



Abbreviated Minutes: Complete Set of Minutes Are on File in The Clerk's Office

**Madison County
Commissioner Meeting Minutes
March 20, 2023**

Attendees:

**Todd Smith, Commissioner Chairman
Brent Mendenhall, Commissioner
Dustin Parkinson, Commissioner
Troy Evans, Deputy Prosecuting Attorney
Kim Muir, County Clerk**

ACTION ITEMS

This meeting was streamed electronically.

Pledge of Allegiance: By all

Invocation: Dustin Parkinson

Commissioner Smith made a motion to amend the agenda to include a claim from Harold Harris Construction from Solid Waste for the scale house, in the amount of \$147,850. Commissioner Parkinson seconded and voting was unanimous. The motion passed.

Commissioner Mendenhall made a motion to approve the claim brought forward by Solid Waste. Commissioner Parkinson seconded. The motion passed.

Canvass of Votes

After review and discussion, Commissioner Parkinson made a motion to sign and approve the canvass of votes for the March 14, 2023, Election. Election officials are confident in the numbers and Commissioners thanked them for the good job and what they do. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Forest Service Grant for back country patrol

After review and discussion, Commissioner Mendenhall made a motion to sign and approve the Forest Service Grant for back country patrol for \$5,000. Commissioner Parkinson seconded and voting was unanimous. The motion passed.

Purchase and Sale Agreement, land acquisition

After review and discussion, Commissioner Todd Smith made a motion to sign and approve the Purchase and Sale Agreement for land acquisition of 9+ acres where the East Parkway Corridor

is planned. The total amount is \$200,000 with the agreement that the owner will be able to farm the property until the road goes through. The purchase includes the water rights. Commissioner Smith was authorized, as chairman to sign closing docs with Brandan Hanna. The seller pays closing costs and the land will be purchased with funds from the Commissioner's reserve. Commissioner Parkinson seconded and voting was unanimous. The motion passed.

Gary Armstrong, Planning and Zoning matters:

Texas Siding Business Park

The application is to approve the Findings of Fact and accept the recommendation from P&Z. located in Thornton on 28 acres divided into 21 lots zoned commercial zoning. P&Z review concern was whether a domestic well be used for commercial use. Gary contacted Water Resources. A maximum 2500 gallons a day can be used for commercial or you have to secure a water right. The final plat will show this as a plat note. Canal water will be used as no water right will be available. East Idaho Public Health will be monitoring before final plat approval and if more use is necessary, they would have to put in enhanced water systems. Fire suppression will have to be figured out.

After review and discussion, Commissioner Mendenhall made a motion to approve the application from Jerome Bowen for the Findings of Fact preliminary plat for Texas Siding Division 2 Business Park proposed in application materials receive January 18, 2023. Commissioner Parkinson seconded and voting was unanimous. The motion passed.

Wolf Meadows Subdivision

Residential subdivision Findings of fact and recommended by P&Z. Proposed is 34 lots, with the property zoned as transitional agriculture and is a large-scale development. The average is a little over two acres per developed lot when you take the roads out. A small side of this is in the impact area. Gary talked to Alan at the City of Rexburg and was told a small strip of the property will need to be donated as easement for widening or dividing the adjacent roadway. One thing that sets this development apart is how they are dealing with the irrigation. Owners reached out to Rexburg Canal District and worked closely with them regarding irrigation water. They propose a pressurized irrigation water system that will gather the irrigation water through the canal company to a reservoir that will be constructed on site that will then have a pump and a pressurized system that will deliver irrigation water to each lot. This is a good example of how it should go. The developer has done a great job. A traffic study was done according to the traffic laws of the state. The developer did a great job and learned from other applications.

Commissioner Smith asked about the timing of the water delivery (pressurized) system and when it will become active. Can there be an addendum to the development agreement that the irrigation system would be constructed prior to 50% of the lots being sold. This was discussed further.

After review and discussion, Commissioner Parkinson made a motion to approve the Findings of Fact preliminary plat for the application from AHG Capital LLC/Mike Hicks for the Wolf Meadows

Subdivision as proposed in application materials received January 17, 2023. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

There was some misunderstanding on information given to commissioners at the last meeting regarding the Traffic Study. They are able to defend the traffic impact study. The count was for one day and incorrect information was presented earlier.

Gary commented on follow up on the development application for a subdivision. The Planning and Zoning Commission have crafted a requirement to work with the irrigation companies as part of the application for subdivisions. Commissioner Mendenhall would like to see the smaller canal companies send a letter as part of the approval for the subdivision.

Melissa is preparing the packet for Sunset Meadows and they have completed the list of requirements regarding irrigation given to them by the commissioners. There will be a public hearing at the next meeting and comments will need to be limited to the new materials.

Additional Information

Today is the deadline for proposals for the comp plan – will need to have a review committee: one commissioner, Troy Thurgood, and Gary. Suggestions of what entities to represent was discussed. 3 for proposals – planning process, 8 – 10 people and there will be public outreach. Involve both cities impact area, a developer, a local farmer, real estate industry. Do they need to live in our county? It would be good if they were engineer – surveyor type – a few names were thrown out.

The Commissioners recessed the meeting until this evening for the Edstrom Gravel Pit. Commissioner Parkinson made a motion to recess until this evening. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Edstrom Gravel Pit Conditional Use permit reconsideration and decision.

The hearing began at 5:30 p.m. Commissioner Todd Smith welcomed everyone there. We have already gone through our agenda items and we are not streaming it tonight, by the way, so hopefully, nobody is trying to watch online. We are recording the proceedings. Kim is here to take minutes. We are here to consider reconsideration and decide on the reconsideration for the Edstrom Gravel Pit Conditional Use Permit.

At this time, I will turn the time over to Vice-Chair Brent Mendenhall, as I have recused myself previously on this matter and will step aside from this matter this evening.

Brent Mendenhall: Thank you. As a matter of an agenda item and continuing on with our agenda for this evening. This is an agenda item and it is a request for a reconsideration of a Board of County Commission decision that was initially made on November 28, 2022, and then was clarified and finalized on January 3, 2023 regarding a CUP for Edstrom Construction. Just as a

matter of understanding this is a reconsideration request that was properly and timely filed. And we will ask the representative or the appellant, the person who signed the request for consideration is Deanna Poulsen. If there is a different representative then that would be fine. But we will ask for them to come and talk about the reason for the request from the items and issues that are listed in the request. Where this is an agenda item and it is a reconsideration, we'd ask that you stay within the scope of that request and we'd have 15 minutes there and then we will have the applicant for the CUP, also, a representative for them if they would like to come and offer comments in defense or rebut or whatever they might want to do, again 15 minutes. We would ask that neither side have new issues. Information is fine, but new issues outside of the scope of that reconsideration and so we'll begin with that and this agenda item. Who is the representative for the {someone from the audience speaking inaudible} okay. If you would state your name and address and that you are a representative of the group that has filed. Needed a microphone on a stand. I don't want you to have to hold that. You might start singing, I don't know! I apologize for that.

Appellant speaking for the group opposed to the Conditional Use Permit: Shane Ruebush is the representative and lives at 1893 W 5350 S. I've been asked to represent the affected persons, Brice and Shauna Johnston, Ryan and Deanna Poulsen, and Laurie Christensen, who live near the property that is in question.

The reconsideration and basically what we'd like to address is in accordance with Idaho Code § 67-6521. We request that the Madison Board of County Commissioners reconsider the final approval made on January 3, 2023. The following are specific deficiencies we wish you would consider from the November 28, 2022 hearing.

A letter was presented from the Idaho Dept. of Lands which stated that Edstrom Construction had submitted an amendment to their Reclamation Plan providing a back-filling plan complete with cost. The plan was under a completeness review and had not been reviewed and approved at that time. So yes, they had a plan, but it had not been completed at that point.

Commissioner Mendenhall had stated correctly in those meeting minutes, "We don't have a complete application, we have an amended plan that has been submitted, and not approved by IDL. We don't have an approved plan back in place."

Commissioner Doug Smith asked then, "Was the application complete when it was approved with P & Z?" To which Mr. Armstrong replied, "There was a list of things that needed to be completed. There were still those things that needed to be provided in a recommendation of P & Z. We have not received proof of those things to date."

Alright, so the Reclamation Plan has in fact been invalid since March 30, 2020. That's the date you will see from IDL at the time. So that was well before the April 22, 2022 public hearing when the process began and due to lack of water rights in the proposed reclamation, as a pond, that's the conflict that exists. Due to IDL's statement that says if ponds or lakes that are created during the mining process will remain after reclamation is completed the Idaho Department of Water

Resources requires the operator or land owners to obtain a water right. That has to do with the reclamation. A valid Reclamation Plan is required by Madison County code as well in the Gravel Pit overlay. In sections 117-62(e)(1)(b) and (c) and it specifies what needs to be provided when it is submitted for an application, prior to being heard. It says the contractors shall submit a plan that includes the development operation and reclamation. It also states the contractor shall show the plan meets the standard as set by the State Department of Land and the county as set forth in this section.

Madison County Code also requires a valid Reclamation Plan the second time for a complete application in Section 117-62 (b)(3) (e) (4) and (5). Which states shall submit a Reclamation Plan for the whole project with drawings that show what the area will look like when finished and it also states "shall submit a plan in each phase of reclamation with drawings". Alright, so these were things that were deficient at the time with respect to the plan that proposed that they would leave the pond as part of the reclamation. Without a water right, in these items we felt these were the things that were needed. Madison County cannot make a decision or take on an action on an incomplete application. Citing the case Fisher vs. the City of Ketchum in 2005, the courts struck down the City's action because the City zoning ordinance expressly required that the engineering design occurred before the application for the Conditional Use Permit and that its adequacy be evaluated by the Planning and Zoning Commission. So, that's in the Land Use handbook. A communication that was submitted as an attachment. Why is this important that this all be done prior to submitting the application? Part of it is because an incomplete application violates due process rights for the affected persons.

Idaho Statute § 67-6534 states: "hearing procedures shall provide an opportunity for all affected persons to present and rebut evidence." Evidence cannot be rebutted when it is not available to the public in the application. Idaho Land Use Handbook page 406 clarifies "Failure to provide mandatory information in the application constitutes a violation of due process rights of other affected property owners resulting in voiding approval of the application. The deficiency is not cured by providing that required information at the hearing and should be provided prior to so that there is an ability for the individuals to review it and to make meaningful commentary about it as they are affected with their property. Ultimately what we request is the Board of Madison County Commissioners reconsider the decision made on January 23, 2023 because the GOP ? CUP had an incomplete application because the reclamation that was considered at the time was not current with complying with state code with respect to water rights if a pond was to be remaining and Madison County Code requires a complete application for public hearing and the Idaho State Statute and Case law requires affected persons and decision makers to have all mandatory information at the time of application for the public hearing, or the approval is void. It is our opinion that this matter must be reheard when a complete application is presented and if it is ready, we welcome that hearing to be scheduled so that it can be reviewed in public. Thank you.

Commissioner Mendenhall: Thank you Mr. Ruebush. Commissioner Parkinson. Any questions you might have?

Commissioner Parkinson: I don't have any.

Commissioner Mendenhall: Could you restate that Mr. Ruebush. Information, if it is ready and available to be reviewed in public, you stand ready to do so? Would you rephrase? I'm trying to write myself a note and I want to make sure I got the full jest of it.

Shane Ruebush: Back in the November 28, a meeting there was a statement that they were currently revising for having their plan reviewed by IDL. And so, inasmuch, as IDL has finished the review and that they had actually approved of a plan, that is fine, but what needs to happen next is to have a public hearing to review that information.

Commissioner Mendenhall: That is what I thought you had said.

Commissioner Parkinson: I guess I do have a question: As I understand it, you do have to obtain a permit?

Shane: To amend lands permit?

Commissioner Parkinson: Yes.

Shane: Okay, so to amend the Reclamation Plan with IDL the applicant has to have all of the required documentation so that they can be in compliance with IDL. That does not exclude the county issues that they need to consider about that action.

Commissioner Parkinson: {Inaudible}

Shane: Meaning to have a CUP before they. . .

Commissioner Parkinson: Before they process?

Shane: No. The county code actually specifically states they need to have it finished in order to do this. So, they can go through the process with IDL prior to application with the county and they have to. so the county can review all of the pertinent facts for the protection of residents as well as the business that is seeking the application.

Commissioner Mendenhall: Okay, thank you. There is a question I'd like to ask our legal counsel. Mr. Rammell. In those minutes that we had there was a statement made by Mr. Armstrong our Administrator of Planning and Zoning and he did make a statement, it's in the minutes. It was a provisional approval. There were a list of things that need to be completed by the requestor of the reconsideration. They cited that there was something in Ketchum, I believe it was. Is there such a thing as a provisional approval?

Commissioner Mendenhall: Yes. In other words, what Mr. Armstrong went on to say was there was a list of things that need to be completed. They needed a plan, approved Reclamation Plan

and provide a document of water rights. Those were the three things specifically meaning that we approve it conditionally if they receive those things. Is there such thing as a provisional approval? Can we approve it conditionally? The distinction comes with the nature of a CUP and if the plan was in good standing or if it is required to be complete.

Gary Armstrong a CUP is fluid. There are certain things that have must be constructed or replaced. A berm has got to be constructed. Those have to be done and eventually the county requires it be reclaimed, {inaudible} the finished appearance. It was in good standing they were supplemented for the record. The disagreement goes with it goes to P & Z if the reclamation was out of good standing or still in good standing. Defer to Gary CUP in this case have two sets of conditions results of the overlay and what the governing body permits. Thumbs up – berms have to be constructed. Hours of operation when you are mining. Dust abatement. These are provisional things the applicant still needs to obtain. This Conditional Use Permit once you have met these conditions, you can commence with the mining operation.

Commissioner Mendenhall: Okay help me with this if you might. Please bear with me. We have a public hearing where the public is here. Either side, doesn't matter. They are here and they hear and they have an opportunity to speak in favor, or against, If we conditionally approve a Reclamation Plan in the public hearing and we do a conditional approval that they get those things in line and will have that application and they will go on, when would the parties that were opposed to the conditional use permit have an opportunity to look at that Reclamation Plan and say, whoa, wait a minute, we live in the neighborhood and we are struggling with that or is that something they take up with the Department of Lands. Do you see what I'm saying? When do they have an opportunity that we consider it two weeks from now, or a week from now, or as happened it was approved on February 1. I don't know if these folks have had a chance to see the final plan. How do they have an opportunity to say, because the hearing is already done and we are already under reconsideration because we have already approved it. How does that look?

Gary: Two different agencies will approve. So as the applicants in the application have a landscaping plan, have a dust control plan different than what their operation plan {inaudible} available to the public for comments. So that was reviewed by P & Z and that was available to the public at that point. The Reclamation Plan was submitted by the applicant. Once the application moved to recommendation for approval then the applicant, Edstrom, went back and said okay the conditions were of the application the plans to reflect them. We now need to review with Department of Land. This letter that says this is incomplete is about the Department of Lands process where they were still considering the amendment to the established Reclamation Plan.

Commissioner Mendenhall: Okay, alright, Mr. Ruebush, do you have further information or further comments.

Shane Ruebush: Yes, on that specific plan. So, if you bring it back the original plan that was submitted, I agree that there was a plan that was put in place. It was pointed out in public hearings through Planning and Zoning that there was deficiency and that the application from

IDL specifically said that they must have a water right from Idaho Department of Water Resources. If they are going to retain a pond as part of the reclamation, otherwise they have to provide for the backfilling of the pond and that would then in turn add to the cost that would be associated with the Reclamation Plan itself. That cost has not been reviewed publicly. That is what really is the concern. If there is an amendment that changes the material manner, the actual plan itself that they had submitted originally, that actually means that it has to be reviewed again. Hence the request, to go ahead and re-hear it so that can be addressed according to what we had seen. The cost is different substantially. The purpose for that is not just for affected residents nearby in the sense of your in proximity, but it also has to do with if there is a failure of the business to reclaim the land as was appointed, then there is going to be an effort by the county to have to take care of that in place of the bond, hopefully, pays for it if it's sufficient and that is what would not have been reviewed at this point in time.

Mendenhall: Okay, alright, thank you We do appreciate your comments. Is there anyone from Edstrom Construction that would like to make some comments? Please come forward and state your name and address as you have done a couple times before.

Joe Stanislao. I work for Edstrom Construction and have since 2005. I live in Idaho Falls at 662 Tendonoy Drive in Idaho Falls. The whole crux of their case at this point in time is they are saying our Reclamation Plan hasn't been invalid since March 30, 2020. In the letter that they received dated November 22, 2022, from the DOL, the DOL quote said IDL would like to make it clear that the Reclamation Plan SO1320 is in good standing with the Department and has been since the plan was approved. Since that time Edstrom has never received any documentation from the Department of Lands written or oral that our plan has been revoked. We have talked with the Department of Lands. Any mining company is available and has the authority to amend the Reclamation Plan at any point in time during the life of the pit. There is a point where the public has input during that amendment process that they can deal with the IDL. That also went through with this amendment. Our Reclamation Plan has never been revoked. We have never had an issue with DOL. We did have our pit inspected during this whole process and it has never been stated that it has been revoked, we have never been shut down by any department in the State of Idaho. We do feel that this reconsideration meeting is invalid as there has been and always has been a Reclamation Plan with the State of Idaho.

Commissioner Mendenhall: Okay, thank you. Any further questions? Thank you, we'll discuss between ourselves and see where we go from here. I would like to make one quick comment so that it is not taken wrong. This request for reconsideration is valid simply because a resident of the county requested reconsideration and it is our responsibility and duty if we determine it valid to at least hear that side. I know that's not what you meant, but I want to make sure that it is in the minutes properly and correctly. Mr. Ruebush.

Commissioner Mendenhall: to rebut that again, uh, you know what, I can give you, I can't give you more than five minutes.

Shane: Agrees with what was stated that they received a letter stating that they had no enforceable action against them. If you go back and review what that Reclamation Plan actually was, that was one from March 30, 2020, so that had been in place and it was primarily focused on the fact that they had the existing pit that's on the west side. So, they were receiving a letter that was talking about their compliance with that, they weren't talking about the actual validity of the newly proposed action. They were just talking about the enforcement on the existing pit, not about what was proposed to happen, and the fact that once it was brought to IDL's attention that they could actually, that they had this conflict with the water right versus reclamation of the pond, that's what precipitated the need for a review for a new plan. That's one of the issues that need to be considered right there. Oh, and as far as taking it up with IDL, I agree that the public can address it with IDL directly, but you cannot also discount that you have put in a Gravel pit Overlay or an Ordinance that also requires for these things to be done in a way in the County. So, we can't just say that its only IDL's problem when you have put in the ordinance to address this. You have it in the code that it must be done, so therefore it must be heard if there are adjustments being made because that is pertinent if there is a material change that must be heard, has to be brought back open. The Gravel Pit Overlay actually provides for opportunities specifies that there should be public hearings when certain things happen including time frames over time to verify compliance so an actual public hearing by the county is natural and normal according to the gravel pit overlay.

Commissioner Mendenhall: Okay. Thank you. Any comments Edstrom would like to make pertaining to the comments Mr. Ruebush made?

Stanislao: Yes. His whole letter for the reconsideration, he is talking about that March 30, 2020 letter or that approval of that Reclamation Plan and that's what he is stating is not, has been revoked, it has not been valid. Now he is changing it because that has been valid throughout the whole time and we have done a Reclamation Plan for both of them. And it has been enforced and it has been with the state. The state is not separating the two properties out as far as a Reclamation Plan. They do understand that it is two separate pieces of property with one Reclamation Plan.

Commissioner Mendenhall: Alright, thank you. Okay. Commissioner Parkinson we have a decision whether we would reconsider and whether we would withdraw our approval of the Conditional Use Permit, or whether we will stand by it and continue on. Any comments or questions you might have.

Commissioner Parkinson: So, what are our options as far as what we can do?

Commissioner Mendenhall: Right now, and I'll wait for Mr. Rammell. Right now, as I know of it, our options are to keep it the way it is that we have been asked to reconsider an approval that we made. We can leave it intact and say No the approval stands, or we can we can say based on information that we have received that we were not aware of prior to this, it puts the CUP invalid the application for the Conditional Use Permit and we would deny the CUP. I do not know Mr. Rammell if there is an additional alternative we have to that.

Spencer Rammell: comments basically reconsideration was sought under Idaho Code.

Commissioner Mendenhall: I mean we could table it and move it on , but it will be back to where we are.

Commissioner Parkinson: What was that, sorry?

Spencer: A procedural question that I may have to defer to Gary. So basically, reconsideration was sought under Idaho Code § 67-652020. My question I guess is have the commissioners previously granted reconsideration and this is that reconsideration or is that determination now whether to end to consideration to affirm, reverse or modify. That's procedurally where I have a question. Gary will you clarify that? Does the record show. Have we previously granted reconsideration?

Gary: What they granted was let's hear you out. I don't think it was a formal reconsideration which would remand it back to P & Z and basically start over the CUP process. That was not determined. Let's hear it out and then we'll make a decision from there. So, I don't think reconsideration has been granted formerly which is granting this petition. As I see the procedural steps of either you grant the petition saying you know what? From what we've heard, from the facts of the case, review the record, reviewing the request of this we feel that yeah there was deficiency in the application as petitioned and therefore we are going to send it back to square one, or the alternatives to me is to say, you know what we've heard what you have to say, we are in disagreement, we believe the application was valid included everything that the county required and that you would dismiss this petition and the approval of the Conditional Use Permit would stand as is. That's the options that I see.

Mendenhall: And as a point of clarification the Board of County Commissioner did hold their own hearing and we are basing this reconsideration on the outcome of that hearing that was held by this body and so the reconsideration request from the party here is to reconsider what this body determined in their public hearing. At this point unless something happens, it would not be remanded back to the Planning and Zoning. This reconsideration is the decision that we make tonight. Is what I'm saying.

Gary: No. I'm not sure I agree with that. What this decision is saying is that along the way commissioners are of the opinion that the application was never completed. So, if it was incomplete when they came to you, and it was incomplete when it went through P&Z and that's what I understand the position to be.

Commissioner Mendenhall: Okay.

Gary: So, if you agree that it was incomplete and it would go back to P & Z to review and handle that and it would go back through the process. If you find that in your opinion it was complete,

you disagree with that conclusion then you would dismiss this petition and the CUP would stand as moving forward.

Spencer: If we get into Idaho Code § 67-6535 the Statute is clear that the decision is reaffirmed, reversed or modified that after compliance of the procedural standard would send you back if Madison County has a specific reconsideration statute. I've looked at it, there is no county code that specifically talks about the reconsideration process or procedure if granted. Then we defer back to the plain language of I.C. § 65-6735, the written decision shall be provided for the applicant or affected person within 60 days of receipted request of reconsideration where the request is being denied. Again, the language of that statute is clear where I think that you affirm, reverse or modify. It doesn't require any written decision if you deny the application if it strictly states if after 60 days they haven't been given a written decision. {inaudible}

Someone in the audience: So just to be clear, it's a firm reversal? That's where we are at in the process and that's why I add that clarification. There wasn't a formal reconsideration and that's where I would say procedurally that's where we are at.

Mendenhall: As a matter of record I'd like to enter in, just so where I feel I'm on. The ground I'm on, citing the letter of request for reconsideration the very first paragraph. "In accordance with Idaho Code §67-6521 this is the important part, we request the Madison Board of County Commissioners reconsider the final approval made on January 3, for a Gravel Pit Overlay Conditional Use Permit for Edstrom Construction Company, and so I felt like its onerous, it falls on us that we would hold it up, reject it and reverse it or just dismiss the reconsideration and say you know what, we are we are good where we are. That's where I'm at. I don't know Gary, I'm not sure, I think what you were saying is the same thing but I'm just going to that were acting and reacting , as an agenda item, on the request from residents of Madison County.

Gary: That's fair.

Commissioner Mendenhall: Commissioner Parkinson, now it's just you and me talking. What are we going to do?

Commissioner Parkinson: I've poured over this again and again and again. I've gone through this until my eyes hurt. I've read the gravel pit overlay until I can almost recite it. I have read through P&Z and P&Z at the time was given information. The plan was current at the time they were given it from what I see. I see it as we need to dismiss this.

Commissioner Mendenhall: Okay and before a motion is made I would offer my comments, I am looking at a key, when I asked a question Mr. Rammell regarding provisional approval and especially the citing of perhaps a court case that was in Ketchum on engineering, if provisional approvals are okay and if they are acceptable and Mr. Armstrong (stating) did you know, yeah, we can do that and have things that we need to do before we get there and that could be a difference of opinion there. I did look and I have read through this and I came to the same conclusion that our Administrator did. That there are agencies that are also coming into play

here, the Idaho Department of Lands. I believe that the final plan was received by applicants of the Conditional Use Permit, the Edstrom's, February 1 or sometime right in there, it's been received. That why I asked the question, when do these folks get an opportunity to say, well wait a minute, we don't agree with that. That then to me becomes moving to another court, not court that's the wrong words. To another arena. Talk to the Department of Lands and tell them you don't agree with it and they can do whatever they need to do.

Someone in the audience: A clarifying questions. If that to take place with the Idaho Department of Lands, and they deny that, that would also deny

Spencer: Nature of CUP. Gary monitors those types of things and given the fluid nature of the Conditional Use Permit can revoke the CUP for non-compliance with that agency.

If I may quickly, Mr. Mendenhall and I apologize we did specifically reference that case I have read in depth the Fisher vs. City of Ketchum. I know that case well. That case was based on an application on a specific City ordinance that Ketchum had. I do believe that this case from the past year are distinguishable from Fisher vs. City of Ketchum that our Overlay Plan is distinguishable from that city ordinance. And again, Reclamation Plans that are required in our gravel pit overlay are fluid and it would be as such in that application and that moving that there will be changes in overlay and that the Reclamation Plans are fundamentally different and the engineering design of a ?

Commissioner Mendenhall: Well based on that, is there a motion?

Commissioner Parkinson: Yes, I'm going to make a motion we dismiss this reconsideration.

Commissioner Mendenhall: I would second that, based on the things we have heard tonight and the documents that are in place and where there are just two of us, the motion passes. Okay, Thank-you. With that, Mr. Chairman, if you would come and take back over your seat please. There is one thing now that you're in place if I could make a comment regarding our last action. I would recommend that the opposing group that is concerned about that, would stay in close contact with Mr. Armstrong of what that Department of Lands Reclamation Plan looks like and that if you are feeling like it, you contact the Department of Lands, but to look at it and see what Mr. Armstrong is seeing and some of the things that we have seen of the Reclamation Plan. So that is not out of place and I would defer to the chairman. I don't know if any of you have comments. I don't know.

Kirstin from the audience: We now have 28 days to appeal for Judicial review?

Commissioner Mendenhall: It is to appeal or for a judicial review? Yeah, for a judicial review, yes.

Commissioner Smith: And that begins today. The 28-day period.

{Inaudible} from the audience. Activities at the site are authorized. Still have to get other things in line. The CUP is approved and there are conditions to be met to commence the mining.

Commissioner Smith: Well with certain things, but the CUP is not going to hinder has not been handed down yet. Correct? Because they have got to get their other stuff done first.

Gary: The current status with Madison County is the CUP has been approved. Okay and there is a list of conditions that must be met before mining may commence and they are good to go forward with those. To build a berm, to get those things in place so they can commence the mining. Until those things are completed and certified, they may not commence the mining operation. So yeah, they are free to work on that list until they don't have an approved CUP, but right now this body has approved the Conditional Use Permit and so the applicant may move forward until told otherwise. Until that permit is not valid. Right now they have approval and will move forward with those preliminary conditions that we talked about. There are preliminary conditions and there are ongoing conditions.

Commissioner Parkinson: So, they can move dirt on that piece of property, build their berms

Discussion: people talking over one another.

Gary: Then for something like a berm, you can do that anyway. You can move dirt on your own property. They can implement their landscaping plan and this can all be done before they commence mining. So yeah, they can work on meeting all of those conditions.

Commissioner Smith: Yeah, real quick.

Deanna Poulsen: Who is making sure the berm is 8 feet tall?

Commissioner Smith: They will.

Gary Armstrong comments: So, with anything, we are looking at whatever certification we can. We have talked to the applicant and they are going to get a certified surveyor to measure the dimensions to make sure it is built according to what was outlined. This will be reported to Madison County. I'm not an expert in measuring. The applicant will provide certification of that construction, is what we talked about doing.

Commissioner Mendenhall: It will be monitored according to code.

Commissioner Smith: Brenda, do you have a question?

Shauna: Yes, I did because the application said that the SWIPP Plan had to be put in place and, not just the Reclamation Plan, but the SWIPP plan {inaudible}.

Commissioner Smith: I'll defer to Gary:

Gary: Again, I'll reach out to DEQ just like I did on the Reclamation Plan and the Department of Lands and I'll say, what is the status of the SWIPP plan? Please provide the certification of that.

Shauna: Why is that not done already? When the application is submitted. Why is all of this not done?

Commissioner Smith: I'll defer to Gary on those.

Commissioner Mendenhall: Provisional

Commissioner Smith: Yes. These questions are more for Gary. If you want to call and set an appointment with him and go visit with him.

Commissioner Smith: Do we have anything else?

Commissioner Mendenhall: I don't believe so. I believe that was it.

Commissioner Smith: Did we miss anything on the Agenda?

Kim Muir: No

Commissioner Smith: Thanks to Spencer Rammell You are a very busy man with an important case coming up. We wish you well on that over the next couple of months. We appreciate you and all the Prosecuting Attorney does for our county. See you next summer! With that, I would entertain a motion that we adjourn.

Commissioner Mendenhall made a motion to adjourn the meeting at 6:13 p.m. Commissioner Parkinson seconded and voting was unanimous.

Approved:

Todd Smith, Commissioner
Brent Mendenhall, Commissioner
Dustin Parkinson, Commissioner

Attest:

Kim Muir, County Clerk