



**MEETING OF THE
TAYLOR PLANNING & ZONING COMMISSION
ON TUESDAY MARCH 1, 2011
AT 7:00 P.M. AT
TAYLOR TOWN HALL
425 W. PAPER MILL ROAD**

Commission Members Present: Chairperson Merry Nutter, Vice-Chair Eric Ritz, Jack Babb, Loretta Whitlow, Harold Meservey

Commission Members Absent:

Staff Present: Planning & Zoning Director Jeff Johnson, Administrative Assistant Kathy Hancock

Attorney Present: Town Attorney Sterling Solomon

Visitors: See list.

- 1. Public Hearing: The Purpose of this Hearing is to take Public Comment on a Text Amendment to 18.70.040 part B and D.**
- 2. Open Public Hearing:** Chairperson Merry Nutter opened the public hearing at 7:02 p.m.
- 3. Public Comments:** There were no comments from the public.
- 4. Close Public Hearing:** The public hearing closed at 7:02 p.m.
- 5. Public Hearing: The Purpose of this Hearing is to take Public Comment on a Zone Change Request on Parcels 205-13-015 A, B, C, D & E. The Owners are requesting a Change from Agriculture-2 (AG-2) to Industrial (IND).**
- 6. Open Public Hearing:** Merry Nutter opened the public hearing at 7:03 p.m.
- 7. Public Comments:**

Citizens that spoke against the zone change included: Lee Hale, Gary Sweet, David Hamblin, Raymond DeMuro, Jerry Willis, Maria DeMuro, Alayna Neff, John Skouson, Ruth Gurr, Paul Anspach, Don Anderson, Michael Bluse, Chris Johnson, Steve Hutson, Ann Anspach, David Fossiano, Barbara Yarn, Mark Alexander, Roger Smith, Don Shurter, Marshall Yarn, Clifford Maxwell, Lucy Hamblin, Jessica Hamblin, Danny Shurter, Brittney Johnson and Rosemarie Yamamoto.

Some of the concerns were:

- Roads are already dusty without anything else happening
- Don't want this in neighborhood or in our backyard
- Lots of dust when the wind blows
- Knew Hatch Construction and Reidhead Sand and Rock were there when we bought property but had no idea that Brimhalls' would come within 400' of homes
- This is the third time we've talked about this matter; this makes no sense

- Smell of the batch plant
- Bought property because it was zoned AG and surrounding property is also zoned AG
- Can mine further out of town where it doesn't bother residents
- Taylor doesn't need to be a mining town
- In regard to the Hall sand and rock project, Mr. Brimhall had said that he did not want to have construction traffic next to a residential area and a church. He was worried about residents' concerns with dust with the Hall's mining operation but must not feel the same about his own operation
- We love this quiet community the way it is
- Hugely increased truck traffic endangering our children and destroying the local roads
- Noise
- Pervasive scent of diesel fuel and perhaps asphalt production
- Bright lights at night
- Effects the mine would have on Cottonwood Wash including the possible redirection of flood waters into properties immediately north of the wash
- Lack of clarity in the reclamation plan regarding management and cleanup of potential oil spills and spills of other chemicals possibly into the wash
- Adequate storage of topsoil so it doesn't get carried away into our neighborhood along with dust and spores, etc.
- Standing water and the increase for mosquito problems
- Diminished wildlife
- Reduction in property values and quality of life
- If this goes forward, where will it happen next
- Can the owner of the vacant lot next to me exercise his sub-soil rights to my gravel, can I do that?
- Council will face a minefield of potential, perhaps litigable inconsistencies if others jump at the chance to change our zoning map into a checkerboard
- This proposed pit is not next to our neighborhood, it is in the middle of the neighborhood
- We may leave the area if this is allowed; wife has serious breathing problems, she will probably be dead within 6 months if this comes in
- I work nights and sleep during the day
- There are several cancer patients in the area and the last time this came up, the council said they would have the County Health Dept. look into it to see if asphalt plants are part of problem
- Trucks are too heavy for that road; they need a weight limit of 12 tons
- Mr. Brimhall knew this was a subdivision before he bought the property
- Mr. Brimhall isn't going to create jobs, he will just move equipment and people from someplace else to here
- We put all of our money in our house and lot and would not be able to sell home if this comes in
- Not everyone can tolerate the level of dust this will create, we already have health problems from the other plants

- I am on oxygen and have had a heart attack, I cannot handle the dust most days and have to stay in my house
- I have asthma and don't want it to get worse
- If the town weighs the positives against the negatives, the negatives far outweigh the positive;
- I have a son that is brain injured and can't stand loud noises; he bites himself and starts yelling with loud noises so we try to avoid anything like that. Sand and gravel is needed but not at the cost of my sons' health, we will have to move if this comes in
- The wash on the north side will be affected by the flooding, but there are at least 26 people on the south side of the wash. It's already difficult and this could make it even harder to get across the wash

David Hamblin added comments saying he realizes Mr. Brimhall might try to justify this request by referring to the Hatch and Reidheads operations which have been in continuous operation for years and are grandfathered; this operation has no such basis. He referenced a Town Ordinance quoting "The purpose of the AG-2 district is to protect and preserve agricultural land and its associated uses within the Town of Taylor. Land uses within the zoning district are intended to be single family Residential and Agricultural in nature." If this request is granted we would have to turn to other sources for relief which would become a burden for us, the town and Brimhalls'. We would expect to involve many other agencies and entities to help. I could expect picketing and lots of publicity that everyone would like to avoid but we are talking about the health and safety of our families.

Senate bill 1598 is under consideration at the state legislature, this bill would dramatically threaten the ability of this town to protect their citizens from adverse actions by companies that mine aggregate materials. There is unincorporated land close to the west that could possibly be aggregate mined where we might not have same protections as we have in incorporated areas. Please protect us from this threat.

Citizen that spoke in favor of the zone change included: Eddie Hancock and Day and Nola Ellsworth

Eddie Hancock said there are two sides to every story; it takes jobs and working together to keep the community. Let's try to be understanding of both sides. Brimhalls' are not here to hurt, injure or cause problems. We can have the best of both worlds by working together. There are federal, state and town rules and regulations and Brimhalls' cannot go in and destroy that neighborhood, they must follow rules. They have been here many years and provided many jobs, so please listen to the whole story before you make your decision.

Day Ellsworth has lived here for 50 years, and has been the person that has been the big creator of growth in Harvest Valley. Nobody can be recipients of more dirt, dust and noise than he is. He lives very close to both Reidhead Sand & Rock and Hatch Construction. These businesses have provided jobs for 100's of people and they have been good neighbors. I would appreciate Brimhalls' coming and helping with Cottonwood Wash, there is a big problem with potential for flooding and erosion. Brimhalls are good and honorable people that will do what they say and they have done a lot for our community. Please allow this zone change.

Nola Ellsworth said this will bring revenue and jobs. Jeff Johnson will not allow problems to exist; he and the town are in charge. This can be done carefully and we can still have good property values. There are two sides to this and this material won't last forever and the land will be left better than it was.

Requests from the citizens to the Commission:

- Ask to have the same consideration to this neighborhood that Mr. Brimhall requested of the Hall property.
 - This is a critical point of discussion for the Town, will it be a pleasant attractive place for citizens to live or will it become a moonscape.
 - Please protect us; we have to have a balance between business and private.
 - We need to appeal to you for our protection and we rely on you to provide protection for us.
 - See if Brimhall has complaints in other towns and what will the town of Taylor allow him to get away with.
 - We recommend that you have a traffic impact study in the area.
- 8. Close Public Hearing:** The public hearing closed at 8:04 p.m.
- 9. Regular Meeting Called to Order:** Merry Nutter called the regular meeting to order at 8:04 p.m.
- 10. Open Call to the Public:** There were no comments from the public.
- 11. Approval of Minutes: Approve the Minutes of the January 4, 2010 Planning & Zoning Commission Meeting.**—Eric Ritz wanted to make a point of clarification as to why he voted in opposition to the motion at this meeting. His opposition had to do with the specificity and the binding nature of the conditions as opposed to the use.

Motion made by Eric Ritz, seconded by Jack Babb, to approve the minutes of the January 4, 2010 meeting as read. Motion passes.

Action; Approve, Deny, or Table

- 12. New Business: Discussion and Possible Approval of Recommendation for a Text Amendment to 18.70.040 part B and D to the Town Council.**—Eric Ritz explained that with this change, we are simply looking to reduce the number of commissioners for ease of a quorum. Jeff Johnson went on to say that we have only had five members for the last two years even though our commission calls for seven members. There have been times when two commissioners are out of town and we haven't been able to have meeting.

Eric Ritz made a motion to reduce the commission from seven members to five, Loretta Whitlow seconded the motion. Voting was unanimous.

Action: Discuss, Recommendation to Council, Deny or Table

Sterling Solomon noted that the motion is to approve a recommendation for a text amendment to the Town council.

- 13. Discussion and Possible Approval of Recommendation of Zone Change from Agricultural-2 (AG-2) to Industrial (IND) on Parcels 205-13-015 A, B, C, D, & E.**—Kirk Brimhall from Brimhall Sand and Rock said in 2004 an opportunity came for Brimhalls' to purchase property from Jack Carlisle and he asked Carlisle

to apply for a zone change. There was a public meeting in 2005 where Brimhall presented a mining plan. The same issues that were brought up tonight were brought up then. They wished there was something in the Town Codes that went between Agricultural (AG) and Industrial (IN). Brimhall sent a letter to the town requesting the zone change be withdrawn for various reasons and one was to get some answers to questions before they proceeded. One thing we wanted to know was who had the mineral and mining rights on this property and if the rights that had been identified in 1958 on the deed had been transferred. One of the issues was dealing with the right-of ways on Gene Taylor Ranch Rd

He explained the steps he had to take in order to comply with the state statute that requires all sand and gravel operations to have uniform rules of their reclamation. This process took several years and the final test results were finally approved on 12/17/2010. At that time, this property was assigned a number and is on the state files as having a commercial source for aggregates.

The aggregates in this area are not as high quality as some areas because of the sandstone in it. This does cause some problems but not for a large portion that can be used on commercial projects.

When we asked for a zone change for Industrial, which allows the mining of sand and gravel, it encompasses everything in the State Statutes that defines what mining means. We don't know as the year's progress what equipment would or would not be on the property. We bid projects and the projects come according to the revenues and each has different specifications and requirement.

Regarding the concerns with the wash, the mining plan does not allow us to be in the wash. We will mine to the south of the fence and wash and will not be disturbing that wash or its flow.

The Town Council adopted the 2015 General plan on 12/10/2003 so this was in effect before we purchased the property. The General Plan says that it's a goal to provide the high quality lifestyle in Taylor but on page 12 it says it is a policy to require that any implementing ordinances such as Zoning Ordinances, Subdivisions Regulations, etc. be consistent with this General Plan and requires that rezoning, subdivision or land use decisions be consistent with the General Plan.

Under *Residential goals and policies*, #5 says we should restrict commercial uses in residential areas to those which do not impact the neighborhood with additional noise, dust, odors, or lighting, or provide visual impacts. Also, reduce residential encroachment into commercial/industrial areas.

Under *Industrial Employment goals and policies* #3 says we should promote the development of "home-grown" industries which utilize local resources and talents. Brimhalls' have been here over 50 years and certainly qualify as a homegrown industry. #4 requires all new industrial uses to be properly separated from residential areas with solid fences or walls, landscaping, and setbacks appropriate to the use. #5 says recognize the existence of "resource-industrial" uses (IND-R) such as sand and gravel operations in the western portion of Taylor.

Then it goes into the Land Use Designations Map that shows where there is possible sand and gravel. There are several areas identified for sand and gravel on the map but he believes the town needs to do a better job of identifying all the gravel resources so someone wanting to buy property would be able to look at the map and see where the resources are. It also says we're supposed to have a

Resource Industrial Code (IND-R), which is what Mr. Brimhall would have liked to applied for. Even though the General Plan says it's the policy and goal for the town to have this code, the town does not have it. That's why we have decided to go ahead with a zone change to Industrial. This is a resource that has been known about and mined for over 50 years. We know there is a dust situation but we do work with all the agencies and we maintain our permits. We have certified employees that have the authority and are required to shut us down if the dust is blowing too badly. We drilled a well and have water so we have the required dust abatement to run a screening operation. Our present plan is screening but we don't know what the future holds.

Mr. Ritz asked what Mr. Brimhall meant with his comment that said "they wished there was something between AG and Industrial zone". Brimhall explained that he was referring to the letter written 2005 to Mr. Sturgell that explained that during the discussion with the public, there was a concern that if the property was rezoned Industrial, when the mining had ceased, the property could be resold and used for any number of Industrial uses. Brimhall did not feel that a rezone was necessary and the property should stay AG so when the mining was completed, it could be reclaimed for Agricultural/Residential use. He made that statement before he knew what the General Plan said. He believes that other miners are zoning in AG including new parcels that they weren't mining when zoning went into place. Talking with the town, the only place mining is allowed is in Industrial, so that is why they are making the request. There are numerous other parcels that need to be rezoned or this Resource Industrial Zone needs to be put into place

Mr. Ritz asked if all aggregate minors are treated the same by law or is there opportunity to change the reclamation process on local levels and if it is reasonable for a town to require more from a miner than the State Mine Inspector. Mr. Brimhall said, in his opinion, no.

Ron Matkin is the engineer and surveyor for this property and addressed issues with their site plan. He noted where the floodplains and floodways are and where truck and other accesses to the property would be. The property that the road is on is owned by Brimhalls'. He marked the map with colored ink to make it easier to identify the different areas: the main area where the material mining will be is marked on the map in green; the main removal of material area is marked in orange; the fenced areas are marked in purple; the sand loom area is marked in pink; blue will identify the floodplain areas and yellow, the floodways. Most of the floodways and floodplain are along the bank on the wash.

Brimhall referenced a letter from the State Mine Inspectors office that addressed a question from Mr. Hamblin. The letter explained that a berm would be created by Brimhalls' that would protect Cottonwood Creek from flooding both during their operation and in the future.

There was discussion about buffers relating to zoning classifications and Mr. Johnson said the Town Code addresses landscaped areas and suggests buffers but does not give a distance, it just says buffer.

Mr. Brimhall reported that State Senate Bill 1598 has already passed one committee; its purpose is to establish the regulatory bill of rights. He said it is basically the same wording as the Towns General Plan, this is why he brought up that the town made the goals and policies but they are not following them. What

is probably a concern for the Harvest Valley citizens is #3 in the bill. If this bill passes, the towns cannot interfere with mining areas that are identified on the states maps. It also says “that a general grant of authority does not constitute a basis for imposing the licensing requirement or a condition unless specifically authorized by that authority”. Brimhall believes they have legal grounds and that mining was never granted to the cities. It prohibits a municipality or county from adopting an ordinance or a code under a specific grant of authority that exceeds the listed subject matter or an adopting a code under general grant of authority to supplement more grants of authority.

This isn't a legal situation, it is a request for a change from AG to IN per the town code to allow for mining for the resources that exist and that the General Plan identifies. You need to follow your General Plan because it's your policy, in his opinion.

Mr. Johnson said in his opinion, the town is following code. The purpose of AG-2 Zoning is to protect and preserve single family residential with AG uses. The General Plan says single family uses are residential and our General Plan does list residential as being protected. Mr. Brimhall is quoting out of the Industrial portion of the General Plan. It doesn't say in Single Family Residential areas that you should acknowledge Industrial.

Mr. Hamblin addressed Senate Bill 1598. He said Brimhall mentioned there is no anticipated physical impact, but the rest of the sentence says “to the State General Fund associated with this legislation”. If this bill passes, the cost to the town and other governments can be expected to reach into the many millions of dollars spent on research and preparation of newly required documents. This bill exercises shocking favoritism towards the aggregate industry. He considers this a very dangerous piece of potential legislation. Knowing that we will probably have to come back to the Town Council meeting and that the neighborhood is on the west edge of town, we will probably have to defend our homes over and over.

Mr. Ritz said the P&Z's job is to try to strike a sense of balance. The property owners have rights but as commissioners, we also have zoning to protect the rights of the property and also to help shelter neighbors from adverse effect of a usage. There is a balance and the community needs to work together as neighbors. Can we have a zoning change that has limitations that might significantly restrict operations? In light of SB 1598 there's a risk that says we might have a mine with no restrictions, maybe some restrictions are better. Property rights are paramount, but restrictions on that can make some sense. We should allow miners to mine in a responsible way and that responsibility starts with a buffer that includes distance.

Mr. Brimhall feels strongly that you need to consider the General Plan and consider the possibility of sand and gravel ordinance that the community and the industry could participate in the wording of the ordinance.

Sterling Solomon said there is a mining ordinance in progress right now. The ordinance will be provided to council and they would decide if they want input from the public and industry. Mr. Brimhall noted that he has to proceed under the existing ordinances.

Loretta Whitlow said we may not always like compromise but we need it to live and grow and have our children be able to live and grow here.

Jack Babb said the issue is that Mr. Brimhall is looking to rezone an area to industrial that is surrounded by residential, mainly because of that he would like to make a motion.

Motion made by Jack Babb to not approve or recommend the Zone Change to the Council. Motion seconded by Loretta Whitlow. Motion approved unanimously.

Mr. Babb continued saying that he believes that there needs to be some balance and something available that everyone can compromise too, but right now because of the proposed Industrial surrounded by Residential, this is the reason he made this motion. Mr. Solomon said for clarification do you mean people living in residences in an agricultural area? Mr. Babb answered yes.

Action: Discuss, Recommendation to Council, Deny or Table

Mr. Solomon noted that this is a recommendation to the Council, not a decision. This will go before the Council for consideration

14. Old Business: There was no old business.

15. Items for Future Agendas: Mr. Johnson said we still need to go over the animal ordinance that we have been talking about. The last instruction he received from the commission was to organize everything that was previously discussed and bring it back. If there is no public hearing, it will be brought back at the next meeting.

16. Adjournment-- Motion to adjourn the meeting made by Merry Nutter, seconded by Harold Meservey. Voting was unanimous.

Meeting adjourned at 9:45 p.m.

Certification of Minutes: I hereby certify that the foregoing minutes are a true and correct copy of the Taylor Planning/Zoning Commission Public Hearings and Meeting held March 1, 2011. I further certify that the meeting was duly called to order and that a quorum was present.

Dated this 1st day of March, 2011

Kathy Hancock
Administrative Assistant