chamtech regulate who is being trained, without creating litigation possibilities for perceived prejudices.
4. How will Chamtech be able to ascertain their operating costs if the fire prevention plan is fluid. One example is the road improvements. Would they be minimal or large? What will be the cost of the water truck? He said there are too many variables.

He needs to know what will make the fire district happy before a vote is taken. It should be a part of the public process.

5. If the water rights can be easily transferred, that is one thing. If it needs to be exchanged from running livestock to having enough water for showers and outhouses, they may be two years in the process.
6. He doesn't have a comfort level with the site that Chamtech has chosen. It creates a burden on existing neighbors. He is not comfortable that the neighbors will have to pass through security gates. The neighboring landowners have a right to cross through the property without being shot at. If someone is chasing a cow, or herding sheep, the animals may not respect the boundaries.

Commissioner Brown stated he believes that the applicants have a right to be here and to go through this process. He thanked them for their efforts to address the concerns that were expressed by both the Planning Commission and the public. He thanked the citizens for taking their time to come to the meeting. He said their comments need to be weighed into the entire equation.

Commissioner Brown stated the Planning Commission is in a difficult situation. He is an advocate of property rights; yet sometimes when you believe in property rights, it is easy to be hypocritical. He acknowledged there are emotions involved on both sides. As a Commissioner, he tries to put away the faces and look at what the law and the Code demands. He said he is not ready to move forward with a vote this evening. There are still some issues that need to be resolved. He needs to think some more about what he has heard. He said this is not an allowed use, but is a temporary use allowed within the Code.

To him, it comes down to mitigating water and fire. The road is a private civil matter; it is a non-issue. The water is still an issue. He understands from Chamtech's point of view, that they cannot obtain water rights until they obtain the TUP. He asked if water rights are available, why hasn't Mr. Woolstenhulme already obtained those rights?

Commissioner Brown said he respects fire fighters, but there is nothing that is 100% foolproof. There are risks in life. He is in favor of having a water truck on the premises. He believes the fire risks can be mitigated; however, he is not willing to give the Fire District a blank check. He wants a detailed fire plan, not a fluid plan. He said if there are changes that need to be made to the approved fire plan, than it should come back to the Planning Commission. He isn't worried about who the students will be. He doesn't believe the wildlife will be impacted. It is also a non-issue; the animals will adapt.

Commissioner Brown said the way he understands it, the upper loop road is not an access to any neighboring parcel. Only a section of road on Mr. Woolstenhulme's property will be closed. The neighboring landowners will not have to go through any closed gates; their access will not be impeded. The closed part of the road will only affect Mr. Woolstenhulme's property. He is satisfied with this approach.

Commissioner Brown said he has enough confidence in Staff and the other service providers that the applicants will be checked on. He agrees with Commissioner Hanson that there should be minimal impact to the neighbors and there would be some impact on the increase use of the road. He agrees the present CWMUs impact Mr. Woolstenhulme. He said he believes all of the negative impacts, except possibly fire, can be mitigated. He would like to see if this can also be mitigated. He would like to have this application continue forth. To him, the fire issues are the main concern.

*(The voice recorder's battery ran out at this point. It was discovered and replaced later during in the meeting. See *for when audio recording resumed. The period between was recorded by handwritten notes only. Before this occurrence, each meeting has been recorded by both methods.)*

Chair Houston thanked the public for coming. She stated that some of this is new information. The water truck is a very good idea. Mr. Hernandez stated they have additional information from Fire Warden Boyer concerning the fire plan. He said there will be a 400-500 gallon water tank stored on site. The present fire plan was distributed to the Planning Commission.

Commissioner Brown said they are making process. The fire plan needs to be in final format to be brought before the citizens. He doesn't want to make amendments at the last minute. The details need to be wrapped tighter before he would be willing to vote on it.

Chair Houston summed up by stating the Planning Commission is not ready to take a vote tonight. They would like to have another meeting to allow the applicant time to further explore some of the unresolved issues. The Commission is requesting that the applicants have a more detailed fire plan submitted. She said the water rights should be changed to the correct names. Chamtech should submit proof of the requisite skills.

Mr. Sutera asked why the application should be held up, if the Fire District is in approval. Chair Houston answered that both the Planning Commission and the public want to know the details of the fire plan. Commissioner Hanson requested that the applicants provide more information about the staging of the vehicles.

Commissioner Henrie commented that the first meeting that was held was confrontational. The second meeting was informational. At this meeting there has been some support expressed by both the public and the Commission.

Chair Houston asked the applicants if they want a vote to be taken tonight. Mr. Hernandez stated that as a young company, they need the work. They are missing opportunities as this is delayed; however, they also need to have a positive vote. That seems to be unlikely if the vote were taken tonight, so the Planning Commission would choose to approve. He stated that they can haul water to the site if it is needed.

Commissioner Brown made a motion to table the application for further review. Planning Director Sargent suggested to Commissioner Brown that the options available to him are to table the item for further review with another Public Hearing scheduled, or to continue the item to a date certain without another scheduled public hearing.

Commissioner Brown made the motion to continue the item to the November 17 meeting. Commissioner Hanson seconded the motion. All voted in favor.

• **MOTION CARRIED (6 – 0)**

**(At this point the battery was replaced. The following is transcribed utilizing both handwritten notes and audio recording.)*

Staff Items

Planner Slaght stated that Staff is seeking guidance from the Planning Commission on what is considered an accessory dwelling unit versus what is an addition to a home. The Snyderville Basin Development Code states if there isn't a common wall, the structure is an accessory structure.

Mr. Slaght displayed floor plans of a structure in question. There is an existing building, a sky walk, and then a garage. The garage has a dwelling unit built on the top of it. He said that presently this would be treated as an accessory structure. Staff would like direction from the Planning Commission on what they would consider a structure that is over 2,000 square feet to be. He said that sometimes people are only adding onto the house, and in some cases it is an apartment.

Commissioner Clyde said that 2,000 square feet is a large accessory building, especially for someone who lives in a house that is not that big. Mr. Slaght said the building department says if a structure shares a wall, it is part of the same structure. But the Development Code doesn't say that. Commissioner Clyde asked if there is a separate kitchen. Mr. Slaght answered that in this case, the structure has a bathroom, a living space, a wet bar with a refrigerator, but no stove. He said that in some cases it has all of the above.

Director Sargent said that in the Code, an Accessory Dwelling Unit is required to have a maximum of 1,000 square feet, but this unit doesn't have all of the needed functions. This is where Staff would like direction from the Planning Commission.

Commissioner Clyde said he spent months working on this question when he worked for Park City Municipal. There is a thin line between the definition of a spartan kitchen versus a well equipped wet bar. At that time, they decided the difference is if it has a gas or a 220-volt stove.

MINUTES
EASTERN SUMMIT COUNTY PLANNING COMMISSION

REGULAR MEETING
WEDNESDAY **NOVEMBER 17, 2010**
COUNCIL CHAMBERS
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN
COALVILLE, UTAH

COMMISSIONERS PRESENT:

Jill Houston – *Chair*
Michael Brown
Tom Clyde
Diane Foster

Tonja Hanson
Ken Henrie
Chris Ure

STAFF PRESENT:

Don Sargent – *Community Development Director*
Adryan Slaght – *Principal Planner*

Helen Strachan – *County Attorney*
Kathy Lewis – *Recording Secretary*

Commission Chair Jill Houston called the regular meeting of the Eastern Summit County Planning Commission to order at 7:00 PM.

REGULAR ITEMS

1. **Pledge of Allegiance**
2. **General Public Input**

Chair Houston opened the General Public Input Session. There were no comments made and the Public Input Session was closed.

3. **Continued Public Hearing and Possible Approval of a Long Term Temporary Use Permit for Chamtech Enterprises, Sawmill Canyon, northeast of the Town of Echo; Anthony Sutura, applicant – Kimber Gabryszak, County Planner III/ Don Sargent, Community Development Director**

Chair Jill Houston explained the procedure that will be followed for the Public Hearing. She said the Planning Commission has received and read written comments from the Public. She stated there will be two public comment periods. One toward the beginning of the meeting, the second will be at the end to allow the citizens to add any additional comments.

Community Development Director Don Sargent said that Staff's job is to represent the County and present information to the Planning Commission. Staff does not represent the applicant, but is resource for the Planning Commission. Generally, a neutral position is

taken; however, on occasion Staff will make a recommendation based upon the findings of the required analysis. He said that in this case, Staff has chosen to remain neutral and has provided several options for the Planning Commission to choose from. Director Sargent said that any landowner has the right to go through the application process. He said that Staff cannot and will not circumvent this process allowed by the County ordinances that are in place.

Director Sargent provided a summary and some background information of the application. He displayed a map of the property in question and pointed out a 40-acre parcel within the property that is *not* part of the application. The property is in Sawmill Canyon located in Echo Canyon. It is a proposal for a long-term Temporary Use (TUP), which is a process to consider an application of a temporary nature. A benefit of the TUP to the County is that if it does not work out for any reason, the use will expire at the designated period of time. It is not a use by right but is discretionary. The Planning Commission can choose to either approve or deny. The application must meet the findings and Code criteria.

Director Sargent said the proposal is for a military/survival training program. The training offered by Chamtech will be low intensity with small groups of up to 15 people. He outlined the operation and activities that will take place:

- ATV training
- Sniper training, with the possibility of around 20 shots per day (The gun shots would be muffled.)
- The use of specialized communications equipment
- Surveillance/counter surveillance techniques
- Survival in combat skills

He said the activities which will not be included are:

- The use of explosives
- The use of chemicals
- Drones or other aircraft
- High volume shooting or shooting ranges
- Machine guns, tanks or heavy artillery

Director Sargent displayed area and topographical maps of Sawmill Canyon. Site maps which showed the ATV trails and the cabin were also displayed. He said the following issues of concern have been discussed: water quality, sanitation, fire, legality of the access, shooting, wildlife, and types of uses.

Director Sargent reminded the Commission there have been several Work Sessions, and this is the third Public Hearing for this proposal. The public has had questions on what would be the required procedure, if this use were to become permanent. He explained that it would require a Development Code text amendment of the Land Use Chart. He stated this is an

extensive process that would include reviews and Public Hearing by both the Planning Commission and the Summit County Council.

The intent of the Temporary Use Permit is to provide an opportunity for any landowner to apply for and receive approval for a reasonable use of their property, if the required conditions can be met. Director Sargent said there are several action options available for the Planning Commission to choose from. These are:

1. Continue the application to another meeting.
2. Deny the application with specific findings.
3. Approve the application with findings and conditions. Director Sargent read these from the Staff Report. He said the applicant would like to address some of these conditions at the appropriate time.

Director Sargent displayed photographs which demonstrated the location of Sawmill Canyon. The access road to the project site was also shown. He said at the October 20th meeting, the Planning Commission requested the following six items be addressed:

1. The requisite skills of the applicant (see SR page 5): Director Sargent said there is information in the packet which addresses this topic. Staff requests the Planning Commission to determine if the requisite skills have been demonstrated.
2. A finalized fire plan: Director Sargent said the applicants have provided documentation of the finalized plan. He said this requirement seems to have been satisfied.
3. Clarification of the water rights (that they are identified and conveyed): There is information in the packet on this requirement.
4. That the operation will not be a burden on the public services of Summit County or local communities: Staff again requests additional discussion by Planning Commission if this issue has been addressed.
5. The winter staging areas: Applicants have provided information on the staging areas. This is contained in the packet.
6. Insurance: The applicants have summarized their plan.

Director Sargent stated that the TUP requires that all Code criteria be met. There is a Temporary Use Permit analysis chart contained in the packet. This can be found on page 67 of the Staff Report. He discussed the requirements as listed in the chart, with Staff's analysis as follows:

Purpose:

A benefit to the community is a clearly stated requirement. Additionally, do the applicants meet the requirements of the General Plan and Development Code? Director Sargent said this has been discussed at the previous meetings. He asked the Commission to consider if there is sufficient evidence that this application meets the requirement of the Temporary Use Permit.

1. Is the use appropriate in this location?
Staff analysis determines that this use has similar intensity of hunting, four-wheeling, and snowmobiling that takes place in these types of locations. He stated that discussion of this condition by the Commission is welcomed.
2. The proposed use is in general compliance with the Development Code.
There will be no roadways or building structures, no development.
3. There are no violations of any laws according to the knowledge of Staff.
4. Evidence of the landowner's approval.
Evidence has been provided. The 40 acres parcel has not given approval.
5. Requisite skills
The applicant will address the requisite skills requirement. Staff is requesting additional discussion on this from the Planning Commission.
6. The site shall be returned to the original condition.
A bond is typically how this is satisfied.
7. The use shall not adversely affect in a significant manner, the public health, safety, and welfare.
Staff requests further discussion specifically to determine if the impacts can be mitigated. This includes impact on surrounding ranch operations, wildlife, fire risk, security and parking access.

APPLICANTS COMMENTS

The attorney representing the applicants, Paxton Guyman, addressed the Commission. He agreed with Staff that there are three options to choose from. They can approve, deny, or continue the application. The applicants are requesting that the option to continue is not chosen.

Mr. Guyman said there are 14 conditions of approval. They will abide by each of these conditions and are proposing an additional condition. He said one of the concerns of the public and the Planning Commission has been if the applicant has the requisite skills. The additional condition they are suggesting will address this concern. They propose that the permit is revoked if the applicant hasn't acquired a government contract within twelve months. He suggested they allow prospective clients to decide if the skill level is there. If a contract isn't obtained in this time period, the TUP will be revoked.

Mr. Guyman said the applicants maintain that the proposed use is very similar to the special hunting units (CMUs) that already exist in the area. The burdens and the impacts on the property are no different. He said that unless a contract is secured, there will be no burden. He believes that the benefits outweigh the burden, especially in light that there is a similar activity already taking place.

Commissioner Foster asked if the new condition would specify that the contract is with the U.S. government. Mr. Guyman said it may be any government agency, but of course not with a foreign agency. Commissioner Henrie asked if that would include law enforcement

offices. Mr. Guyman said that it would. Chair Houston turned the time over to the applicant to respond.

Anthony Sutera excused Eric Hernandez stating that Mr. Hernandez is at an army base demonstrating the technology that they have developed. Mr. Sutera said that he met with the Sheriff for 45 minutes on Monday. The Sheriff had read through the project materials. He said that what he took from that meeting was that the Sheriff felt the project would be quite safe and would not be detrimental to the public safety. The training would be a benefit to the Sheriff's office, especially for the SWAT team and the volunteer Search and Rescue team.

Commissioner Brown requested clarification from the Fire District on what they had previously required for the access road. (12 foot drivable space with two foot shoulders.) He asked why their position has changed. He asked Staff if there is an established width of easement for this road. If so, what is it? Brett Jones from the North Summit Fire District answered that as they talked about the road; the width requirement didn't seem to be a reasonable condition, and would cause the permit to be denied. They have agreed that structure trucks, ambulances and rescue trucks would not access the property. The Fire District would only access the property for a brush fire. He said this is no different than Tollgate Canyon and similar areas during certain times of the year.

Mr. Jones said that as this process has taken place, everyone has been concerned about Wildland Fire. He said the North Summit Fire District (NSFD) responds to more than just Wildland Fire. They run their ambulance about ten accidents to one brush fire. He said the brush trucks are higher off the ground and can access the site. They will walk in, and do the best they can to facilitate the site. He said that Chamtech will allow them to use their equipment; however, they may not be familiar with this equipment. He said they will be met at the gate by Chamtech personnel and taken into the property, should the need arise.

Commissioner Henrie asked Mr. Jones for clarification that the Fire District will not access the property for any reason other than a brush fire. Mr. Jones responded they will not access the property to put the cabin out. They cannot have one of their trucks go down trying to access this property; that would be an endangerment to the public.

Commissioner Henrie asked Attorney Strachan if liability is created for the County if someone should die or be seriously injured and Summit County has agreed that the Fire District will not access the property. Mr. Sutera responded that Air Med is on call and is only seven minutes away. Mr. Jones added that Chamtech will have a registered nurse on site and will be staff by people with EMT certifications. Attorney Strachan read from the Code (Section 11-2-5.) She said if the Planning Commission is inclined to approve and if the Fire District is inclined to sign-off, they can include a letter to the applicant stating what services can be provided.

Commissioner Henrie said what concerns him is that they would be entering into an agreement not to provide service; that they aren't going to try to respond. Mr. Jones

answered that they will try. They will hike in with necessary equipment if needed. Fire Warden Boyer said that some of the EMS and structure fire equipment could be put on a brush truck. It can be done, but it will be a more limited suppression. Chair Houston summed up by saying the Fire District will do the best they can.

Commissioner Brown said that he would like to know more information about the easement. He said there were red flags raised when the fire district changed their requirement on the needed road easement. He asked the width of the road. He said this information is crucial. The road easement is one of the first things that should have been determined. The road easement was discussed and as reviewed at previous meetings, was identified as the actual width of the roadway.

Chair Houston disclosed that 25 years ago she was related to the landowner "Tiny" Woolstenhulme.

The Public Hearing was opened.

BRUCE BAIRD said he is counsel to Nadine Gillmor. He recommended the width and the legality of the road easement is determined before the permit is issued. He said if this permit is approved, it will be litigated. Mr. Baird said that Ms. Gillmor's property is endangered because the Fire District can't reach her property due to the applicant's gate. He said if something happens, even if there is a waiver, the County will be sued.

Mr. Baird said that according to Brett Jones, Chamtech will have most of their employees EMT certified. He said that Chamtech only has two employees. Does that mean that one will be EMT certified? He said there is nothing on the list of Conditions about certified EMT personnel, and nothing listed about a registered nurse on site. There is nothing in the conditions about Air Med standing by.

Mr. Baird suggested that Mr. Hernandez isn't present because he would have to answer questions about his qualifications. He read a portion of a July 20th 2010 letter from Mr. Hernandez, which listed his skills and experience. Mr. Baird suggested some of the qualifications listed in this letter may be fabricated. He stated they have not proved they have any skill or experience. They have established they have one subcontractor; however, he is unable to find any details about that subcontractor. There has not been any information shared about any other subcontractors.

Mr. Baird referred back to a question which Commissioner Foster asked concerning the additional condition. She asked which government entity would meet the condition. Would it be the U.S. government? Mr. Paxton answered, yes; it would be the United States Government, not a foreign government. Mr. Baird said that Commissioner Henrie asked if a law enforcement agency would qualify. Commissioner Henrie was told that it would. Mr. Baird said that if a contract is obtained from the United States Government, that might be a valid check on the applicant's skills and qualifications. He believes that a

loophole may have been created if the condition can be applied to any government agency. If Chamtech can get one contract from one county sheriff's office to send one person to shoot one pistol, or ride one ATV, then suddenly it is carte blanche. If this is going to be a condition of approval, the condition should be with the government of the United States of America. He ended by saying the most permanent thing in the world is something that is temporary.

FRANK SUTERA is Tony Sutera's father. He said he would like to address the bad attitude that has been shown by the previous speaker. He stated that Mr. Hernandez has shown him his bullet holes. Mr. Sutera said that he has served for 23 years with Wasatch County Search and Rescue and 22 years with Wasatch County EMS. He said is 77 years old and has retired.

Mr. Sutera stated that when his son was a young man he used to help him dig out bodies from wrecked planes and assisted with ice rescues on Strawberry Reservoir. He said that his son got into electronics when he was young. He would fix radios for the Search and Rescue group. He said that later, Tony became a part of the Search and Rescue team.

Mr. Sutera stated the Search and Rescue group used to go out of state for training. His son's training camp would help immensely in that training. He added that if a pickup can access the property, so can a brush truck. He believes the training camp is a good idea. He encouraged the Planning Commission to think about this application seriously.

DENNIS WRIGHT said the width of a right-of-way will determine what type of activity that can take place. He said that making this determination is difficult and expensive. He added that the staging area that is being proposed won't be allowed by UDOT because it will block the highway. He referred to page 70 of the Staff Report. He read from the report stating there may be a potential traffic concern if numerous fire trucks need to be parked along the Echo Canyon Road.

Mr. Wright referred to page five (Section III-A) of the Staff Report. He said the State Water Engineer has not yet determined if this usage may be granted; therefore, the applicants don't know what kind of right they have. He referred to Page 50 of the report, which says the quantity of the water is 0.04 cubic feet per second.

Mr. Wright next referred to page 71 of the Staff Report. The Division of Wildlife Resources has stated they need to know the location and the timing of Chamtech's activities. He believes their concern is due to the timing of wildlife breeding and calving.

He said the applicants have "sweetened the pot" by adding the extra condition of revoking the permit if a contract is not obtained within one year; however, in the meantime, he and others would be in court trying to convince the judge that this shouldn't be happening. He said the court will be influenced by what the Planning Commission decides.

TOM TOOLE stated he has recently retired from the Utah State Division of Water Quality. He said the water in Sawmill Canyon is on the 303d List, which means it is impaired water; however, he said that his office didn't think it should be on that list. The applicants will need a stream alteration permit. The permit is through the State of Utah, not Summit County.

A problem the applicants may encounter is that Chalk Creek has the largest population of Bonneville Native Cutthroat trout in the United States. Because of this the State will look at this application a little more closely.

MARK NELSON lives in Midway. He said that he has over 20 years of corporate training. He is here to provide a reference for Tony Sutera. He said that Mr. Sutera understands the military and he understands business and technology. He knows how to establish and grow a business. He is a good American citizen and a good neighbor.

FRANK CATTELAN passed pictures of Sawmill Canyon to the Planning Commission. He stated there are petroglyphs approximately 60 feet from the road. He reported that he was with a tour group and a woman from California warned the group not to touch the petroglyphs, because the oils in their hand would damage them. Mr. Cattelan said this was a Fremont Indian ritual site. He wonders if there are any burial sites located there. He wants to preserve this historical area.

HOLLY MCGEE is a Coalville resident and a concerned citizen. She said this is great for Search and Rescue organizations. She asked if the paramilitary training will be for the Sheriff's departments or for the Feds. She said the fire potential and the access issues are a concern. Ms. McGee said there have been some good issues brought forth at the meeting. She felt that the petroglyphs should be protected.

LAFE BOWEN lives in Coalville. He asked if the applicants are planning on using heavy artillery. He said if they are, there will be major problems. He was told the applicants are not planning on using heavy artillery.

EUNICE SUTERA is the applicant's mother. She vouched for her son.

Chair Houston suspended the Public Hearing. She announced that after deliberation by the Planning Commission, there may be time for more brief comments from the Public.

COMMISSION QUESTIONS AND COMMENTS

Commissioner Clyde said seems that many of the operational issues are working themselves out. He said this brings them back to the more complicated issues, such as community benefits. He stated that he admires the applicant's courage.

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Commissioner Clyde stated that early on in the process there was a condition that dealt with background checks and notifying the Sheriff's office as to who the students would be. He wondered if the background checks would be adequate. He asked if notifying the Sheriff's office of who would be attending the training would be enough security. He said the training of bona fide law enforcement and military personal is different than training militia. He has tried to think about how Chamtech could limit their customers to a certain type of people without running afoul of constitutional boundaries.

Mr. Sutera responded that he had spoken to Sheriff Edmunds about this subject. Sheriff Edmunds commented that the militia-type of people wouldn't want to work with an organization like Chamtech that trains Federal agents. Commissioner Clyde commented that the militia and the FBI are polar opposites. He acknowledged the applicants have a military and a Search and Rescue background.

Commissioner Foster said she appreciates the public being in attendance. She noted that it has been a long, but good public process. She believes there is a need for this training. She said that because there are Summit County citizens who belong to the military, we have an obligation to provide this type of support if it is possible. She said the challenge is that the Code is very specific. The Code requires that a long-term TUP must provide an overall benefit to the community in the timeframe that it is permitted. She stated that not being a detriment to the Community is not the same as being a benefit. She said even if there were public benefits, she believes there are significant disadvantages. She listed the detriments as the following:

- The affect on the adjacent land owners
- The effect on the wildlife
- The burden on emergency services
- The risk of fire

Commissioner Foster said the Code also requires them to consider the health, safety, and welfare of the community. She said if this application were for a Conditional Use Permit, they would be having a different conversation. She supports the concept, not the location.

Commissioner Brown said he has lost some sleep thinking about this application; he has considered every scenario. He said he asked Staff to put together the TUP criteria table that is found in the Staff Report. He thought this would be helpful as the Planning Commission considers the criteria. He said he disagrees with most of the Code, but is bound to judge this and all applications by the Code.

Commissioner Brown said that as he has reviewed the criteria, he believes the applicants have the required skills. He thinks they have been able to meet or mitigate the Code Requirements for all but two of the conditions of approval. He hasn't been able to solve the concerns in mind for condition numbers two and seven.

Commissioner Brown said that condition number seven deals with fire management and emergency access. He said if an individual gets lost or is injured on their own property it is different than if an injury should occur as the result of the County extending an unprecedented use to the applicant. He thinks that the Planning Commission has a responsibility of protecting the health, safety, and welfare of both the community and those who choose to participate in this activity.

Commissioner Brown said that to him, it comes down to the width of the road. To have this application approved, he needs to know that the County's emergency trucks are able to access the property. This is unknown because there is no established road width. He believes the County should be able to support the activities that approval is granted to.

Commissioner Henrie responded that what Commissioner Brown has said makes sense to him. He said he is uncertain that the applicants have satisfied the requirement of showing they possess the requisite skills needed for such an endeavor; however, he liked the additional condition suggested by their attorney.

Commissioner Henrie stated there are unresolved water issues. The owners of the 40-acre parcel won't allow any type of trespassing by Chamtech. They have stated they don't want water pipes crossing their property to reach the Chamtech site. At the request of Commissioner Henrie, Commissioner Clyde commented that the application for the transfer of water rights doesn't seem unusual. A change application will have to be filed to change the water rights from a seasonal agricultural use to a year round use. He said this can be a time consuming endeavor. He said with 2,500 acres the applicants can probably find a pipeline path that won't go through the neighbor's property.

Commissioner Henrie said he is unsure of how the applicants would mark the boundaries of the property. He added he is not concerned with the staging area. He said they will drop people off and then be on their way. He said this is different from loading or unloading a cattle truck. He noted that the DWR wants to have input. They seem to have some legitimate concerns and there will most likely be additional conditions from them.

Commissioner Henrie asked how proof of U.S. citizenship will be obtained. He said there are a lot of illegal aliens in the Country; it may be hard to know if someone is a citizen or not. He said the EMS plan should be modified to show the proof of burden on Chamtech. Additionally, if there are petroglyphs are on the property, a condition should be made that the historical sites remain undisturbed.

Commissioner Ure said the applicants have a great idea, but he feels that the fire issues, the access, and the winter staging remain as problems. He believes this is not the right property for the activity. He said the Code requires the Commissioners to consider the health, safety, and welfare of the public. He believes this consideration should also extend to Chamtech's clients as well.

Commissioner Hanson said one can't ask for a much better time than to have Air Med available within seven minutes. She likes that Chamtech will have a registered nurse and an EMT on site. She said having a water truck on site is a huge safety measure. She commented that the surrounding property owners are participating in similar activities with gun fire. These activities are already up there and taking place. She said the property owner will be able to create some extra income, add to the local economy, create some open space, and exercise his personal property rights. These are all good things.

Commissioner Hanson said if this application passes there will be a significant financial gain for the businesses in the North Summit area. She listed some specific figures that she had calculated. She said this will bolster the economic development on the east side and at the same time, it will maintain open space.

Commissioner Foster asked who would be staying on site and who would be using the hotels? Mr. Sutera answered that it would most likely a 50-50 split of those staying on site and those utilizing the local hotels. He said that most of those who would be utilizing their services will be people who make a significant amount of money. Most likely, the spouses of the students would be staying at the local hotels and eating at the local restaurants. He stated there will be a financial benefit to the community and a benefit of world-class training.

Chair Houston thanked the applicants. She noted there is a lot of diversity of opinions on this application from the Commission. She believes that what is being proposed is not much different than what is currently happening. She said that a water truck and a water storage tank will be a benefit for all of the properties in the area.

Chair Houston stated that the Code discusses *significant* adverse effect. She commented that everything can adversely affect someone, but she doesn't believe this activity will adversely affect anyone in a *significant* manner. She noted they have CUPs for snowmobilers in rural areas of the County. There isn't emergency access available for these operations. She verified with the applicants that they will work with the DWR concerning the critical times for wildlife.

Commissioner Foster asked if their business taxes are coming to Summit County. Mr. Sutera said that presently they are incorporated in Draper, but they would be happy to change that if it would help. Commissioner Clyde commented that if they are training private individuals taxes would be received, but government officials would be tax exempt. He believes that sales tax would probably not be significant revenue.

Mr. Sutera stated that he had a business in Coalville for four and one-half years and a business in Park City for six years. He said they want to bring in revenue for the County. He noted that half of this business deals with technology. He said they are looking for a building for production of this technology. He has spoken with the previous owner of Kiddie Kandids about the possible use of this building. He said that when Kiddie Kandids went out of business there was a significant impact on the town of Henefer. He said that obviously he

wouldn't be interested in this building unless there was a need for it. He projects the potential revenue for the first two or three years to be in the \$3-5 million dollar range.

Attorney Guyman said that from listening to the Commissioner's comments it is apparent that each has put a lot of thought into this application. He asked the Commission to consider the following.

- The width and quality of the road. He said the width of the easement is defined by the road you see.
- Air med would be the primary medical response. It is seven minutes away.
- There will be on-site water storage for fire issues. This would be a benefit to all in the area.
- There is only so much that can be done in a rural environment and the applicants are doing all that can be done.

Attorney Guyman said that in two years this permit will expire and the Commission will have the chance to readdress these very issues. At that time, the applicants will have gained some operational history. This will assist the Commission in deciding if they want to allow this permit to end or to continue.

Commissioner Henrie said there is a long list of conditions. He said there seems to be a way to mitigate most, if not all, of these concerns. He suggested that they should examine each of the conditions. Commissioner Brown stated that the hunting units on the property can be used as a comparison, but they shouldn't be used for making a decision. This is because commercial hunting units didn't have to come before the Planning Commission for approval. Commercial hunting is an allowed use, paramilitary training is not.

Commissioner Brown said the Commission should be able to know what the width of the road is. He said if the road is 16-20 feet wide there would be no staging, fire, or EMS issues. He said he needs to know the width before he could vote to approve.

Chair Houston reopened the Public Hearing. She advised the public to keep their comments brief.

FRANK SUTERA said he has been up this road several times. He said that a four-wheel drive ambulance could travel the road. He said the Fire District wouldn't take a structure truck for one cabin. They would take a brush truck. The applicant commented that he has pulled a 31-foot trailer to the cabin using a two-wheel drive vehicle. The wildland fire trucks would have easy access up there.

Commissioner Brown said that although these vehicles may be able to drive up the road, his question is if the width of the vehicle will allow the vehicle to stay on the road. If not, do they have the right to access the road?

BRUCE BAIRD said the applicants are asking for a vote tonight. Because there are too many unanswered questions, the vote should be no.

BRAD WOLFE said he is one of the owners of the 40-acre parcel. He thanked the Commission for acknowledging their property rights. He said the applicants have reached out to them to resolve some of their issues; however, there are some issues they are still working on.

DENNIS WRIGHT said if someone dies, the County will be held liable. He said that only the State Engineer can determine if the exchange application will be granted. He agreed there is enough water, but it could be denied, especially because the application is changing the use.

Mr. Wright asked if the applicants section of road will that be taken out of the Greenbelt. He said that it would take bulldozer work to get a water truck on site. Part of that work would be on Mr. Ovard's property.

Chair Houston closed the Public Hearing.

Commissioner Henrie began a discussion on the conditions outlined in the Staff Report. He said that none of the 14 conditions should be eliminated. He asked how the condition concerning signage would be met. This was discussed.

Hours of operation was next discussed. Mr. Sutura said the hours of operation were listed in the original application. Commissioner Henrie suggested the wording of Condition #13 should be altered to read, "according to the project plan." The wording of condition #15 was considered. It was decided that this condition should require a contract by either a Federal or State agency. A county agency was not acceptable. Attorney Bruce Baird wished to comment but Chair Houston reminded him that the Public Hearing time had been closed.

Commissioner Henrie suggested there should be no activity until the conditions from the DWR are completed. Commissioner Brown commented that his questions have not been answered tonight. He said that if this is approved, he would ask that the TUP is suspended until the outside litigation is settled. That would avoid the County being involved in the litigation. Attorney Strachan said that litigation should not be a concern to the Planning Commission; their job to see if the applicant has met the criteria of the Code.

Commissioner Brown moved to deny this application based on item number seven of the conditions of approval. He said this condition states that the use shall not affect in a significant manner the public health, safety, and welfare; however, there would be negative impact under the areas of fire risk and access. Commissioner Ure seconded the motion.

Chair Houston called for a vote. Those voting in favor of Commissioner Brown's motion to deny were:

Commissioner Henrie
Commissioner Ure
Commissioner Clyde
Commissioner Brown
Commissioner Foster

Those voted against Commissioner Brown's motion were:

Commissioner Hanson
Chair Houston

- **MOTION CARRIED (5 – 2)**
- 4. **Public Hearing and Possible Recommendation of amendments to the Eastern Summit County Development Code regarding the Wildland/Urban Interface Zone – Adryan Slaght, Principal Planner**

Principal Planner Slaght said this is the second part of a Public Hearing concerning amendments to the Wildland Urban Interface (WUI) Zone. The first was held in Kamas on November 3, 2010. There have been no public comments received since the past Public Hearing. He stated that some modifications in the document have taken place to better reflect what the Planning Commission directed. He listed the concerns expressed by the Planning Commission at the last meeting, such as:

- A boundary line for the WUI Zone for Border Station Road.
- Croplands in the Hoytsville area being in the WUI Zone.
- If the rezone area is too tight, should the zone begin further up the slopes.
- Wetlands in the Wanship/Rockport area. (He said that Rockport Reservoir was included as an oversight. That has been corrected.)
- The potential increased cost of development and the need to have the WUI map advise of the potential increase in development cost.

Chair Houston thanked the Fire Districts for working with the Planning Commission when it becomes late. She said that when things were changed without people really knowing about, it upset some. Fire Warden Bryce Boyer said that he would like feedback from the Planning Commission to know if this document is addressing the issues adequately. Chair Houston asked if Brown's Canyon is really "no-man's land." Kent Leavitt from the South Summit Fire District answered that it is, but that fire suppression will be provided if needed.

Fire Warden Boyer said they are obligated to follow the State, Federal, and international fire codes. He said if there are mitigating circumstances some of the requirements can be waived. He said they try to work with applicants and not allow the cost to become prohibitive. He said there are certain things they can do, but they have to be consistent with what is required. At times people want things to be approved and at times people want things

Mike Schultz

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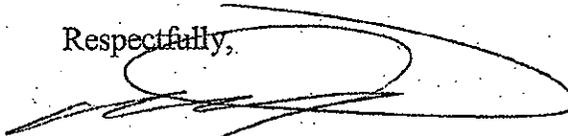
Dear Mr. Sergeant

I am now the new owner of the parcel of ground: Portions of Sections 28, 27, 26, 23, 22, and 21 Township 4 North, Range 5 East. Parcel number and sizes: NS-1268, 640.00 acres, NS-1269, 640.00 acres, NS-1270, 340.00 acres, NS-1277, 276.54 acres, NS-1276, 316.46 acres, and NS-1275, 316.46 acres.

I have met with Mr. Eric Hernandez and Mr. Anthony Sutera, the owners of ChamTech Enterprises, and I hereby grant them permission to move forward with their proposed training facility on my property.

Please let me know if you have any questions.

Respectfully,



Mike Schultz

Sawmill Ranch LLC.

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YOUR SAFETY IS OUR TOP PRIORITY

The North Summit Fire District emergency response to the Chamtech site in Sawmill Canyon will be as follows. With no improvements to the road, fire response with rescue and structure fire trucks will stop at the gate. These trucks are not capable of navigating the road in its current condition. The trucks will stay parked along Echo Canyon Road and access will be made on foot or a member of Chamtech's staff will meet us at the gate to provide us access to the incident site. This will affect the type of equipment we will be able to use. In the event of a structure fire at the cabin or in the event of a vehicle accident with the need for extrication, we will not be able to access the incident site with any effectiveness. With the potential of numerous fire trucks parked along Echo Canyon Road, this may cause a potential traffic concern.

In the event of a brush fire, our brush trucks and military style water tenders will be able to navigate the road to access the brush fire.



Community Development Department
P.O. Box 128
Coalville, Utah 84017
Phone: 435-615-3124
Fax: 435-615-3046
www.summitcounty.org

STAFF REPORT

To: Summit County Council
Report Date: January 6, 2011
Meeting Date: January 26, 2011
From: Jennifer Strader, County Planner
Project Name & Type: Appeal of an Administrative Decision
Type of Item: Discussion/Final Decision

A handwritten signature in black ink, appearing to be "JS", written over the "From:" line of the staff report.

EXECUTIVE SUMMARY: The applicant, Ted Barnes, representing the Park City Day School (school), is requesting that the Summit County Council (SCC) overturn the Community Development Director's Determination that a structure built within open space identified in the Gorgoza Pines Ranch Consent Agreement (Consent Agreement) is in violation of the Agreement.

A. Community Review

This item has been scheduled as a discussion and final decision. A public hearing is not required for an appeal.

B. Background

The Consent Agreement was approved by the Board of County Commissioners (BCC) on February 24, 1997. The Consent Agreement formulation was the result of a vested rights settlement between Summit County and the developers of Gorgoza Pines Ranch.

The property covered by the Agreement contains approximately 68 acres, located at the northwest edge of Pinebrook. The development includes Albertsons and the existing retail, commercial, and residential uses in the immediate vicinity. The Agreement anticipated development of single and multifamily residential units, as well as commercial and retail uses.

The school (previously known as Park City Academy and Carden Christian Academy) is located at 3120 W. Pinebrook Road. The school is not located on property within the Consent Agreement; however, they do own Parcel SS-B-4-D-X, which is a parcel west of and directly adjacent to the existing school site and included in the Consent Agreement (EXHIBIT A).

As part of the Consent Agreement, the parties agreed to a certain amount of density in exchange for community benefits. Section 5.2 of the Consent Agreement states, "*This Consent Agreement shall be construed so as to effectuate the public purpose of resolving disputes, implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest; while providing reasonable assurances of continued vested development rights under this Agreement.*"

One of those public benefits was the preservation of open space. The Consent Agreement contains an open space/visual corridor map that identifies the open space locations. Parcel SS-B-4-D-X is a parcel within one of the identified open space corridors (EXHIBIT B). The Consent Agreement addresses open space as "*Areas where no building or above grade structures other than trails or parking is to be located.*"

In August of 2010, the school started constructing a green house in the open space parcel. Code Enforcement contacted the school administrator and explained the nature of the violation and requested the removal of the green house support structure.

The structure was not removed and a Notice of Violation was sent to the school on September 8, 2010. Staff then received a letter from Ted Barnes, representing the school, requesting a hearing before the Administrative Law Judge (ALJ).

A hearing was held before the ALJ on November 18, 2010. After reviewing the matter, the ALJ declined jurisdiction as he felt administering a Consent Agreement was beyond the scope of the Administrative Code Enforcement (ACE) program. The ALJ recommended that any decisions be made by the Community Development Director (Director), with an option to appeal that decision to the Summit County Council (EXHIBIT C). On December 6, 2010, the Director sent a letter to the school confirming the violation and requesting again that the structure be removed (EXHIBIT D). The school then filed this appeal.

C. Identification and Analysis of Issues

The Consent Agreement expired in 2007. The school is of the opinion that because the Consent Agreement expired, the community benefits (i.e. the open space) also expired; therefore, they should not be subject to the restrictions that limit structures within the open space parcels.

Staff's opinion, including the County Attorney's Office is that although the Consent Agreement expired, the community benefits that were settled upon between the parties in order to secure the development rights remain.

In support of the County's position, Section 5.19, Survival of Developers' Obligations, of the Consent Agreement states *"Notwithstanding any provisions of this Consent Agreement, or of law to the contrary and as a partial consideration for the parties entering into this Consent Agreement, the parties agree that Developers are obligated to provide to the County the following enumerated extraordinary and significant benefits even if the Developers cancel, rescind, repudiate, refuse, revoke, or in any manner terminate or attempt to terminate this Consent Agreement:*

(1) Dedication of the open space shown on the project plan..."

Therefore, the requirement that certain parcels remain as open space was an obligation of the developer that existed beyond the expiration of the Consent Agreement. To believe otherwise would not only defeat the entire purpose of the Consent Agreement, but also negate the consideration the County gave for initially entering into the Consent Agreement, which was the settlement of a lawsuit and a grant of density to the developer in exchange for certain tangible community benefits to the County.

Also, Section 3.5, Dedication of Open Space states, *"As an integral consideration for this Consent Agreement, the Developers agree to, and shall be allowed to dedicate to the County or some other entity approved by the County (such as a charitable entity which will accept the land with a conservation easement), all of those areas designated as open space on subdivision plats and site plans as reflected and as specified on Exhibit B in a form approved by the County in order to assure the long-term preservation of the land in perpetuity as open space..."*

Staff cannot find any evidence that the open space areas were dedicated to the County or any other entity; however, when Staff reviewed the development permits for the existing buildings located in Quarry Village, site plans reflected the open space and visual corridor areas in order to ensure compliance with the Consent Agreement.

Exhibit C of the Consent Agreement also specifically lists the allowed uses for each of the parcels subject to the Consent Agreement. The allowed uses for the subject parcel specially states that only "open space," "trails," and "limited access roads" are allowed uses. Different parcels (parcels A and B) call out "garden supply, nursery, or greenhouses" as an allowed use, which suggests that a green house is NOT an allowed use in the subject parcel, otherwise such a use would have been specifically listed (EXHIBIT E).

Staff is also concerned about the precedence, with regard to this Consent Agreement and other or future Consent Agreements, which may be established if the school is allowed to build within open space, in violation of the Consent Agreement. That is, if the Council were to uphold the school's appeal, allow them to continue construction of their green house, and find that the community benefits / obligations that survived the Consent Agreement also expired, what would prevent the school from building any other type of structure or building. Such a determination may possibly lead to challenges of other Consent Agreements or may give the County pause to negotiate Consent Agreements with individuals in the future.

D. Recommendation(s)/Alternatives

The role of the County Council is to determine whether or not the Community Development Director erred in determining that the community benefits, specifically the open space parcels and their associated restrictions are applicable, even though the Consent Agreement has expired.

Staff recommends that the Summit County Council deny the request for an appeal based upon the information contained in the Staff Report, specifically that the open space identified as part of the Consent Agreement was designated as a public benefit in perpetuity and should remain as such as defined in the Agreement.

ATTACHMENTS

- EXHIBIT A: Aerial Photo / Parcel Map
- EXHIBIT B: Open Space / Visual Corridor Map
- EXHIBIT C: ALJ Determination
- EXHIBIT D: CDD Determination
- EXHIBIT E: Chart of Allowed Uses
- EXHIBIT F: Photo of structure

GORGOZA PINE PROPERTIES

CONSENT AGREEMENT

OPEN SPACE / VISUAL CORRIDOR

PREPARED FOR: GORGOZA PINE PARCEL, INC.
 200 SOUTH 900 EAST
 SALT LAKE CITY, UTAH 84111
 (801) 260-0000

PREPARED BY: THE AEC GROUP
 1000 WEST 1000 SOUTH
 SALT LAKE CITY, UTAH 84119
 (801) 466-1000

OPEN SPACE - AREAS WHERE NO BUILDING ABOVE GRADE STRUCTURES OTHER THAN TOWER OR PARKING IS TO BE LOCATED AT THE INTERSECTION OF PARCELS TO COUNTY ROAD CROSSING THROUGH THE OPEN SPACE DESIGNATED IN PARCEL A MAY BE ALLOWED AND AS SHOWN ON THE ROAD / TRAIL ACCESS EXHIBIT "B".

VISUAL CORRIDOR - AREAS WHERE NO BUILDING CAN BE LOCATED, ONLY BELOW OR AT GRADE PARKING AND LANDSCAPING IS ALLOWED IN THESE AREAS. PARCELS CONTAINING VISUAL CORRIDORS, ONE OF THE ORIGINAL VISUAL CORRIDORS MUST BE MAINTAINED IN THE DEVELOPMENT OF PARCEL A UNLESS SPECIFIC DEVELOPMENT OPTIONS FOR THE PARCEL, WHICH ARE ACCEPTABLE TO SUMMIT COUNTY ALLOW ENCLOSED HEREIN.

HIGH DEMAND PARKING - PARKING IS NOT INTENTIALLY BUILT. IF THIS ADDITIONAL PARKING IS NECESSARY FOR ACCESS OF HIGH DEMAND AS DEMONSTRATED BY THE INTERSECTION, PARKING WILL BE ALLOWED TO BE CONSTRUCTED IN THE AREAS.

THESE AREAS ARE GENERALLY LOCATED AND MAY BE SEPT SEPARATELY FROM FINAL DESIGN AS APPROVED BY SUMMIT COUNTY.

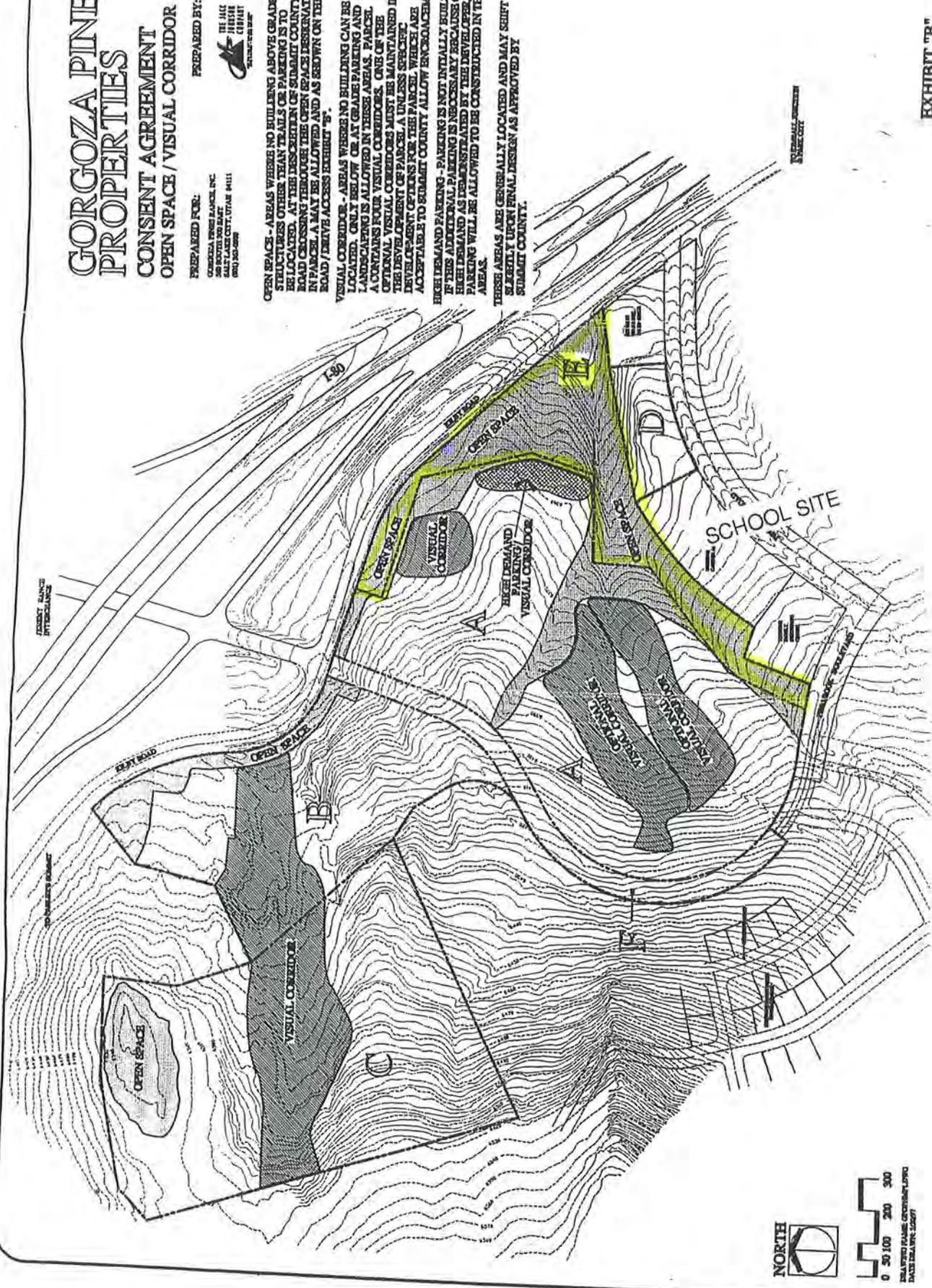


EXHIBIT "B"

23 November 2010

Helen Strachan, Esq.
Summit County Attorney
Coalville, Utah 84017

Edwin C. Barnes, Esq.
Clyde, Snow & Sessions
Salt Lake City, Utah 84111

RE: PARK CITY DAY SCHOOL ADMINISTRATIVE HEARING of 18 November 2010

Dear Counselors:

Thank you for your presentations regarding the referenced matter. All parties involved were patient, professional, and helpful. The matter is quite complex and has an extensive history.

My review of the myriad issues presented during the hearing leads me to the preliminary conclusion that this matter is not properly within the jurisdiction of the Administrative Code Enforcement (ACE) Hearing program. The ACE program is designed to be a portion of a more comprehensive code enforcement program which allows precisely written regulations to be effectively applied.

In this matter, it is my opinion that any attempt to reconcile the party's interpretations of the underlying Development Agreement and the subsequent Consent Agreement would clearly be beyond the scope of the ACE program. Rather, I recommend the issues be presented to the Community Development Director for an administrative decision. Any necessary appeals would then need to be presented to the County Council.

As a consequence of my deliberations I am declining jurisdiction of the referenced matter. I suggest you jointly discuss the way forward. I am hopeful that you can agree on a plan and forum which will be acceptable to your clients.

Very truly yours,



Mark A. Ferrin, Administrative Law Judge

EXHIBIT C



December 6, 2010

Park City Day School
Attn: Charles Sacs
3120 W Pinebrook Rd
Park City, UT 84098

Edwin C. Barnes
Clyde, Snow & Sessions
202 S Main, Thirteenth Floor
SLC, UT 84111-2216

Dear Mr. Sacs and Mr. Barnes,

By now, you likely have received Judge Ferrin's letter regarding the ALJ Hearing on the Park City Day School. As indicated in the letter, the ALJ has taken the position that the matter is not within the jurisdiction of the ALJ Hearing process. Because the issue involves the consideration of a violation of the Gorgoza Pines Consent Agreement, Judge Ferrin suggested an administrative decision to be made by the Community Development Department.

We stand by our position that the greenhouse structure built within the open space is in violation of the Consent Agreement and ask that your clients remove the offending structure within 10 calendar days of receipt of this letter. Alternatively, you may appeal this decision within 10 calendar days of receipt of this letter by filing an appeal to the Summit County Council.

Appeal applications are available via web site www.summitcounty.org or you may obtain one from the Summit County Development Department.

Respectfully,

Don B. Sargent
Community Development Director

Cc: File
Helen Strachan, Deputy County Attorney
Leslie Rushton, Enforcement Officer
Jennifer Strader, County Planner III

EXHIBIT D

- G. Mixed Use. Where possible, a developer shall consider housing opportunities over commercial space to maximize the type and afford ability of living environments available within the neighborhood and to promote a sense of life and interest after shopping hours.
- H. Building Heights. Generally building heights will be restricted to 2 stories. A third story is allowed so long as it occurs within the area formed by a pitched roof on the two story structure where approved by Summit County. A taller structure can be accomplished using natural topography and grades to reduce the overall effect, or if the structure can be designed to blend into the natural mountain landscape in the judgment of the BCC.
- I. Signage and Lighting. Outdoor signs and lighting for the Project shall be regulated by the provisions of Ordinance 282 of Summit County, unless another standard is adopted by the County and is agreed upon by Developer.

XI. ALLOWED USES

The uses and densities allowed for each Parcel within the Project are as described at Exhibit B, and Table I. Although generally described at Exhibit B and Table I, the land use within any of Parcels A, B, C or D s hall be limited to the following lists, subject to all other limitations herein. The BCC may approve other uses not listed, provided that it is shown by the Developer that the specific use applied for is compatible with the surrounding neighborhood and will not create any impact which is more adverse than the impact otherwise created by the uses listed.

Parcels A and B

Parcels A and B are intended to permit opportunities for a variety of retail commercial, service commercial, office uses or single or multiple family dwelling units. Mixed use commercial and residential uses shall be permitted and encouraged. The following uses are specifically allowed:

- Bed and breakfast inn;
- Nursing and retirement home;
- One hotel or motel not to exceed 100 rooms - (1 only, Parcel A or B);
- Small scale light or custom manufacturing uses when directly associated with a permitted retail operation;
- Contract construction offices;
- Building maintenance services;
- Local utility and communication offices;
- Restaurants (no drive-through);

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- Child day care;
- Adult day care;
- Multiple family residential dwellings at approved densities.

Parcel E

- Open space
- Trails;
- Limited access road.

Parcel F

- Public roadway;
- Trails;
- Open space.

XII. QUARRY

It is acknowledged that Developer has used an existing stone quarry within the Project for many years, and this area will be protected as a part of a "Visual Corridor". Developer shall be allowed to continue limited quarry operations for commercial purposes and for use of quarry stone in the Project. Developer is encouraged to use quarry stone within the Project. As development is completed and as the quarry is utilized, Developer shall plan the use and development of the quarry to leave a natural looking outcropping of stone. Upon application, the County shall issue appropriate permits for continued quarry operations.

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8-30-2010
LR

EXHIBIT F

August 31, 2010

Claudia McMullin
Summit County Council Chair
P.O. Box 128
Coalville, UT 84017

Dear Ms. McMullin;

In October of 2007 my son Scott McDermott and I entered into a lending traction (bridge loans) for a developer and his partner who owned a residential construction company, and a development group (I'll refer to them as the "borrowers"). These loans became available to us through two brokers one of which was a former friend of my son's. These borrowers had an opportunity to purchase lots at Promontory Point at a discount if they purchased them in quantities of 3 or more.

The borrowers were to come up with 40-50% of the purchase price of the lots at closing and we were to lend the remaining 50-60% for a 60 day period until the borrower's construction loans (permanent financing) came through. The brokers and borrowers provided us with the borrower's financials and the REPC's (Real Estate Purchase Contracts) for 5 lots in the Promontory Point development. They also provided us with the borrower's completed loan application for the permanent financing and bank statements which showed their financial strength.

My son Scott closed on his loan in October 2, 2007, (SUM-4 lot) lending \$641,112.00 and I closed on four other lots on October 9, 2007 (SUM-12, SUM-16, SUM-31, and DC-37) lending \$3,773,277.00.

After the 60 day loan period expired the borrowers having not repaid the loans asked for 3 extensions over a 4-6 month period which we gave them. In the early fall of 2008 one of the borrowers had a conversation with us confessing that the loans we made with them were not 50-60% LTV but that we had funded between 100-110% of the purchase price of the lots. The original REPC's had been changed by the borrowers/brokers to reflect the fraudulent purchase price. The title company's agent had fraudulently prepared two sets of closing statements at the time of closing, one reflecting the 40-50% of funds coming in at closing from the borrowers which were the documents we received and the actual closing statement showing no funds coming in from the borrowers which were the undisclosed and correct documents. We would ultimately learn that everyone from the brokers, to the borrowers, to the real estate agents, and the development group had a hand in the fraud as the large commissions provided too great of an incentive.

Efforts by us to resolve this issue became futile as each of the parties involved in the fraudulent transaction claimed they were the one innocent party and had no prior knowledge of the fraud.

In the early summer of 2009 my LLC, Forest Hills Apartments LLC, and Pheasant Wood LLC owned by my son Scott McDermott filed a claim against all the parties involved in the transaction. (Case No. 090910443)

We have been battling this lawsuit for well over a year now. Several of the key Defendants who promised they would make good on repaying our loans have now filed bankruptcy and are attempting to discharge or erase their debt to us. The main developer who signed a personal guarantee for the loans is also under investigation by the FBI and IRS and has at least 12 felony indictments against him for loan fraud on another fraudulent loan he took out with a federal lending institution.

In the spring of 2009 I was forced to foreclose on the four lots in which I had Trust Deeds, however, my son Scott has still not been able to foreclose on the SUM-4 lot. The owner of the constructions company who had signed the Trust Deed, Trust Deed Note, and Personal Guarantee claimed that his signature had been forged on these documents and that he had never signed any of them. This forgery claim has created a clouded title and now my son is being forced to go through a judicial foreclosure with American First Title to finally secure the SUM-4 lot he collateralized when he originally made the loan. He still doesn't have title to the property and isn't sure when he'll get it.

To add insult to injury the market for these lots has vanished and the lots are worth less than 30% of what we lent on them, which has been a devastating financial blow to both of us, not to mention the high legal expenses that have been incurred to recoup the loaned money. It is for this reason that we are seeking tax relief. I paid last years (2009) taxes in full and will do everything in my power to fulfill my obligation for upcoming taxes; however, the taxes for 2007 and 2008 have become burdensome. These were taxes that the borrowers were responsible for and defaulted on. My son is in an even worse predicament. The property tax on SUM-4 continues to accrue without his control and he can't even appeal the assessed value yet. I was able to appeal the assessed values on the four lots I did loans for last year and get them reduced, but Scott is unable to do so as he still doesn't have SUM-4 in his possession.

We would be happy to discuss this matter in detail either by phone or in person further if you so desire. Please feel free to contact us at your earliest convenience. My son, Scott McDermott can be reached at 801-910-3826, and I can be reached at 801-561-9108 extension 12.

We would greatly appreciate your consideration in this unfortunate matter.

Sincerely,

C. Eugene McDermott – Forest Hills Apartments LLC

Scott D. McDermott – Pheasant Wood LLC

Reason for Tax Relief for:

Forest Hills Apartments LLS/Gene McDermott Pheasant Wood LLC/Scott McDermott

- Money laundering and loan fraud (Mortgage Fraud, Tax Fraud, Money Laundering, Wire Fraud etc.) were committed by the individuals with whom we did bridge loans for the purchase of the 5 Promontory properties. See letter dated 8-31-10 (Tax Relief Letter for Promontory Lots) for details outlining what transpired.
- 2007-2008 property taxes were not paid by the individuals who committed the fraud even though they indicated to us that the taxes had been paid and everything was current.
- 2008 property tax amounts on the 5 lots could have been appealed as property values had dropped but the fraudulent borrowers didn't do that as they were trying to fraudulently inflate the value of the lots so large lending institutions & banks would lend on the land for higher amounts. Had we (Pheasant Wood & Forest Hills) been in possession of the lots we would have appealed the assessed values and had them reduced as was done for the 2009 & 2010 property taxes after the foreclosures occurred. Note: Pheasant Wood LLC's, SUM-4 lot is still in Judicial Foreclose and Scott McDermott won't take possession of the land until the end of April 2011.
- The accrued property taxes, interest and fees on the 5 lots have become a hardship financially. A total of \$4.4 million dollars was lent on the bridge loans and not a dime has been recouped and never will be from the fraudulent borrowers. The lots sell today for \$60K-200K and continue to drop.
- We continue to have legal bills from the civil lawsuit. The lawsuits were started in hopes of having monies returned to us. Scott continues to pay for a additional lawsuit against American First Title which ultimately led to the judicial foreclosure. These legal fees to regain possession of the lots have also been and continue to be a financial burden.
- Below is what we are asking in the way of tax relief: All penalties and interest charges dropped from the 2007 & 2008 property tax bills for the properties owned by Forest Hills Apartments LLC. All penalties and interest dropped from the 2008, 2009, 2010 property tax bills for the properties owned by Pheasant Wood LLC. The reduction of 2008 property taxes on the 4 lots owned by Forest Hills Apartments LLC. The reduction of 2008, 2009, and 2010 property taxes on the 1 lot to be owned by Pheasant Wood LLC. See below table for detailed breakdown.

Forest Hills Apartments LLC 2008 – SUM-12

Property Tax	Interest	Special Assessment	Penalty	Current Total Owed
\$6,736.25	\$918.27	\$196.20	\$138.65	\$7,989.37

Forest Hills Apartments LLC 2008 – SUM-12 REQUESTED TAX RELIEF

Property Tax	Interest	Special Assessment	Penalty	Total Owed Request
\$4,715.38	\$0.00	\$196.20	\$0.00	\$4,911.58

Forest Hills Apartments LLC 2008 – SUM-16

Property Tax	Interest	Special Assessment	Penalty	Current Total Owed
\$5,943.75	\$813.29	\$196.20	\$122.80	\$7,076.04

Forest Hills Apartments LLC 2008 – SUM-16 REQUESTED TAX RELIEF

Property Tax	Interest	Special Assessment	Penalty	Total Owed Request
\$4,160.25	\$0.00	\$196.20	\$0.00	\$4,356.83

Forest Hills Apartments LLC 2008 – SUM-31

Property Tax	Interest	Special Assessment	Penalty	Current Total Owed
\$7,132.50	\$970.74	\$196.20	\$146.57	\$8,446.01

Forest Hills Apartments LLC 2008 – SUM-31 REQUESTED TAX RELIEF

Property Tax	Interest	Special Assessment	Penalty	Total Owed Request
\$4,992.75	\$0.00	\$196.20	\$0.00	\$5,188.95

Forest Hills Apartments LLC 2007 & 2008 – DC-37

Property Tax	Interest	Special Assessment	Penalty	Current Total Owed
'07 \$5,087.40	\$1,645.89	\$ 0.00	\$101.75	\$6,835.04
'08 \$4,755.00	\$ 653.96	\$182.09	\$ 98.74	\$5,689.79

Forest Hills Apartments LLC 2007 & 2008 – DC-37 REQUESTED TAX RELIEF

Property Tax	Interest	Special Assessment	Penalty	Total Owed Request
'07 \$5,087.40	\$0.00	\$ 0.00	\$0.00	\$5,087.40
'08 \$3,328.50	\$0.00	\$182.09	\$0.00	\$3,510.59

Pheasant Wood LLC 2008 & 2009 & 2010 – SUM-4

Property Tax	Interest	Special Assessment	Penalty	Current Total Owed
'08 \$5,151.25	\$710.19	\$210.33	\$107.23	\$6,179.00
'09 \$5,446.35	\$403.72	\$506.29	\$119.05	\$6,475.41
'10 \$3,052.20	\$ 12.30	\$427.54	\$ 34.80	\$3,526.84

Pheasant Wood LLC 2008 & 2009 & 2010 – SUM-4 REQUESTED TAX RELIEF

Property Tax	Interest	Special Assessment	Penalty	Total Owed Request
'08 \$3,605.88	\$0.00	\$210.33	\$0.00	\$3,816.21
'09 \$2,723.18	\$0.00	\$506.29	\$0.00	\$3,229.47
'10 \$2,094.75	\$0.00	\$427.54	\$0.00	\$2,522.29