

City of Driggs  
**PLANNING AND ZONING COMMISSION MEETING**  
**MINUTES**  
MEETING HELD AT CITY HALL  
April 11, 2012  
6:30pm

**MEMBERS PRESENT:** Rick Bladwin (Conducting), Delwyn Jensen, Jen Calder, and Chris Valiante.

**OTHERS PRESENT:** Planning and Zoning Administrator Doug Self and Deputy Planning and Zoning Administrator Kreslyn Schuehler, City Attorney Stephen Zollinger and other community members.

**1) Approval of Minutes**

The Commission reviewed the minutes from March 14, 2012. Commissioner Baldwin and Valiante made corrections.

**Commissioner Chris Valiante made a motion to approve the minutes from March 14, 2012. Commissioner Rick Baldwin seconded the motion. The motion passed with all in favor.**

**2) Public Hearing – 6:40PM – Reverse Zone Change for Burns Concrete Properties from M1 (Light Industrial) to C3 (Service and Highway Commercial)**

Kathy Spitzer, Teton County Prosecutor, spoke to the Commission. She presented a brief background regarding the previous application and the reasons for wanting to reverse the zone change for these properties. Ms. Spitzer stated the original zone change from C3 to M1 was based on the Development Agreement, which she felt could not be fulfilled by Burns Concrete. She explained that one of the conditions for the zone change was to building the structure based on a 75-foot height allowance. The applicant and County have been involved in litigation for several years regarding the denial of the Conditional Use Permit to allow the requested height limit.

Ms. Spitzer stated the County won at the Supreme Court and therefore, she felt, the applicant could not build the proposed structure. The reason for the increased height was to keep the building enclosed. Ms. Spitzer believed that Burns Concrete would not be able to enclose the building and therefore could not meet the conditions of the Development Agreement. She further stated that Kirk Burns had expressed interest in applying for a variance. However, she felt that was not a good option, as a variance can only be granted if undo hardship based on geography of a site was present.

Doug Self presented his staff report. He stated in the Comprehensive Plan, the property straddled a line that suggested general commercial and manufacturing land use recommendations. Therefore, either zone could be compatible with the Comprehensive Plan. Mr. Self felt the objective was to get rid of the temporary structure and either have a permanent structure with an appropriate height or find another use and support the zone for that use. Mr. Self suggested the Commission play a neutral role and find that either zone would be supported.

Stephen Zollinger spoke to the Commission as well. He stated the language in the Development Agreement was unclear and believed the Development Agreement was still in effect and did not constitute an automatic reversal of zoning, as was implied by Ms. Spitzer.

Commissioner Rick Baldwin opened the Public Hearing at 6:51pm.

Anna Trentadue spoke in favor of the applicant. She felt her concern was a policy issue and stated the batch plan had “been emblematic of planning in the valley.” She stated that after a 5-year battle and victory for the county, the city should also take action and approve the reversal zone change.

Kirk Burns, spoke in opposition. He read a letter submitted to the Commissioners dated April 11, 2012. He stated both the county and the city originally directed Burns Concrete to the subject location because it was the best fit. He further stated they knew there would be a height issue from the beginning, but weren’t sure the extent until plans were developed. The statute that was discussed regarding height limitations for conditional use permits had been revoked, according to Mr. Burns. He concluded his statements by saying he had no intention of leaving the valley and wanted to move forward with the project.

Commissioner Rick Baldwin closed the Public Hearing.

Ms. Spitzer responded to public comments. She stated the applicant should have applied for a variance and could still do so. However, she felt, due to the definition of a variance, the application would not be approved. She discussed the legislative change that left the decisions for height conditions to the cities and counties. She did not agree with Mr. Zollinger when he stated the timeline should not go into effect until after the judgment from the Supreme Court was received and continued to feel the timeline should have begun when the document was recorded. Therefore, the applicant had not complied with the Development Agreement and the zone should be changed, Ms. Spitzer stated.

Commissioner Delwyn Jensen questioned if the county signed a Development Agreement to allow the project, but then revoked it before the applicant could prove the project could be done. Mr. Zollinger explained simple contract law versus force majeure. He further stated that the county may be correct in their “assumption” that the applicant cannot perform the conditions within the Development Agreement. However, the applicant had not had the option to prove otherwise. He felt it was premature to ask for anything other than a zone change, which should be independent of the Development Agreement because, he felt, the agreement had not matured yet to do otherwise.

Mr. Self stated the County Commissioners would need a finding as to whether the C3 zone was compatible with the Comprehensive Plan and he felt it was. He further suggested that the Commission not debate the time line of the Development Agreement. Mr. Zollinger further stated he felt the Development Agreement had not expired.

Commissioner Calder questioned what would occur if the property went from the M1 to the C3 zone. Mr. Self stated the C3 zone would not allow a batch plant and felt a variance would not be the best method to move forward. He suggested a zoning code amendment be pursued if needed.

Commissioner Jensen stated he was in favor of leaving the zone the way it was and giving the applicant 18 months to decide what they are going to do and if they are able to do so under the Development Agreement. He further stated that he remembered discussing a place for this type of business and felt it was very appropriate in the location it was in now. He concluded by stating he did not understand why the county would sign an agreement and then not let the applicant fulfill the obligations.

Commissioner Valiante felt the Comprehensive Plan supported both the C3 and the M1 zone and reverting the zone would be impossible for the applicant to move forward.

**Commissioner Delwyn Jensen made a motion to recommend to Teton County Commission that the zone reversal be denied but note that the C3 zone change does comply with the Comprehensive Plan. Commissioner Chris Valiante seconded the motion. The motion passed with all in favor.**

### **3) Design Review of Addition to The Pet Center**

Geoff Lynes presented plans for an addition to The Pet Center. He stated the tenants wanted more retail space. He further stated the tenant did not want the windows that were currently shown in the plan and the two side windows and back window would be eliminated. The Commission determined that would be agreeable.

**Commissioner Chris Valiante made a motion to approve the design review for The Pet Center with the removal of the mentioned windows. Commissioner Jen Calder seconded the motion. The motion passed with all in favor.**

### **4) Election of Planning and Zoning Chairman and Vice Chairman and Determination of Meeting Schedule**

**Commissioner Chris Valiante made a motion to nominate Delwyn Jensen as Chairman and Rick Baldwin as Vice Chairman. Commissioner Jen Calder seconded the motion. The motion passed with all in favor.**

The Commission determined the meeting times should remain the same.

**Commissioner Chris Valiante made a motion to adjourn. Commissioner Delwyn Jensen seconded the motion. The motion passed with all in favor and the meeting was adjourned at 7:54pm.**