



**MEMORANDUM:**

Date: July 13, 2016

To: Council Members

From: Tom Fisher

Re: Recommendation to appoint members to the Public Arts Program and Advisory Board

Advice and consent of County Manager's recommendation to appoint Matthew Lawyer, Jenny Diersen and Melissa Marsted to the Public Arts Program and Advisory Board. Matthew, Jenny and Melissa's terms to expire July 31, 2019.

Advice and consent of County Manager's recommendation to appoint Jorge Rodriguez to fill the unexpired term of Polly Hopkins on the Public Arts Program and Advisory Board. Jorge's term to expire July 31, 2017.

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# MINUTES

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**SUMMIT COUNTY**  
**BOARD OF COUNTY COUNCIL**  
WEDNESDAY, JUNE 1, 2016  
SHELDON RICHINS BUILDING  
PARK CITY, UTAH

**PRESENT:**

**Roger Armstrong**, *Council Chair*  
**Chris Robinson**, *Council Vice Chair*  
**Kim Carson**, *Council Member*  
**Claudia McMullin**, *Council Member*  
**Talbot Adair**, *Council Member*

**Tom Fisher**, *Manager*  
**Anita Lewis**, *Assistant Manager*  
**Robert Hilder**, *Attorney*  
**Kent Jones**, *Clerk*  
**Brandy Harris**, *Secretary*

**CLOSED SESSION**

**Council Member McMullin made a motion to convene in closed session to discuss property acquisition. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.**

The Summit County Council met in closed session for the purpose of discussing property acquisition from 1:00 p.m. to 3:40 p.m. Those in attendance were:

**Roger Armstrong**, *Council Chair*  
**Chris Robinson**, *Council Vice Chair*  
**Kim Carson**, *Council Member*  
**Claudia McMullin**, *Council Member*  
**Talbot Adair**, *Council Member*

**Tom Fisher**, *Manager*  
**Anita Lewis**, *Assistant Manager*  
**Robert Hilder**, *Attorney*  
**Dave Thomas**, *Deputy Attorney*  
**Lisa Yoder**, *Sustainability Program Manager*  
**Jami Brackin**, *Deputy Attorney*  
**Peter Barnes**, *Planning and Zoning Administrator*  
**Patrick Putt**, *Community Development Director*  
**Megan Suhadolc**, *Snyderville Basin Interim Director*

**Council Member McMullin made a motion to dismiss from closed session and to convene in work session. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.**

Chair Armstrong called the meeting to order at 3:48 p.m.

## **WORK SESSION**

- **Discuss recommendations of the Summit County Recreation Arts and Parks – Cultural Committee**

Ben Castro, Summit County Cultural Committee, stated one of the new applicants this year was Ballet West. The committee is excited about this program and believes it will enhance the area and the cultural aspects of it. Mr. Castro stated the committee is also excited that this year Mountain Town Music has announced publicly they are going to expand their concert series to Eastern Summit County, specifically in the DeJoria Center as well.

Mr. Castro stated this year the Summit County Recreation Arts and Parks had \$771,000 to spend, which was significantly more than last year's \$685,000. He explained their total spend requests was \$1.3 million, so they could fund about half of the requests that people were asking for. Mr. Castro stated one item he wanted to highlight was the Park Record digitalization. He explained they've been going back and having the University of Utah help out in actually digitizing the old Park Records and putting them online so people can go in and see them. The Park Record's chairperson, Sally Elliott, has also been in the process of trying to renegotiate the cost and getting some additional organizations to help out with that cost as well.

Council Member Carson asked if the process the way it's set up this year is working well and functioning the way they would like it to. Mr. Castro stated there were some hiccups with the Dropbox feature. Some of the committee members weren't able to access the information. A quick fix that employed was they got a flash drive for everyone and downloaded it and gave everyone the flash drive so they could access that quickly. He explained there were frustrations when applicants or additional information would come in, they wouldn't know until they had gone into the drop box several times to actually find the applicants or the information. One of the things they did this year that they had done in previous years was had a presentation available for all of them. They also did a public announcement with the restaurant committee talking about specifically how the funds work and what it's looking like and when they would start the granting season and application season.

Council Member McMullin asked how the quality of the applications was this year. Mr. Castro stated he felt like there has been an improvement. They specifically sat down with other organizations outside of the actual applicant time talking specifically about some things that they're looking at, such as community outreach. They also looked at organizational capacity. Specifically they wanted these organizations to have a strong board that would help guide and direct them to what their mission specifically was, and several organizations were able to accomplish that. Mr. Castro explained one of the things they continually ask with all of the applicants is, "What are you doing to enhance Eastern Summit County?" because they feel like a lot of times that is the underserved area. A lot of these organizations are getting that message. For example, the Park City Film Series is going to the Kamas library to do some screenings and give people some opportunities to see films that they wouldn't have seen otherwise.

A discussion regarding the funds granted arose and Mr. Castro explained the funds distributed have to satisfy certain criteria such as art, music, natural history, and some of those types of categories. Some of the things that they're limited with are actually education programs, specifically in the schools. They cannot have nonprofits go in and teach specific programs week after week, but they could fund Park City Institute doing an assembly for some of the schools, for example. They had Attorney Robert Hilder talk to the committee specifically about that and they went through several of those organizations and the different programs to make sure they were within the state code. The programs to be funded are required to be for Summit County residents and not for tourists.

- **Discuss recommendations of the Summit County Restaurant Tax Committee**

Summit County Restaurant Tax Committee Chair, Brook Hontz, stated they are thrilled to announce their 25th year as a restaurant tax committee in Summit County because that means they've had 25 years of millions of dollars going back to our cities, towns, and to all the local not-for-profits. Ms. Hontz reviewed the process and explained what the restaurant tax entails. She stated one percent is collected off of all restaurant sales within Summit County. The restaurant tax was created by the County Commission and there was an enabling ordinance created by the state that the county replicated, which is how they are organized and how they utilize that statute. Ms. Hontz stated they have a nine-member committee of volunteers who work very hard to review all the applications. This year there were 48 applications. Each volunteer reads every application and then participants in listening at the interview with each of the applicants and the Q&A and then participates in the deliberation process.

They are allowed to recommend to the Council to give money out based on two things: financing tourism promotions; and the development, operation, and maintenance of publicly owned convention, cultural, or tourist facilities. After the committee receives and goes through all of the applications, there are five criteria they utilize to make sure they meet the state statute. Those are (1) the tourism component, (2) the ability to leverage, (3) the potential to increase the 1 percent restaurant tax, (4) whether the application is a promotion or an asset, (5) and whether the application is a new or developing program. Each application is then given a score and ranked by how they turn out in the outcomes. The deliberations occur after that where they sit down and look at the budget and how the budgets meet the requirements of the statute and then match up to how they scored. There are varying degrees of tourism in these applications. The committee's focus concentrates on the ability to augment this tax by tracking day and overnight visitors, particularly outside Summit County. Some of the applications are from marketing promotions and in other cases they see applications for an event, a service, or a capital improvement of a facility that will enhance the experience of a guest visiting the area. The committee recognizes and agrees that some local events and facilities will not directly drive an overnight visitation and provide opportunities for guests to enjoy their stay in Summit County and enhance the perception of the county as a valuable destination.

This year there were 48 qualifying applications requesting a total of over \$4.1 million. In comparison, last year they had 40 applications and a request for \$2.6 million. They have made specific recommendations for nearly the entire amount of \$2.27 million, so the shortfall is \$1.57 million.

Ms. Hontz stated specific restrictions for use of the funds is provided in the report that was sent to Council and they have a rationale developed about why and how the applicants should receive the money and specific restrictions that will hopefully go into their contract about how the money needs to be spent. There would be a \$929.80 reserve that they feel is an appropriate amount to carry over to the next year. She explained, due to many factors they have eight applications that have a zero dollar recommendation. Four of those, per working with the county attorney, they found do not meet the statute. The other four they didn't feel were appropriate during this cycle of funding based on how the applications came in and the tourism component. Every year is different in terms of who comes in, how much they ask for, and how many funds are available. This year there will be \$2.2 million going back into the community.

Council Member Carson asked what the purpose of the remaining \$929.80 was going forward. Ms. Hontz replied volunteers are allowed to submit travel expenses and things like that and the committee felt like it would cover any costs of the restaurant tax committee going forward. Council Member Adair asked if they underfunded a project and they really needed the total amount, do they have the opportunity to keep the money until they get the amount to fund the project, and Council Member McMullin asked if they have to spend the money in a certain amount of time. Ms. Hontz replied they have 18 months to spend it. There have been a couple of special cases. Pre-Olympics set aside money annually to go into an escrow account that was used at the appropriate time, and that was deemed appropriate by the county attorney. They are also doing that with a very similar type of scenario with the USSA regarding setting aside some money that they will need and the committee feels it's important to spend in a few years, but they don't want them to spend it now. The county holds that in escrow so the committee gives it to them this year, but the county holds it for them until the time of the ski event in 2019. She stated the committee doesn't like to hold on to too much money because the statute frowns on that and they like to get the money back in the community as soon as possible.

Council Member Carson asked if they saw any glitches that they feel need to be changed next year. Ms. Hontz replied they have worked closely with Assistant Manager Anita Lewis and discussed a couple of things that need to be changed such as some Dropbox issues, but they feel each year it's going to get better and this year was better than last year.

## **CONSIDERATION OF APPROVAL**

- **Pledge of Allegiance**

## **COUNCIL COMMENTS**

Council Member Adair stated he went to the Mountain Lands Association of Governments meeting and they reviewed the budget for Mountain Lands and it passed unanimously. Kim Carson was nominated to sit on the steering committee and he thinks she will do a great job.

## **MANAGER COMMENTS**

There were no manager comments.

## **APPROVAL OF MINUTES**

MAY 4, 2016

MAY 11, 2016

MAY 16, 2016

**Council Member Carson made a motion to approve the minutes of May 4, 2016, as written. The motion was seconded by Council Member Adair and passed unanimously, 4 to 0. Vice Chair Robinson abstained from the vote, as he was not present for the May 4, 2016 meeting.**

**Council Member McMullin made a motion to approve the minutes of May 11, 2016, as written. The motion was seconded by Council Member Adair and passed unanimously, 3 to 0. Vice Chair Robinson and Council Member Carson abstained from the vote, as they were not present for the May 11, 2016 meeting.**

**Council Member Adair made a motion to approve the minutes of May 16, 2016, as written. The motion was seconded by Vice Chair Robinson and passed unanimously, 3 to 0. Council Member Carson and Council Member McMullin abstained from the vote, as they were not present for the May 16, 2016 meeting.**

(A brief recess was taken from 4:17 p.m. to 4:33 p.m.)

Chair Armstrong called the Consideration of Approval session back to order at 4:33 p.m.

- **Discussion and possible action regarding an appeal of the Community Development Director's interpretation of a Plat Note of the Sunrise Ridge Subdivision, appellant Steve Luczak dba Kodiak, LLC; Patrick Putt**

Dave Thomas, from the County Attorney's office, presented a PowerPoint presentation to outline the legal issues and use of the Plat Note in question. Mr. Thomas stated agricultural preservation is one of the driving things behind Eastern Summit County general planning code. As part of that Eastern Summit County code there's a specialized bonus density that allows you to basically triple your density in exchange for the preservation of agricultural land and open space. The density bonus is intended to be incentive for the property owner. As a condition to any approval of getting this density bonus, there is a mandatory plat note. The purpose of the plat note is to preserve the land for agricultural use. Usually they also would require a conservation easement, and while that's preferable under the code, you can, in fact, simply have subdivision lots that are oversized lots that have the agricultural use restriction on them, as the code says: "So long as there are adequate restrictions on the agricultural preservation area for it to continue to function as continuous agricultural use."

Mr. Thomas explained the Sunrise Ridge Subdivision, which is at issue, is a 10-lot agricultural cluster bonus subdivision, so it was a subdivision and received density bonus under this specific provision in the Eastern Summit County Development Code. That subdivision plat was an amendment in 2012 and Kodiak America acquired it in June of 2014. The property was first subdivided in 2007. The Sunrise Subdivision Plat, Plat Note 8, is the specific required plat note for these agricultural density bonus subdivisions. It is meant to preserve areas as agricultural and open space purposes and only uses customarily associated with agricultural use of the properties permitted. Both agricultural, as well as open space, are defined terms in the code. Agriculture is: Specifically the tilling of soil, rising of crops, foraging, and grazing. It is not recreational activity not normally associated with a farm or ranch.

The rules of construction are basically that the best evidence of what something means is the plain language. Mr. Thomas stated the Council needs to interpret terms according to their ordinary and accepted meanings and they need to interpret terms so that all parts are given meaning and effect, avoid rendering portions superfluous and read all the provisions and the code provisions as a whole. The whole idea is to ensure that the intent is followed, and the intent of these agricultural subdivisions is specifically to preserve the agricultural nature.

Subdivision plats may only be amended in accordance with state statute, and that state statute is implemented through the Eastern Summit County Development Code. Specifically under that code, a Plat Note may only be amended by the Eastern Summit County Planning Commission after they hold a public hearing. Mr. Thomas stated it is an important case to remember since Kodiak America has brought an issue of somehow the grading permit acted as a waiver. Waiver and land use in Utah is disfavored. Mr. Thomas stated the only ones who can change that plat note are the Eastern Summit County Planning Commission, not the County Engineer and not the Director of Community Development.

Mr. Thomas explained there is also an issue in this case of what a grading permit is and what it is not. He explained grading permits are not development permits. They are not administered by the Department of Community Development. They are administered under a separate code section by the County Engineer. That's important because land use law is fairly unique and the state statutes that govern it are very unique as well, and they're found in Title 17, Chapter 27(a) of the state code. Grading permits do not convey land use approvals or development rights. Grading permits cannot be used to amend subdivision plats. That's part of state statute. So the purpose of the grading permit is to ensure that erosion control measures are in place when land is disturbed. As a result of that, these permits are temporary in nature and are not meant to be permanent. You go in and disturb the land and you get the grading permit to make sure the erosion control measures are satisfied. The ability to change a use or in terms of granting density, those things can't be done by grading permits. The grading permit that's at issue here, 14-G-31, was issued in November 2014. It was issued only for Lot 1 of this ten-lot subdivision. It was for bike trails and new pasture land or new pasture space and landscaping.

Grading permit 14-G-31 was also limited to 6.2 acres. It also had a provision in it where it says "see email" in the actual permit where the Department of Community Development, although they acknowledged they were aware of the grading permit, they said, "This does not constitute approval of the grading permit by the Community Development Department." The one who approves the grading permit is the County Engineer. This grading permit expired in May of

2015. Mr. Thomas stated that the grading permit had a site plan that was attached to it. The site plan showed a total net disturbance of about 5,000 cubic yards that was to be a minor disturbance. In December of 2015, the County Engineer issued a "stop work" order. One reason that was issued was the grading permit had expired in May of 2015. The grading activities were also inconsistent with the permit because while that disturbance was supposed to be around 5,000 cubic yards, the actual disturbance was around a quarter of a million cubic yards. This also occurred outside the 6.2 acres. It included all of Lot 10, which is not part of the grading permit, in excess of 50 acres. Kodiak America did provide the County Engineer in February of this year some updated site plans, which included a much more extensive nature than what was presented to the County Engineer back when that permit was first issued.

Mr. Thomas stated in March of this year the Community Development Department received a complaint from the neighboring property owners. Their complaint was that Sunrise Ridge Subdivision was being used as a commercial motocross track. According to multiple sources, there was a large-scale motocross race with spectators on this land on May 7th. On March 23rd this year, Community Development Director Patrick Putt issued a cease and desist letter stating that the motocross use was prohibited. In response Kodiak America appeared on Fox 13 News and said it had no intention of ceasing motocross activities. Then on April 7th, a use determination was not made by Mr. Putt in accordance with the county code where he stated that the motocross use is prohibited and constitutes a violation of Plat Note A because the motocross track and motocross use are not agricultural uses nor are they customarily associated with the agricultural use of the property. Farmers and ranchers do not have a motocross track as part of their normal activities. Kodiak America filed an appeal. The Council is the appeal authority and Kodiak America has the burden of proof to show that this use determination by Mr. Putt was in error. Mr. Luczak on behalf of Kodiak America has stated with regard to this appeal hearing, "We're just not using the track right now out of kindness. But if the hearing doesn't go well, we'll start riding right away."

Mr. Thomas cited a case of Utah County versus Young, and explained the definition of zoning estoppel. He stated as a matter of law estoppel may not be used as defense by one who has acted fraudulently or in bad faith or with knowledge. "He who comes seeking equity must come with clean hands." Mr. Thomas stated that's the law and in this case Kodiak America is not entitled to zoning estoppel. They had actual knowledge of Plat Note 8. Plat Note 8, which has not been amended, and a motocross track are inconsistent with what ordinarily occurs on agricultural property and what agricultural use is. A grading permit as a matter of law cannot amend a subdivision plat. You cannot have good faith reliance on a grading permit to somehow change the use. Mr. Thomas stated bad faith was demonstrated through the issuance of the "stop work" order, in what the County Engineer was led to believe would be a minor disturbance of 5,000 net cubic yards is 250,000 cubic yards of disturbance. The County Engineer was misled. This was supposed to be 6.2 acres and it's over 50 acres. The excavation was occurring after the grading permit expiration. Mr. Thomas stated bad faith was also demonstrated by the statements of Mr. Luczak and his continuation of motocross after the cease and desist letter was served. Lawlessness is bad faith. There are multiple witnesses to an event on May 7th with spectators that were after the cease and desist order and after the use determination in April. He stated it is the county staff's contention that in this case the Council should uphold the use determination by Mr. Putt.

Stanford Bell, attorney for Steve Luczak, then presented their side of the case by stating this entire case is about what a piece of paper means. Does it mean what it says, that Kodiak America had a permit to grade property or does it mean something else? He asked if the county can come back at a later time and revoke a permit and tell them it's not in accordance with the county code and tell them that they have to tear down what they just constructed. Mr. Bell stated there are the two properties that are owned by Kodiak America, Parcel NS-131-B to the east, and to the west, Sunrise Ridge Subdivision. There is a supercross track on Parcel NS-131-B (which is not in question) and a motocross track on the Sunrise Ridge Subdivision.

In 2005 Kodiak America acquired Parcel NS-131-B. This parcel is zoned as agricultural protected 40, AP-40. In the Summit County Code, Section 11-3-2 states that AP zone district is established to preserve, promote, maintain, and enhance the use for commercial and agricultural purposes and protect and promote the open space values of Eastern Summit County. Mr. Bell stated that code states "agricultural purposes and open space values," which is very similar to the Sunrise Plat Note at issue in this case. Mr. Bell presented a timeline of a sequence of events which led to the approval of a grading permit for a supercross track for Parcel NS-131-B, approved by the County Engineer.

In 2014, about five years after the supercross track was installed, Kodiak purchased the Sunrise Ridge Subdivision. Mr. Bell explained that based on his prior experience with the county, Mr. Luczak knew that both properties were zoned as AP-40 and he knew that a Plat Note existed and both had to do with open space and agricultural. The grading permit had apparently given him the authority and approval to install a supercross track on the first property, so Mr. Luczak did the same thing regarding the Sunrise Plat Note and submitted a grading permit application along with topographic plans detailing the motocross track. Mr. Bell presented the Council with an exhibit book and stated that Tabs 16 through 25 constitutes all the communications back and forth between Kodiak with the county, and that it was very clear that Kodiak intended to install a motocross track. There was no question jumps were being installed and a track was being installed.

Council Member Adair asked if there were plans submitted with that. Mr. Bell replied yes, there were plans submitted with a detailed topographic survey. He explained you can see the lines inside of the track, which are the elevation changes, and those were submitted to the Engineering Department. Mr. Bell stated on November 18, 2014 a grading permit is issued and appeared to be approved by all the departments. Tab 16 included a copy of the grading permit. Mr. Bell stated when Kodiak saw the permit issued and saw that Engineering had signed and Planning approved by "see email," especially with the past performance with the previous supercross track, to Kodiak America this looked like they had the approval of everybody to install a motocross track.

Council Member Carson stated on that permit it has 6.2 acres, and asked if that was the actual area that was affected. Steve Luczak, the owner of Kodiak, replied the 6.2 acres is what Heather Judd had listed on there she could figure out the bond for the seeding, so she only calculated the actual track acreage. Everything else around the track is pasture space. Mr. Luczak stated he was told he did not need the AG permit for the agricultural side and that's why it looks like it's 50 acres because she figured 6.2 for grass seeding and that's how they charged him the bond accordingly. The pond, the pasture, and the access roads was all done under the agricultural side,

which in the grading permit says it's exempt for a permit. He stated the actual track, if you calculate some of the pasture space it crosses, is less than 9 percent of his entire property on Lot 1 and everything else is agricultural that they are doing up there.

Council Member Carson asked when the county calculates an area for a permit do they look at the total area that it encompasses or do they look at the specific area where dirt was moved. County Engineer Gary Horton replied that typically they just look at the area that's disturbed. They don't include the whole lot. Mr. Horton stated this is not a typical grading permit. Generally it's within a boundary and the whole area is being disturbed. He stated being the way that Heather calculated it and the way they currently calculate, they base it on the disturbed area. Mr. Luczak stated back then that's not what they did for the bonding on it. It was only the track so she calculated what the track was for that area and charged him accordingly for it. They had a \$10,000 bond originally for the lower piece and then they moved that to the upper track because it was still there and good. Mr. Luczak stated it was a good relationship between the Engineering Department and Kodiak. If Kodiak were asked something, they provided it and they always let them know up front what they were doing. The track map was laid out for the grading permit and they provided more surveying to put the jump sizes and quantity in there. The actual disturbance of the track is still approximately with what they estimated, which was about 12,000 yards, plus or minus. The quarter million yards is the entire agricultural side of both properties. Mr. Bell stated it's true that 250,000 yards of soil have been moved, however, that is not on the motocross track. The permit covered a lot more than just the motocross track. It also included a pasture land, a riding arena, and a few other items.

Chair Armstrong asked how much soil was moved in the Sunrise Subdivision. Mr. Bell stated the motocross track was authorized to be moved 12,000 cubic yards, and Tab 17 has the actual survey that was submitted.

Mr. Bell stated the other misconception is by some of the neighbors that Kodiak uses and markets the motocross track commercially. NBC and MX Sports approached Kodiak and the Park City Chamber of Commerce to determine if they could conduct a race on the Sunrise property. It was determined by the Planning Commission that a conditional use permit would be required to conduct that race and as part of that a public hearing would need to be held to determine what the potential impacts would be. At that point Mr. Luczak determined that wasn't a route he wanted to go down so no race was ever held. Mr. Bell stated three months ago Yamaha, the manufacturer of motorcycles, approached Mr. Luczak and wanted to shoot a commercial on his property. Mr. Luczak informed them they needed to get a filming permit from the county before he would authorize them to ride on the track. They went to the county and asked for a permit and they were denied so Mr. Luczak did not allow them to ride on the track. Mr. Bell explained while Kodiak has rides regularly and invites family and friends; it's never been used commercially and has never received any compensation for operating the track.

Mr. Bell stated Steve Luczak went to the Engineering Department, who can give grading permits to install driveways and motocross tracks to receive a grading permit. It was signed by the parties to Steve and to Kodiak and he relied on that in good faith believing that he had the authority to install a motocross track.

Chair Armstrong asked Mr. Bell if Mr. Luczak had conferred with him as counsel and stated he wanted to build a motocross track and that he had a grading permit if Mr. Bell would consider that to be enough to proceed with building the track. Mr. Bell replied he would because the county is the holder of the county code and the interpreter of it and if you have a permit from the county saying you can install a motocross track, he doesn't know why he would tell him he couldn't. Chair Armstrong asked if Mr. Bell had knowledge of the Plat Note if that would make him pause. Mr. Bell replied he would probably call to confirm but that would be about as much as he would do.

Council Member McMullin stated the theory of the case here seems to be a pattern of practice of the manner in which the county behaved prior with Mr. Luczak when they gave him a permit for one motocross track that was sufficient and in the second instance the same type of permit was deemed insufficient. Council Member McMullin asked besides the pattern and practice of the history, what current representation Mr. Luczak relied upon with the second permit, the Sunrise Subdivision, which led him to believe it was all he needed to build out the motocross track. Mr. Bell replied that Mr. Luczak had been emailing and talking with Heather Judd from the County Engineering Department and she had come back a few times and said they need more detail on the motocross track and topographic survey to show elevation changes, and then they issued the permit which says he has the authority to do it pursuant to the survey he turned into the county.

Council Member McMullin asked what evidence Mr. Luczak had that the county understood he was building a second motocross track. Mr. Luczak replied that every time he went into the Engineering Department they talked about how big the jumps were and how high they were flying on it. Mr. Luczak stated he believed once he submitted the application everybody would look at it, and when Leslie and Heather would email him asking for more information on it Kodiak gave them everything they were asked to give.

Mr. Luczak stated they have not done anything on either track that's been commercial. He explained the motocross race that was mentioned earlier was a father-and-son outing on the property with about 20-30 fathers and sons, and a couple of the kids brought four-wheelers up there and they pitched their tents on the asphalt because it was raining a little bit.

Dave Thomas explained the property in question is not just like Parcel NS-131-B. The difference is the property owner in 2007 came in and got a specialized subdivision and with the specialized subdivision came a very specific Plat Note. Property owners are aware of what the Plat Note is. If the Plat Note didn't mean anything more than the definitional section of what AP zone is, they wouldn't have an agricultural bonus subdivision. It would mean nothing. It's very specific of what it is and it's defined. The agriculture is defined and that's what makes this so much different. Mr. Thomas stated when he talks about zoning estoppel and bad faith; this is a property owner who knew Plat Note 8.

Gary Horton pulled up two pictures for the Council and stated the first was a photo of the plan that was presented to the engineering department when the grading permit was provided, and the other was the plan that was provided after in February of this year, and in looking at the difference of that, it was definitely in excess of 12,000 yards.

Council Member Carson asked Mr. Horton if they're doing grading that's considered AG grading, do they still need to get a permit for it or are they able to do whatever they like. Mr. Horton replied there is an agricultural exemption for AG permits for grading. That would be considered for a fairly small grading effort and not to this degree or magnitude.

Vice Chair Robinson stated he's an agriculturalist and he's done a lot of grading and land leveling in order to improve productivity and when he reads the code he doesn't see that it's minor grading. He stated if you were wanting to adjust the slope or make modifications to land for agricultural purposes it could be deemed major. He asked Gary Horton if he had a response to that. Mr. Horton replied that he would have to go back and look at the code.

Vice Chair Robinson asked what the proper permit to apply for is if someone wants a private motorcycle track. Dave Thomas replied that for this subdivision someone would have to have a plat amendment and they would have to distinguish the Plat Note.

Community Development Director Patrick Putt explained how the development code and land-use table works. He stated the code identifies all the land-use zoning districts on the east side. It has a list of a series of land uses. Each one of those land uses are either identified as an allowed use, a conditional use, or a temporary use. The way the code is structured goes on to explain if a use is not listed on that table as a conditional, allowed, or temporary, it is prohibited. There is no specific list for a supercross or a motocross track. One can argue that the closest land use in this particular case is that of a seasonal recreation use (motorized). That also implies a commercial use. There is no specific land use enumerated for a private motocross use that has been administered in the code on the east and west side. By virtue of the fact that it's not identified, it would be prohibited.

Vice Chair Robinson stated they have an applicant that has presented in evidence that hasn't been controverted by the staff that as early of 2005 or 2006 or sometime many years ago on another parcel, grading permits for the express purpose of creating a track were not only granted but extended many times. Dave Thomas stated he thinks the dispute they have with that goes back to what a grading permit is. A grading permit is not a land use permit. Vice Chair Robinson asked if someone needs a land-use permit to ride a motorcycle on their land. Mr. Thomas replied a grading permit is something that they do for erosion control purposes and it does not grant use, density, or configuration.

Vice Chair Robinson asked if prior to this issue with Sunrise Ridge if the county had any concern. And if so, did it ever express it with the activities occurring on the out-of-subdivision track that was built beginning in the last ten years? At any time was there an issue with that? Patrick Putt responded that he does not have a personal recollection of a complaint on the lower portion of the property. There may have been, but he's just not aware personally of those being made.

Vice Chair Robinson asked Mr. Luczak with respect to the permit that was issued that expired in May of 2015, did he do any work on the track after that date, and why, if it expired in his previous course of conduct with the county, did he not get an extension. Mr. Luczak replied in the past every time that the permit was about to expire the county would give him a reminder call. He stated with the old engineering department he got into that habit and when he didn't get

a call this time, it slipped his mind to file for the extension. He stated he didn't realize it had expired until December when they put the "stop work" order on there that his permit had lapsed. Vice Chair Robinson stated the permit has an expiration date on it and it's not the county's obligation to notify someone when it expires.

Vice Chair Robinson asked if the definition of agriculture that staff has cited is the same definition that the Council should apply to the agricultural preservation zone. Mr. Thomas replied that's the general definition.

Vice Chair Robinson asked if the creation of the grading that resulted in the track was any kind of development activity that's in contravention that required a permit under the 8 or the AP-40. Mr. Thomas replied it is technically development. Use density configuration is development.

Council Member McMullin stated back in 2009 a letter from the Community Development Department went out to Mr. Luczak regarding a grading permit application that had a sentence stating: "This approval does not include the existing motocross track." She stated Planning knew a track existed, and asked what permit was gotten from the county to get that track in the first place. She asked if a grading permit didn't allow for the track, then what did, and what kind of permit needed to be used if it was converted to commercial purposes in the future. She stated she wanted to know legally what kind of permit was required, if it's not the grading permit, to create the motocross track on NS-131-B. Patrick Putt stated motocross tracks, commercial or private, are not listed or identified on the land-use table. He stated it is his opinion that in order to have a private or commercial motocross track, one would have to amend the Eastern Summit County Development Code and land-use table to establish that use and have the appropriate process to do that. Mr. Putt stated he has not been able to find any permit or permit history or file that speaks to what happened in 2009. Attorney Robert Hilder stated it's his understanding on the first lot in 2009 there was never a permit issued and it's not a complying use, but they're way past any time to enforce that, so it's a non-complying use.

Chair Armstrong stated the grant deed in this particular property talks about that it's subject to any restrictions that may be placed on the property. This is a very clear plat restriction. The plat restriction says the only thing you can do on that property in exchange for the density bonus is stuff that is customarily associated with agriculture. Chair Armstrong stated, "I don't think that a motocross track is customarily associated with agriculture." Chair Armstrong reviewed that Mr. Luczak previously stated that he builds high-end houses and has worked with many cities and counties, so when he bought this piece of property, as a developer of planning homes he probably read the plan and would understand these restrictions. Chair Armstrong stated the purpose of that AG bonus is to maintain the agricultural community without adding substantially to the infrastructure and he believes Mr. Luczak has done everything to the opposite of that and still gotten the density bonus.

Council Member McMullin stated what disturbs her about the whole situation is that she sees communication from different departments from 2009 to 2015 all of which expressly acknowledge there's motocross happening on one parcel and then the second parcel and nobody ever told Mr. Luczak that he did it wrong and that he should have gotten a different permit. She stated she doesn't know what permit he was supposed to get to cut those trails other than the grading permit, so she completely disagrees with Chair Armstrong's statements. She stated she

believes Mr. Luczak relied upon the county and that permit when he kept doing that which he'd been doing for nine years and nobody ever told him to stop.

Council Member Adair asked: When did the Planning Commission know there was a track? He asked if they are not allowed at all from the county, when did the county know that the lower track was being built let alone when the upper track was being built and why didn't that raise a red flag and say it's allowed not? Council Member Carson stated she believed this was a property rights issue and because of that she goes back to the Land Use Code. She stated she has to respect those other residents that purchased property based on what uses were identified on that plat map. That gave them certainty when they purchased their property, she think it's clear, that the motocross track that Mr. Luczak has built lies outside of the typical agricultural use of a motorcycle. Mr. Luczak asked why the county didn't tell him that and Council Member Carson replied it's not the same as the other track and there is a difference and it's because of that Plat Note and the impact it has being on that hillside that was supposed to be preserved as open space.

**Council Member McMullin made a motion at 7:10pm to convene in closed session for deliberation. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.**

**Those in attendance were:**

**Chair Armstrong  
Vice Chair Robinson  
Member Carson  
Member McMullin  
Member Adair**

**Attorney Hilder**

**Council Member McMullin made a motion at 7:25pm to leave closed session and return to open session. Council Member Adair seconded and the motion passed, 5-0.**

Chair Armstrong asked Mr. Luczak if he ever had any permit issues in Wyoming where he had previously built motocross tracks. Mr. Luczak replied they didn't have to have a permit because it was their private property and they were allowed to grade without a permit.

Chair Armstrong asked Dave Thomas to give the definition of grading permit once more, and he complied. Chair Armstrong asked Dave Thomas for the current definition of development in Eastern Summit County, the planning code. Mr. Bell stated there is no definition of development in Eastern Summit County and that Title 10 is defined, but Title 11 is not.

Chair Armstrong asked Gary Horton when the Engineering Department gets an application for a grading permit what they are typically looking at. Mr. Horton explained when a grading permit is brought into their office they look at the amount of disturbance, level of disturbance; make sure it's within their property. Depending on the level of disturbance, they'll determine partially the amount of requirements from the applicant. Typically, if they have any question about land use applications, they will go down to the Planning Department, because it's not in their purview,

just to make sure they're not approving something that is contrary to what should be used on that particular site. Every once in a while they may ask for additional information depending on what's supplied, but they typically do not pull up the plat and look at that. Chair Armstrong asked Mr. Horton when they are looking at an application if they are essentially looking for erosion. Mr. Horton replied yes. He stated they understand they have the ability to grade upon their property. One of the things that they don't guarantee is access to a home, or it doesn't guarantee future abilities or rights because it is grading and it needs to have stabilization for erosion control and in the end, it needs to be re-vegetated.

Vice Chair Robinson stated it seems to him that the county has a broken system in that the application was circulated by Planning and Planning said, "We don't approve," and yet the permit was still issued.

**MOTION:**

VICE CHAIR ROBINSON: Mr. Chair, I'd like to make a motion that we grant the appeal and overturn the decision by the Community Development Director on the grading permit that's engineering permit 14-G-31, concerning Parcel SRRG-1-AM -- if I can read the scribblings here correctly -- based upon the following findings of fact: That the applicant in good faith applied for a grading permit submitting a detailed plan of what he intended to do on the property, and that the permit was issued and it was issued by the Engineering Department in the same fashion as his previous course of conduct had been with the county on adjacent properties, albeit not under the subdivision plat, and that he relied on that grading permit to construct the track that has now been built there and that the county is estopped from, at this point, rescinding that permit. And, furthermore, that this motion be subject to such additional findings of fact and conclusion of law that our county attorney's office may add. I don't believe that this -- there may exist continued issues with respect to what constitutes private versus commercial use and I'm not opining in this motion on that.

COUNCIL MEMBER CARSON: What about going back -- so a grading permit was issued, but it was clearly -- the grading was outside of the plans and there was obviously more dirt. So going back -- having to re-vegetate the property according to the original permit.

VICE CHAIR ROBINSON: I'd be fine with adding the condition that the applicant comply with the terms of the permit. I think that it appears to me that the track is substantially -- the footprint of the track is substantially the same other than minor deviations. I haven't seen evidence to indicate that it deviates significantly from what was submitted in the grading application.

COUNCIL MEMBER CARSON: But more dirt was moved.

VICE-CHAIR ROBINSON: That gets to the question of parsing the excavation for the track versus other agricultural grading that has not been -- you know, which would not require a permit. The way I understand it, agricultural grading is exempt.

COUNCIL MEMBER CARSON: I understood that it would, though, based on the quantity.

VICE CHAIR ROBINSON: They did -- by choosing an engineered grading permit, in other words, in excess of 5,000 cubic yards -- which goes to infinity, I suppose -- I think that that -- had it been the opposite, which is the regular grading application of less than 5,000, and I think there's a different standard of review and it would have been more material to have an overage in the amount of material moved, than it would be in this instance where they chose the engineered version.

COUNCIL MEMBER MCMULLIN: So, no, you're not going to accept that change to your motion?

VICE CHAIR ROBINSON: No, I'm not going to accept that change.

CHAIR ARMSTRONG: So I have a motion from Chris.

COUNCIL MEMBER MCMULLIN: Second.

CHAIR ARMSTRONG: I'm going to vote "no" on this. I don't think that you get estoppel here because estoppel does require clean hands and I don't think you have that. I think you're an experienced developer. I think you had an engagement in Wyoming, whether it was on a road or access or otherwise, so you've had experience with enforcement before. I think as a builder/developer you understand how to read a plat map. I think that the note is clear. And I think all of that for me and even the "see email" annotation on the permit, I believe, should have called your attention, and a reasonable person would have inquired, "What does that mean?" and you didn't do it. And so I think that you actually used the system here to your advantage and that's why I'll be voting no. Any discussion or comments before we vote?

VICE-CHAIR ROBINSON: I wanted to just say that I wish I weren't in a position of having to make this motion because I don't like the track and I think that it creates a host of problems, but I believe in the rule of law, and for that reason only I am in support of this motion and making it.

COUNCIL MEMBER MCMULLIN: I feel the same way.

CHAIR ARMSTRONG: All in favor?

(The motion passed, 3 to 2, with Vice Chair Robinson, Council Member McMullin, and Council Member Adair all in favor. Chair Armstrong and Council Member Carson were opposed.)

CHAIR ARMSTRONG: Congratulations.

**PUBLIC INPUT**

Chair Armstrong opened the public input.

There was no public input.

Chair Armstrong closed the public input.

The County Council meeting adjourned at 7:50 p.m.

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*Council Chair*, Roger Armstrong

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*County Clerk*, Kent Jones