



GRAND COUNTY COMMISSION REGULAR MEETING

Grand County Commission Chambers
Hybrid virtual participation on Zoom
Moab, Utah

WATCH ON YOUTUBE - search for: "GRAND COUNTY UTAH GOVERNMENT"

MINUTES 7 May 2024

The Grand County Commission met in a regular meeting on May 7th, 2024. The meeting was held in-person in the Grand County Commission Chambers, with hybrid virtual participation available via Zoom. It was also broadcast and saved on YouTube. Attending the meeting in person were Commission Chair Jacques Hadler, Commission Vice Chair Kevin Walker, and Commissioners Bill Winfield, Mary McGann, Trisha Hedin, Evan Clapper, Mike McCurdy. Also attending in person were County Attorney Stephen Stocks, Commission Administrator Mallory Nassau and Clerk/Auditor Gabriel Woytek.

Closed Sessions

At 2:02 p.m., motion by Commissioner McGann to enter closed session for the purpose of discussing pending or reasonably imminent legislation and the purchase, exchange and lease of real property.

Motion seconded by Commissioner McCurdy

Motion passes 6-0, Hedin absent from vote

At 3:37 p.m., motion by Commissioner Hedin to exit closed session

Motion seconded by Commissioner Walker

Motion passes 7-0

4:00 p.m. Chair Hadler called to order the Regular Meeting

Pledge of Allegiance

4 p.m. Citizens to be Heard (2:20)

Dave Closser referenced numerous reasons why the Commission should deny the Kane Springs CUP and questioned whether the ownership group could effectively build and manage the project as drawn. Closser suggested that the numerous complexities of the proposed project were far beyond the expertise of the three-person developer-board.

Dave Wagner stated that he did not see how the Kane Springs CUP could be granted given that water rights were being questioned and appealed, along with questions regarding the need to widen the road and who

would be responsible for such improvements. Wagner added that raising the floodplain 10 feet may not be enough to withstand the effects of a large spring runoff.

Amy Johnson expressed concerns regarding the engineered compacted fill on which the sewage plant is proposed to be installed, which may be unstable based on the increased permissible cobble size which was used for fill material. Johnson stated that groundwater upwelling above the lower bench level during regular increased river levels will impact the stability of the fill.

Pete Gross stated that there were a host of reasons why the Kane Springs project does not make sense, including dubious water rights with formal protests and the cost of upgrading the currently inadequate road, Gross cited state law which governs road width standards that allow for bike lanes and stated that serious questions remain regarding erosional possibilities in the Colorado River floodplain.

Crystal Muzik stated that there were major issues that needed to be resolved before issuing the Kane Springs CUP permit, including zoning concerns, road rights of way, effects on environment, and water availability.

Laurel Hagen stated that the Commission should deny and force the developers to prove their case to an appeal officer. Hagen added that a denial was important as a larger strategic matter, as continuing to issue permits will allow the developers to continue to spend money and subsequently up the ante in their litigation threats.

John Walden, grandson of Charlie Nelson, stated that in his experience of growing up on the site of the proposed CUP, uses were appropriate for the area. Walden claimed that the developers have thrown his family under the bus, purchasing the land from an elderly man without counsel or input from his adult children, which in his mind puts the developers' integrity into question.

Sonya Jefferies stated how important the area of the proposed CUP was to her, an area of national park quality and important quick getaway for residents. Jefferies expressed concern regarding potential downstream impacts to the Colorado River, claimed that the developers have not been forthcoming or truthful about their intentions for developing their property, expressed that keeping this area sacred is important, including protection of its rich archaeological resources, and the CUP should not be allowed given impacts to these resources that is already taking place.

Barb Clawson stated that the river and its banks belong to everybody and not only to those wealthy enough to develop it, and that a CUP approval will be irreversible. Clawson added that an HOA would not be responsible enough to run a sewage treatment plant along the Colorado River due to absentee ownership issues.

Courtney Barry stated that she recently became a resident to the area and was looking forward to making Moab her home, highlighted how the community has rallied around opposition to the proposed development, and stated that the community deserves a preserved natural landscape.

Presentations (none scheduled)

Department Reports (none scheduled)

Agency Reports (none scheduled)

Commission Member Disclosures (none at this time)

General Commission Reports and Future Considerations (26:35)

Jacques Hadler

- Meeting with Steve Waldrip, Governor's Senior Advisor for Housing Strategy and Innovation, led a local affordable housing tour
- Attended UMTRA site tour
- Attended successful Moab Museum annual fundraising gala
- Attended e-bike subcommittee meeting put on by Motorized Trail Committee, discussion regarding BLM exemption program for legal e-bike use
- Guided a visiting minority mountain biking group
- Observed yearly maintenance of mobile stage at OSTA. Future Consideration: need more trained stage operators
- Future Consideration: many more miles of non-motorized bike path is currently slated to be built between the paved path, Spanish Valley Drive, and Highway 128, lingering questions must be addressed regarding maintenance needs and the currently maxed out capacity to maintain these paths

Evan Clapper

- May EMS board meeting to be postponed

Bill Winfield

- Attended Motorized Trail Committee meeting, State trails crew currently working in the area
- Attended UDOT SR-128 Technical Advisory Group focused on improving safety and uses by different user groups, separate UDOT meeting looking at Aggie Blvd stoplight
- Meeting with Southern Advisory Council to the Colorado River Authority
- Attended UAC Board Meeting, as well as Public Lands Committee and Legislative Management Conference
- OPMA training in St. George, State meeting on homeless services
- Multiple meetings in preparation for consideration of the Conditional Use Permit

Mary McGann

- Recognition of Trisha Hedin for receiving her PhD
- Toured UMTRA site, on schedule to remove an additional one million tons in 2024
- Attended Economic Development meeting, presentation regarding optimizing the Moab product mix to maximize marketing reach and impact for different types of potential visitors, presentation from Moab Community Child Care, which has increased availability of childcare by 50% since its inception, adding spots for 63 children, started a partnership with the School District to support staff in childcare needs, lively discussion regarding revenue generating opportunities associated with offering childcare to visiting tourists
- Attended Solid Waste Special Service District, new software to improve customer service
- Attended Moab Area Housing Task Force meeting, application being prepared for neurologically divergent housing, which would be a first for a rural community, Canal Commons groundbreaking in Green River, discussion regarding support for displaced Walnut Lane residents
- Attended meeting between Four Corners Behavioral Health and Arroyo Crossing regarding dedicated employee housing in that development
- Future Consideration: follow up with staff regarding checklist for open and public meetings

Trisha Hedin

- Attended Planning Commission meeting, robust discussion regarding employee housing within commercial zoning
- Meeting with State Historic Preservation Office regarding archaeological sites in the Bookcliffs Area

- Attended EDAB meeting, presentation by John Corkery from Thompson Springs regarding Economic Development needs in Thompson Springs
- Attended Mosquito Abatement District meeting, employee now has drone pilot license for pesticide application

Mike McCurdy

- Attended CNHA board meeting, aid requests issued to National Park Service

Kevin Walker

- Attended cooperators meeting for BLM Dolores Travel Management Plan, public scoping to open May 22nd, Commission to submit comment

Elected Official and Staff Reports

Sheriff Jamison Wiggins

- New deputy Josh Christensen hired
- April statistics:
 - o Calls to Dispatch: 2,846,
 - o 911 Calls: 614
 - o Deputy Responses: 859
 - o Traffic Stops: 298
 - o Arrests: 26
 - o Papers Served: 104
 - o SAR Calls: 18

Clerk/Auditor Woytek

- No report at this time

Attorney Stocks

- Attended Utah Prosecution Council Spring Conference
- Meeting with Commissioners to advise on CUP approval process
- Deputy County Attorney Eddie Cervantes leaving for a job with Salt Lake County
- OPMA training to come for Commissioners, definitions of meetings are now less restrictive after new state law took effect on May 1

Commission Administrator Mallory Nassau

- Report sent via email directly to Commission
- Office of Emergency Preparedness, Canyonlands Airport ARFF team recognized by state for response to October 1st, 2023 aircraft crash

General Business - Action Items, Discussion and Consideration of Approval:

1. Kane Springs Improvement District Conditional Use Permit for a Major Utility (Planning and Zoning Director Elissa Martin and County Engineer Dan Stenta) (56:05)

Presentation

Martin gave a background of the Conditional Use Permit application, along with a summary of the Staff Report, as shown in the agenda packet. Overview given of key findings included in the Staff Report. Commissioner Walker referred to the variety of discussions and questions that were addressed at the last

Commission meeting. Stenta clarified that some new analysis had been added to the staff report since the last meeting regarding the roadway.

Commissioner Walker sought clarification regarding the role of different state agencies in securing the letter of 'approval in concept' from the State Division of Water Quality. Staff explained that state administrative rules include regulation regarding specific technologies, detailed plans have been submitted and are currently under review which would be followed by an approval permit and then trigger the need for a county building permit which would primarily scrutinize fire protection, after which the Division of Water Quality would complete an inspection followed by an operating permit. Advanced technology plant will require a level 4 certified operator, the highest level of operator for wastewater treatment plants, to be contracted with and committed to by GWSSA. Discharge permit regulated by Department of Environmental Quality, which is administered by the EPA, and requires weekly testing and monthly reports.

Commissioner Hedin clarified that GWSSA does not currently operate a wastewater treatment plant but rather is a water service provider.

Commissioner McCurdy sought further information regarding the fire hazard prevention system, which would include a plan for fire suppression in the form of hydrant, and an automated suppression system in the cave where the sewage treatment equipment will be housed.

Attorney Bruce Baird, representing the applicants, came forward to speak on the record regarding the CUP application, first expressing gratitude towards County staff for their efforts. Baird stated that he is in agreement with staff's findings, with the exception of items 6-9, as presented in the report. Baird stated that General Plans are always vague and not sufficient to deny a CUP for inconsistency, and that state law dictates that ambiguities must be ruled in favor of private property owner. Baird stated that the requirement for a CUP is a deliberate attempt to target the project, and addressed perceived misunderstandings of his role and his relationship with the applicant. Baird stated that the developers are trying to develop private property under the laws of the County and state, due process right of client includes a response to how they would specifically address reasonably mitigated effects, and proceeded to offer a legal analysis of the standards of how CUPs are considered.

Baird continued with the following statements responsive to questions that have been posed regarding the CUP: Colorado River belongs to the United States of America and private property belongs to the property owners. Operational competence will be addressed by appropriately qualified staff. In regards to water rights, these are not the purview of the county and will be addressed in the proper forum. In regards to compaction of soils, applicants intend to be safe, will be safe, and will be subject to jurisdiction of all regulatory bodies and their reviewing authority. Application includes adequate demonstration of floodplain management despite speculation otherwise. In regards to traffic and road stipulation, under CUP rules, the County is entitled to evaluate reasonably anticipated detrimental effects only of the wastewater treatment plant, but not entitled to consider supplemental effect of the project that might be facilitated by the permit. Kicking it to the court and appellate body is submitting to public clamor and ignoring duty as elected officials. Job of the Commission is to narrowly evaluate project based on standards of the Utah CUP and not kowtow to public interest.

Commissioner Walker highlighted that this action was an administrative decision along with the need to ignore public clamor in rendering a decision, and declared what he described as simple and straightforward grounds for denial which are mainly section 4.06 of LUDMA and 9.5e of the Land Use Code, regarding incompatibility with the General Plan. Walker stated that focusing on these points narrowly are sufficient grounds for denial.

Commissioner McGann stated that she has taken her duties in considering this application incredibly seriously, and that any decision she makes will be based on concrete findings and not due to public clamor

that she has been subject to. McGann stated that she did attempt to work with the developers to bring forth a palatable project, but they have failed to do so, and they do not have the right to develop their property in any way that they see fit.

Motion by Commissioner Walker to deny the Kane Springs Improvement District Major Utility Conditional Use Permit based on the following findings:

(1) The proposed CUP is not consistent with U.C.A. §17-27a-406.

(a) 17-27a-406 reads:

After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

(b) The part of the Grand County's current general plan (adopted 2022) which most directly addresses new water and sanitary sewer services is 6.2.viii, which reads:

Do not extend community water and/or sanitary sewer services outside the Urban Service Area-Service Level 1 unless consistent with an adopted urban growth strategy, or for public safety reasons, as determined by the Planning Commission and the County Commission.

(c) The location of the proposed new utilities lies outside of Service Level 1 area.

(d) Grand County has not adopted an urban growth strategy that includes the area at issue, and neither the County Commission nor the Planning Commission have determined that the proposed new utilities are necessary for public safety reasons.

(e) The proposed public utility therefore does not conform to the current general plan.

(f) We also adopt Staff Report Findings #6 and #7, together with the associated Evidence items.

(2) The proposed CUP is also inconsistent with the General Plan.

(a) Grand County Land Use Code 9.10.5.E reads

The proposed use will be consistent with the purposes of this LUC, the General Plan, and any other statutes, ordinances or policies that may be applicable, and will support rather than interfere with the uses otherwise permitted in the zone in which it is located.

(b) The proposed CUP is not consistent with the General Plan and the policies contained therein for the same reasons it does not conform under U.C.A. §17-27a-406.

(c) There is no clear way to substantially mitigate these detrimental effects, and the applicant has made no proposal for mitigation.

Motion seconded by Commissioner Hedin

Discussion

Commissioner Walker stated that there were challenges in separating the narrow CUP from the larger context surrounding the proposed future development, and continued by saying Section 4.6 of LUDMA states that if the proposed utility is not consistent with the General Plan, it must be denied, and the staff report

states that it does not conform with the General Plan. Walker added that regulations regarding the extension of public utilities are quite clear, that there are no inconsistencies or ambiguity for that plan in this regard, that Section 9.5 (E) in the LUC calls for consistency with the General Plan, and that State statute allows the Commission to consider the General Plan not merely advisory, but that it must be obeyed, including as it applies to CUPs.

Commissioner Clapper added that this was not a judiciary legislative action or decision, but an administrative decision, and when considering staff findings, the CUP is not approvable because it does not conform with the General Plan in a very black and white reading.

Commissioner Winfield stated that he is closely considering this issue after several meetings learning more about the process, commended Commissioner Walker for his thorough findings, but pointed out that they go against the advice of legal counsel which is that there are not sufficient grounds for denial, and that this decision comes down to property rights. Winfield added that the Commission must be good stewards of Grand County citizens' taxes and county staff time, and that the body had a poor track record regarding CUPs, citing Escape Adventures' overturned decision. Two outside attorneys, SLC County Deputy Attorney Shaw and contracted legal counsel Kunz, in addition to Attorney Stocks, have advised approval, and while the project is extremely controversial, Winfield stated that he was unwilling to vote against professional staff and the County Attorney. A poor decision will force financial hardship on private property owners, and Winfield stressed that he won't ask taxpayers to pay for a colossal mistake.

Commissioner Walker asserted that the Planning staff stated that CUP did not conform with the General Plan and that this decision was not a referendum on the nature of the project, but a clear black and white reading of the law, and a simple question of conformance that must be ruled upon. Walker added that arguments for nonconformance are much more convincing and straightforward than an argument claiming ambiguity.

Chair Hadler stated that Commission was advised to follow the recommendation made by staff, which includes findings regarding nonconformance with the General Plan.

Motion passes 5-2, Winfield and McCurdy opposed

2. Independent Contractor Agreement with CZB, LLC for 2030 General Plan, Land Use Chapter Update (Planning and Zoning Director Elissa Martin) (1:51:05)

Presentation

Martin gave a summary of the proposed agreement, as shown in the agenda packet. Comprehensive update slated, which up to this point has been handled internally with limited staff resources. Approved within 2024 budget. 3 high quality proposals submitted, with two coming in a tie in the scoring process, triggering another round of interviews with finalists.

Motion by Commissioner McGann to approve the Independent Contractor Agreement with CZB, LLC to complete the Update to the General Plan, Land Use Chapter

Motion seconded by Commissioner Clapper

Discussion

Commissioner Clapper stated that he was grateful for the quality applications received and for the fact that the selection process forced a hard decision, and supports idea of hiring a contractor rather than increasing staffing. Commissioner McCurdy asked what the defining quality of the selected firm was. Staff explained their proposal was heavily centered on the concept of placemaking, especially as it relates to emerging

development nodes in the county, and how that will relate to development standards best fitting the community. The selected firm also has extensive experience throughout Utah.

Motion passes 7-0

3. Ordinance to Repeal and Replace Ordinance 675 and Chapter 8.16 of the Grand County General Ordinances and Adopt New Chapter 8.16 (Special Events) (Commission Administrator Mallory Nassau, Special Events Program Manager Kate Finley) (1:56:35)

Presentation

Nassau gave an overview of the proposed changes, all previously discussed, including exceptions carved out for OSTA and the consideration of a preauthorized list, as well as clarifications made regarding vendors and commercial activity.

Motion by Commissioner Clapper to repeal Chapter 8.16 (Special Events) of the Grand County General Ordinances and related Ordinance No. 675 and adopt new Chapter 8.16 (Special Events), as set forth in the attached Ordinance and its Exhibit A.

Motion seconded by Commissioner Winfield

Discussion (none at this time)

Motion passes 6-0, Hedin absent

4. Creation of a Preliminary Pre-Authorization List for Special Events (Special Events Program Manager Kate Finley) (1:59:35)

Presentation

Finley gave an overview of the proposed list of events that would be preauthorized, discussing criteria that would be used, with a short presentation of events that meet these criteria completely or partially. Commissioner Clapper confirmed that if any events underwent a significant change, they would come back for Commission consideration and not receive pre-authorization.

Motion by Commissioner Winfield to approve the preliminary special event pre-authorization list for 2024 as presented.

Motion seconded by Commissioner Hedin

Discussion

Commissioner Walker sought clarification as to whether removal from the list would have to be provided for in the ordinance. Staff explained that the pre-authorized list would be reaffirmed twice annually. Commissioner Clapper stated that he was leaning towards a shorter list, with the first four presented in the hypothetical list being what he considers no brainers. Chair Hadler stated that he felt it was a short list that didn't present to him any concerns or question marks. Commissioner McCurdy stated that he wanted an even bigger list.

Motion passes 6-1, Clapper opposed

6pm Citizens to be Heard (2:05:45) (none at this time)

5. National Geographic Traveller - NationalGeographic.com 2024-06 - ID 11046 Marketing Proposal (Assistant Economic Development Director Sky White) (2:07:05)

Presentation

White gave an overview of the proposal, as presented in the packet. Preferred vendor and proposal for this project oriented towards outreach in the United Kingdom, to include a variety branded media content, with an option to pivot and expand to other destinations if it proves successful. Proposal within approved paid media budget.

Motion by Commissioner McCurdy to approve National Geographic Traveller - NationalGeographic.com 2024-06 - ID 11046 Proposal for \$14,017, as presented.

Motion seconded by Commissioner Hedin

Discussion (none at this time)

Motion passes 7-0

6. STAR Grant First Contract Amendment(s) (Assistant Economic Development Director Sky White and County Attorney Stocks) (2:10:30)

Presentation

Attorney Stocks gave an overview of the proposed adjustments, as presented in the packet. Most amendment are related to granting more time to expend the funds, with one being a small adjustment to the nature of the use of the funds, which is the reduction of one proposed workforce housing site, a reduction based on compliance with what is actually permitted.

Motion by Commissioner Walker to approve the First Amendment to contract, extending and or modifying the terms for the following recipients: Grounded Healing, Heron School, Hidden Cuisine, Science Moab, Sheri Griffith Expeditions, Westside Woodworks, and Wild Raven Soap.

Motion seconded by Commissioner Winfield

Discussion

Attorney Stocks clarified that it was likely that a small number of additional grant contracts would need amendments and would come before Commission in the coming months.

Motion passes 7-0

7. Childrens Justice Center (CJC) Vehicle Purchase (County Attorney Stocks and Children's Justice Center Director Andrea Noyes) (2:16:30)

Presentation

Noyes gave an overview of the proposed action, as presented in the packet. High travel demands associated with CJC activity, from the Navajo reservation up to the Wasatch Front, and the current department vehicle is in disrepair and comes with very high gas costs. State funding source through the Attorney General's Office had rollover funds available, and paired with the extension associated with San Juan County coverage, increased funds can be reworked to allow for this purchase without an increased in

budgeted expenses. Electric vehicle proposed for purchase will serve to reduce gas costs. Attorney Stocks gave further background regarding the need for the vehicle.

Motion by Commissioner Winfield to approve the purchase of a vehicle for the Children's Justice Center.

Motion seconded by Commissioner Hedin

Discussion

Commissioners expressed concerns regarding the relative lack of vehicle charging infrastructure, especially on the reservation. Fleet manager Cody McKinney did complete an analysis regarding charging coverage throughout the service area and deemed that an electric vehicle is appropriate.

Motion passes 6-1, Clapper opposed

8. Ordinance Establishing the Public Land Corner Preservation Fund (Associate Administrator Quinn Hall and Commissioner Winfield) (2:24:53)

Presentation

Hall gave an overview of the proposed action, as presented in the agenda packet. Public Hearing held in 2019 without a subsequent approval. Commissioner Winfield stated that at the UAC Convention he learned that there were statewide funds available for this effort. Deadline of May 10th for establishing the Ordinance and submitting a proposal for these funds.

Motion by Commissioner Winfield to approve the Ordinance Establishing the Public Land Corner Preservation Fund.

Motion seconded by Commissioner McCurdy

Discussion

Commissioner Clapper stated that it might be advantageous to request a general update at a Commission meeting from Surveyor Lucas Blake. Commissioner Winfield added that he was exploring ways that these funds could be applied to the Thompson Springs replat effort.

Motion passes 7-0

Consent Agenda – Action Items (2:29:20)

9. Approval of Consent Agenda Items

A. Approval of Meeting Minutes from 4/16/2024

B. Ratification of Payment of Bills

C. Ratification of the Emergency Purchase of the Evaporative Cooler for the Kitchen Intake at the Grand Center

D. Ratification of the UDOT Federal Aid Agreement for Local Agency Project

E. Ratification of the Independent Contractor Agreement with Arch Walker for an emergency replacement/repair of the North bay roll-up door at the Old Spanish Trail Arena (OSTA)

F. Modification to the Cooperative Law Enforcement Agreement for the Manti-La Sal National Forest

G. Update to GC/SEUHD MOU for Healthy Trails Coordinator Position

H. Updating the Succession Plan for the Emergency Manager and Chief Executive Officer

I. Grand County 2024 4th of July Fireworks Display - Independent Contractor Agreement

J. Extension of time for Redtail Air to begin construction of their new FBO Building
K. Sales Tax Data Request to the Utah State Tax Commission

Motion by Commissioner McGann to approve the Consent Agenda as read by the Chair, excepting item I

Motion seconded by Commissioner McCurdy

Discussion (none at this time)

Motion passes 7-0

I. Grand County 2024 4th of July Fireworks Display - Independent Contractor Agreement
(2:32:05)

Presentation

Staff explained that the cost for the fireworks is split three ways between the County, City, and Recreation Special Service District. County portion is derived from TRCC funds. Commissioner McCurdy declared that OSTA would be an enthusiastic and willing host for future fireworks displays.

Motion by Commissioner Winfield to approve the ICA with Vortex Fireworks

Motion seconded by Commissioner Walker

Discussion (none at this time)

Motion passes 7-0

Discussion Items (none scheduled)

Public Hearings (none scheduled)

Chair Hadler adjourned the meeting at 6:33 p.m.



Jacques Hadler
Chair, Grand County Commission



Gabriel Woytek
Grand County Clerk/Auditor