

## FREMONT COUNTY STODDARD BROTHERS GRAVEL PIT APPEAL HEARING

Date: October 07, 2010  
Time: 6:00 pm  
Location: Fremont County Annex Building

**Attended by:** Commissioners Paul Romrell, Skip Hurt, and Lee Miller

**Also attended by:** Clerk Abbie Mace, Deputy Clerk Cathy Conger, Hearing Officer Blake Hall, Planning and Building Interim Administrator Stephen Loosli, and Prosecuting Attorney Joette Lookabaugh

Commissioner Romrell called the hearing to order at 6:03 pm and welcomed the public attending.

Commissioner Romrell introduced those in attendance. He reviewed the schedule for the evening.

### **Hearing Officer Blake Hall**

Mr. Hall welcomed everyone. The record shall reflect that this is the time and place indicated for the public hearing relative to the appeal filed by Steven Huber. It has been published 14 days prior to this hearing. Mr. Hall has a notice from the administrator that the individuals who live within 300 feet have received written notice of the hearing. There is a list of all other individuals who requested or meet the requirements that have received written notice. This proceeding will declare that proper notice has been provided and the hearing will go forward.

He stated that if there was a commissioner or public official who believes that there is a conflict they may recuse themselves now. Commissioner Hurt stated no, Commissioner Romrell stated no, and Commissioner Miller stated no.

### Planning & Building Interim Administrator Stephen Loosli

Stephen Loosli provided the administrators report. Mr. Loosli provided a background on the comprehensive plan. Tonight is in regards to an appeal for permit number 10-022 that was granted by the Planning & Zoning Commissioners at a public hearing. The applicant for this permit was Stoddard Brothers LLC.

Mr. Loosli submitted into the record as:

- Exhibit 1 Sketch Plan Application
- Exhibit 2 Class II Preliminary Plat Application, Hearing Notice, Mailing List
- Exhibit 3 Minutes & Audio from Hearing
- Exhibit 4 Original P&Z Public Hearing Staff Report
- Exhibit 5 Appeal Application
- Exhibit 6 Appeal Hearing Notice & Mailing List & the former appeal and mailing list
- Exhibit 7 Administrative Staff Report to Board of County Commissioners
- Exhibit 8 Appeal Public Comments

Mr. Hall explained that the purpose of the hearing is to provide for public comment. He gave the guidelines for the hearing. The appellant will receive 20 minutes for comments. Defendant will then be given 20 minutes to respond and then public comment will be allowed. He explained that

the public comments will be kept to five minutes each. Comments are to be consistent with the issue that has been set before the county commissioners at this time. He gave guidelines for content of comments. Written comments could be provided eight days before the hearing. Two written comments were submitted.

## Opening Comments

### Hyrum Erickson (25 N 2 E, Rexburg)

Mr. Erickson is the attorney representing the appellant in this matter. He submitted photographs of the gravel site as Exhibits #9 and #10. In the Stoddard Brother's response they point out that we only appeal one permit when in fact there were two permits submitted. Appendix J states that the permit to manufacture gravel is dependent on the permit for the gravel; the permits are contingent on each other. He read from page 13 of the memo that Mr. Loosli gave to the Board of County Commissioners. He read from Appendix J 5.2.

This permit cannot or should not be approved until the development plan is in place. Mr. Loosli responded that the conditions of approval must be in place. Therefore it would be premature to establish this before a permit is approved and a hearing is completed. There would be no purpose for a proposal that might be denied.

He referred to #7 of appellant's argument and page 11 of the application regarding fencing. Table K1 on page 11 refers to a site obscuring fence defined as minimum of 6 feet tall and a maximum of 10 feet tall completely blocking the view. They are not going to build a fence but rather a berm with barbed wire at the top. The definition for a fence provides for protection of trespassing as well as site. A berm does not protect against trespassing. There is no valid variance.

### Steve Huber (248 N 2300 E, St. Anthony)

State code clearly states that neighbors cannot be negatively affected by a proposed development. He feels that security fencing is an issue. The applicant stated that it is too costly to put up a fence in that manner however this is a requirement. There is a concern about the safety of children in this area. The number of pits neglects neighboring uses and is incompatible with all working models of development plans.

### Troy Thurgood (81 E 3500 N, St. Anthony)

Mr. Thurgood is representing the Stoddard Brothers. He read into records a letter from HK Contractors as Exhibit #11.

He referred to the 2009 Comprehensive Plan that was in place at the time of the application and the preferred land use map. The area in question was designated by commissioners for gravel. The permit was applied for and granted after this designation. The development agreement includes recommendations made by the Planning and Zoning commission. The absolute standard is that Stoddard Brother's and DePatco cannot be mingled together and operate as one as they are separate entities. They have followed all required procedures of the comprehensive plan and the appendixes.

Mr. Hall explained how the public comment section will proceed.

## Public Comment

### Rachel Huber (248 N 2300 E, St. Anthony)

She spoke against the gravel pit. When the Stoddard Brothers obtained their permit they agreed to put up a pig wire fence with barbed wire and a security fence immediately. They have not done this. She stated that there is ongoing concern about the roads and bridges in this area. Complaints have been sent in to Planning and Zoning and apparently were thrown out or lost. She presented into record a letter by Karen Lords dated May 18, 2004 as Exhibit #12.

Commissioner Romrell asked about the letters that had been submitted and she stated that they were submitted to Planning and Zoning and she was told by a staff that they were thrown away. They apparently were from the neighbors around the pit in Island Park on Shotgun Road.

### Ben Hildebrand (209 N 2300 E, St. Anthony)

He spoke against the gravel pit. Most disturbing is the secondary staff analysis. I wrote the original appeal and it was done off of the first staff analysis. This new one appears to be an advocate for the gravel pit. This is not their job; they are to be an advocate for the county policies not for an individual. He is concerned that the main pit is out of compliance. The 2004 letter gave DePatco two years to come into compliance and that should prevent them from getting a new permit. Another letter was just recently sent to them stating that they are still not in compliance. The appeal process does not make sense.

Commissioner Hurt questioned the letter that was issued. Mr. Hildebrand stated that they were issued a letter giving them 30 days to come into compliance just a few days ago.

### Kay Hildebrand (209 N 2300 E, St. Anthony)

She spoke against the gravel pit. It is obvious that they were not in compliance. Solid waste is to be obscured. They are closer than what is required to their neighbors. The response that was written by the administrator appears to be an advocate for the gravel pit not for policy.

### Jennifer Daniel (209 N 230 E, St. Anthony)

She spoke against the gravel pit. Her first and main concern is for safety and the problem with the berms.

### Jamie Birch (2250 E 300 N, St. Anthony)

He spoke against the gravel pit. He supports the citizens of Wilford and the appeal that has been submitted.

### Irene Hansen (241 N 2300 E, St. Anthony)

She spoke against the gravel pit. The gravel pit is right in the back of her house. She has a few sheep and the babies tend to die young. The vet thinks that it is because of the dust that comes from the gravel pit. This could put her out of business.

### Terrell Birch (2252 E 300 N, St. Anthony)

He spoke against the gravel pit. He has some health concerns and is worried about safety. I have a lot of problems that are aggravated by this type of industry.

Cathie Shirley (2202 E 300 N, St. Anthony)

She spoke against the gravel pit. She expressed her confidence in the commissioners to look out for the community's best interest.

Jay Peterson (2169 E 200 N, St. Anthony)

He spoke against the gravel pit. He referred to the Constitution and the Declaration of Independence. His request is that the commissioners look at the emotional stability for families in this area that will be disrupted and distracted by the gravel pit.

Mr. Hall closed the public comments section and explained the closing comments.

### **Closing comments**

Mark Fuller (560 Douglas, Idaho Falls)

Mr. Fuller is the counsel for Stoddard Brother's. It is clear that different corporations are separate entities and cannot be considered together. They are three separate entities – they have different offices and operations. Under the law each of those entities is required to be held separate and cannot be held responsible for other issues. Many of these comments would have been significant at the time that the comprehensive plan was developed and reviewed. There was a public hearing where this was not heard. It was determined that this was the area that was decided for an industrial area. It was clear that citizens of this county wanted this. Gravel areas cannot be arbitrarily picked out but you have to go to where the gravel actually is. If the residents don't want gravel pits there then they can go through another process to change that law. The statement that a berm is not adequate is not accurate. His client was told by Planning and Zoning that a berm would meet the requirements.

Mr. Hall questioned Mr. Fuller's buffer referenced to in Exhibit K.1 of the development code. Mr. Fuller responded that K.1 does not refer to berm but throughout Exhibit K berm is used in conjunction with fence.

Commissioner Hurt questioned Mr. Fuller's reference as well. Mr. Fuller responded that K.1 is not talked about in berms but in paragraph 2 bottom of page 9 the sentence defines a berm as appropriate.

Hyrum Erickson (25 N 2 E, Rexburg)

Mr. Erickson presented his closing comments. He addressed the berm versus fence issues. The indication would be that they would be different such as "a fence or a berm" or "a fence and a berm". There is a reason that it states a site obscuring fence. A berm can be walked over with ease. He sees the importance of recognizing the difference between them however they are so closely related it is impossible to review them separately. The applicant makes it clear that this is not a new project but rather an enlargement of the current existing gravel pit that is in the name of DePatco. Mr. Erickson presented into record the sketch plan review of 2004 as Exhibit #13.

Commissioner Romrell asked Mr. Erickson to repeat where he references the information that DePatco and Stoddard Brother's are the same.

Commissioner Hurt questioned if they can determine that Stoddard Brothers and DePatco are separate. Mr. Hall stated that they can make that request.

Mr. Hall questioned how Mr. Erickson came to that decision legally. Mr. Erickson stated that he does not have case law or statute on hand. He feels that they are so closely tied together that even without, that would allow the county to do that.

Mr. Fuller was asked to provide to the commissioners who the owners of the respective entities are. For DePatco it is DeVerle and Patricia Stoddard and their five sons. For Stoddard Brothers LLC it is DeVerle Stoddard, his five sons and their wives.

Commissioner Miller asked Mr. Thurgood who the owner of the property was in 2004. He did not know. The zoning office would have that information. Commissioner Hurt asked if they will be able to pull those records in a work meeting and Mr. Hall said yes.

Commissioner Romrell thanked all who attended. They have 60 days to make a decision. He encouraged the public to be involved in the development of laws. Planning & Zoning has done well in trying to get everything done. When we had the gravel pit ordinance hearing originally and no one came. We adopted the ordinance based on that.

Commissioner Hurt and Commissioner Miller commented that they appreciate everyone attending. They may come to the commissioner meetings but will not be able to participate.

The public hearing was closed at 8:08 p.m.

There being no further business to come before the board, the hearing was adjourned.

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Paul Romrell, Chairman  
Fremont County Commission

Attest: \_\_\_\_\_  
Abbie Mace, Clerk