

**PARK CITY BLUE RIBBON COMMISSION ON THE SOIL ORDINANCE AND SOIL DISPOSAL OPTIONS  
SUMMIT COUNTY, UTAH  
MINUTES OF FEBRUARY 25, 2013  
10:00am – 12:00pm  
Marsac City Hall Council Chambers**

COMMISSIONERS PRESENT: Roger Armstrong, Chris Cherniak, Hans Fuegi, David Hampshire, Moe Hickey, Rory Murphy, Liza Simpson, Brian Suhadolc, Leslie Thatcher, Tom Ward, Charlie Wintzer

COMMISSIONERS ABSENT: Chuck Klingenstein, Katie Wright

STAFF PRESENT: Tom Daley, Joan Card, Matt Abbott

I. Roll Call and Approval of the Minutes

Craig Sanchez asked for any changes and clarifications to the minutes. Joan Card explained that draft minutes reflect an error in that David Smith is a nonvoting member of the Commission. Mr. Smith declined membership on the Commission on January 31, 2013. Mr. Smith has agreed to attend the meetings. David Smith should be removed from the commission membership list. Mr. Smith has never been a member of the commission, whether voting, non-voting or otherwise. Minutes of previous meetings will not be amended to reflect any misunderstanding to date of Mr. Smith's status. Liza Simpson asked if the current draft minutes should be approved as drafted. Ms. Card indicated she would clarify with the Legal Department that the error could be corrected. Chris Cherniak also indicated that the February 11 minutes should be changed to state receptors "include" humans, wildlife and plants. Mr. Cherniak recommended that addressing lead addresses other contaminants ought to be changed to "potentially address" because there is no guarantee that addressing lead addresses other contaminants. Roger Armstrong, Liza Simpson and Joan Card expressed their opinions that the minutes accurately reflect Mr. Everett's statement. Mr. Cherniak also indicated that the statement that a standard of 5 in blood lead would lower the soil standard for lead to 150 parts per million should be qualified. Mr. Cherniak suggested the minutes should reflect that Mr. Everett made that declarative statement.

Roger Armstrong moved for the approval of the minutes. Moe Hickey second. Minutes of February 4 and February 11, 2013 are approved.

II. Discussion and Possible Election of Chairperson

Craig Sanchez asked for discussion about the possible election of a Chair. Mr. Sanchez stated that his role will include certain Chair duties, such as calling for votes, as well as facilitation. Rory Murphy indicated he was comfortable with Mr. Sanchez in the role. Liza Simpson suggested that the facilitator role is more important than a Chair in this type of Commission and she is content without a Chair. The Commission did not elect a Chair. Mr. Sanchez raised questions outstanding from the last meeting. One was regarding the Soil Ordinance standard of 200 parts per million, which would be answered in a future meeting as Jim Blankenau was out sick. The other related to Commissioner liability and Joan Card passed along from the Legal Department that Commissioners are covered acting in the scope of their duties under the Governmental Immunity Act. She stated it also is difficult to conceive of actions this advisory body could take that would result in liability. Ms. Card summarized that so long as Commissioners act in the scope of their duty and follow the Open Meeting laws the Governmental Immunity Act should apply.

### III. Facilitator's Opening Remarks

Craig Sanchez reviewed the agenda.

### IV. Staff Presentation Cont'd—EPA in Park City: Past, Present and Future

Joan Card reviewed where this topic left off at the last meeting with EPA's Richardson Flat Superfund Site map and EPA's apparent cleanup plans. Ms. Card referred to the correspondence between EPA and Park City in the summer of 2010. Ms. Card summarized that the June letter reflects an understanding that EPA requires Park City to take the steps to open a second repository. The July 2 letter from EPA was considered a change in direction, as EPA stated its vision for a "multi party agreement" involving more parties than EPA and Park City. Ms. Card also highlighted the portion of the July 2 EPA that indicated the volume of waste in the cleanup area that may require disposal in the repository—approximately 1.2 to 2.2 million cubic yards. Ms. Card stated that this directive from EPA lead to approximately two years of negotiations in the "multi party agreement" context and no agreement was reached. Rory Murphy asked if any understandings were reached. Ms. Card responded that the volume of capacity and contaminated material anticipated for cleanup apparently has not changed. Ms. Card reported an oral statement from EPA from September 2010 that the Richardson Flat repository has approximately 960,000 cubic yards of capacity remaining. Ms. Card clarified that the capacity left at the repository is being reserved for the EPA directed cleanup of Silver Creek. Roger Armstrong asked if a multi-party agreement was being drafted and was close. Ms. Card responded that there was a draft or two of an agreement, but it was not finalized because of certain liability waivers and releases that the Council felt it could not agree to as a matter of law and policy. Liza Simpson indicated that the recent agreement for the City to address the Prospector Drain came

out of the multi-party negotiations because EPA's cleanup plans for Silver Creek did not change when the multi-party agreement fell through.

Ms. Card also pointed out the EPA distinction between "site" waste and "development" waste in the July 2010 EPA letter. EPA's cleanup priority is "site" waste and not "development" waste because "development" waste is covered waste in town that does not currently pose a human health or environmental risk. Rory Murphy wondered if the EPA plans were born out of antagonism between Park City and EPA. Ms. Card suggested that EPA's policy makes sense to her from an EPA regulatory perspective because Silver Creek contamination is in violation of the Clean Water Act and CERCLA is designed to address that. Liza Simpson described EPA's viewpoint as dealing with waste that hasn't been dealt with (Silver Creek). Ms. Simpson also stated that the City's relationship with EPA has improved over the last three or so years. Leslie Thatcher asked what is limiting the capacity at Richardson Flat. Ms. Card answered that she believes or understands from EPA that EPA has technical concerns about the design and stability of the current repository. Liza Simpson suggested that the repository could have been designed from the beginning to be bigger but the design probably cannot now be revisited.

Hans Fuegi asked to understand better the liabilities of the City and a developer or land owner and believes it is important for the Commission to understand liabilities and obligations. Mr. Sanchez said it would be addressed in a future agenda. Roger Armstrong stated that he studied CERCLA as a law student and found most CERCLA cases involve complicated cases between numerous plaintiffs and defendants because of the nature of CERCLA's liability scheme. Chris Cherniak indicated that a person can be liable for some or all of contamination at a CERCLA cleanup.

#### V. Staff Presentation—Current Soil Disposal Options and Costs

Joan Card stated that the current available disposal option for Park City Soil Ordinance soil is at the Clean Harbors facility in Tooele, which is about three hours away. The tipping fee at Clean Harbors is \$50-60 per truck load, plus the cost of hauling. In total, a truck costs about \$2000.00 for disposal at Clean Harbors. Ms. Card made comparisons with the costs of disposal at a sanitary (municipal) landfill. She indicated landfills need daily cover and landfills may from time to time take soil that passes the TCLP test for daily cover. Summit County landfill has made a policy decision not to take soil from Park City (though they have in the past) in order to reserve capacity for municipal waste. Rory Murphy asked if there was a disposal facility in Price and Ms. Card did not know the answer. She believes there may be one in Southern Idaho, but understood that Clean Harbors is the least costly option at this time.

#### VI. Staff Presentations—Municipal Soil Disposal Needs

Clint McAfee, Water Manager, summarized Park City's water system and indicated a large portion of the system is buried—120 miles of pipeline and 5200 connections with meter boxes underground. Mr. McAfee showed photographs of water treatment plant construction involving large excavations of soil, and also pipeline construction and repair. Mr. McAfee described upcoming pipeline and treatment plant construction projects. Mr. Suhadolc asked if they have plans for soil management. Mr. McAfee indicated that an environmental engineering consultant has been asked to prepare soil management plans for the Water Department. Mr. McAfee indicated that most soil from the treatment plant was sent to the Richardson Flat repository as clean cap material and implemented an on-site soil segregation program with an XRF. Chris Cherniak indicated that an XRF machine allows soil contamination to be tested on site in real time without the need to send the soil to a lab for analysis. Mr. McAfee indicated Water Department concerns are cost, schedule, worker and public safety and working training.

Jonathan Weidenhamer, Economic Development Manager, described himself as a “developer” responsible to reinvest in the community. The soil issues create budget challenges whether the soil issues are known or unknown. Mr. Weidenhamer discussed upcoming “walkability” projects, including pedestrian/bike tunnels within or near the Soil Ordinance boundary. Mr. Weidenhamer also has considerations for potentially large recreation facilities. The Lower Park Avenue Redevelopment Authority recently was approved and potentially large projects will involve the excavation of soil. Projects are under consideration for Swede Alley and Main Street in Old Town, which are in the Soil Ordinance boundary and there is concern for the contamination that may be found.

Matt Cassel, City Engineer, described that a couple of Old Town projects are in the Soil Ordinance boundary and those have been reprioritized and only projects outside the boundary are going forward. Also, Prospector Avenue is scheduled for replacement and it is in the heart of the Soil Ordinance boundary. Mr. Cassel indicated that any federal money on the project would require 100% contaminated soil disposal (not allowed to be placed back on site), so he is evaluating that now. Mr. Cassel also suggested that mill tailings were used in road base and pipeline bedding. Rory Murphy asked if that would require the City to expand the Soil Ordinance boundary. Joan Card indicated that would be a risk management policy decision. She suggested that in any event federal law must be followed. Mr. Murphy asked what the City is doing with contaminated soil now. Mr. Cassel indicated that the City has taken some soil to Clean Harbors and his recent project on Empire Avenue did not unearth contaminated material. Leslie Thatcher asked if you can visually identify tailings. Mr. Cassel described in some cases we know that soil is contaminated or is tailings and in some cases the City does testing.

## VII. Guest Presentations—Private Sector Soil Disposal Needs

Mark Fischer thanked the Commissioners for their service. He is the proponent and owner of Bonanza Park redevelopment. He stated that if disposal costs are thirty times higher now than they were that will affect the type of development in town. Mr. Fischer said he wants to segregate clean from dirty soil so underground parking can be developed. Mr. Fischer understands that the Soil Ordinance does not allow clean soil to be removed from the boundary and Ms. Card confirmed that is the case. He strongly recommends the Soil Ordinance be changed to allow clean soil to be taken outside the boundary. Rory Murphy indicated he understood soil could be taken to a landfill if it passes the TCLP test. Ms. Card explained the difference between disposal under the ordinance and “reuse” as explained by Mr. Fischer. The ordinance currently does not allow reuse out of the boundary. Ms. Card stated she believes that this provision of the ordinance is rooted in federal hazardous waste law. Charlie Wintzer suggested that Richardson Flat was so close that segregating clean soil for reuse was not a consideration. There was discussion about EPA approving a change to the ordinance that would allow reuse of clean soil. Roger Armstrong asked if the 60,000 cubic yards in Park City’s July 2010 letter was all contaminated or a blend of clean and contaminated soil. Ms. Card responded that the City did not know because a soil segregation program was not being implemented for the reason Mr. Wintzer described—disposal at Richardson Flat repository was inexpensive.

Mike Sweeney described the development of the Caledonian and other properties on Lower Main Street in 1994. Those projects required the testing of soil in the area. Mr. Sweeney has an education and background in geology and the mining industry and he understands the challenge the community faces. Mr. Sweeney agrees with Mr. Fischer that allowing clean soil reuse is an important part of the solution. There were no tailings at his property on Lower Main Street and soil containing lead was managed on site at that time. This soil was impacted by waste rock from the mines rather than tailings. Mr. Sweeney reiterated the importance of changing the ordinance to allow the reuse of soil from the Soil Ordinance boundary in areas outside the boundary. Mr. Sweeney also believes the better approach is to develop a good working relationship with EPA.

## VIII. Commissioner Discussion and Questions to Staff

Leslie Thatcher asked if it would make sense to ask EPA about changing the ordinance before recommendations are made. Joan Card responded that it would be appropriate for this Commission to complete its work advising City Council and the City can take specific proposals to EPA. Rory Murphy wondered if EPA should “be at the table” in the spirit of communication and to get their people involved to help improve the relationship between Park City and EPA. Ms. Card responded that the last two and a half years of discussions with EPA did not bear an agreement but the relationship and

communication between Park City and EPA is better now. Also, Ms. Card has asked EPA for their participation at the Soil Commission and they have not accepted. Ms. Card also stated that in the next meeting there will be presentations on the difference between a CERCLA repository and a RCRA (Resource Conservation and Recovery Act) disposal facility. The recent negotiations with EPA related to a potential second CERCLA repository and Ms. Card would recommend against revisiting that topic with EPA at this time.

Craig Sanchez encouraged discussion about the liability question. Hans Fuegi described his understanding of environmental liabilities and said he is unclear about the details. He wondered about the City's obligation to use tax payer money for a repository for only City soils or for a developer's soil. Liza Simpson suggested that this Commission was created, in part, to assist the City Council's holistic view of the soil challenges with the community's general interests in mind, including reducing the overall costs of City projects if that requires an investment in a second repository. Also, if the community wants to see development happen in a certain way, the municipality may have a role in encouraging that kind of development, also if it means an investment in a second repository. Hans Fuegi questioned who has the ultimate responsibility. Rory Murphy said liability "fights" last a long time and would not result in a timely solution to the challenge. Liza Simpson reiterated that it makes sense to the Mayor and Council to look to a big picture, community based solution. Hans Fuegi reiterated that the Commission ought to run out the liability question. Charlie Wintzer said he was named in a lawsuit simply for preparing a report in a potential property transaction. Ms. Card stated that the City is only in the position to tell a property owner what his responsibility is to the City under the Soil Ordinance and not what his liability is to EPA or another private party. Charlie Wintzer suggested the Commission ought to know about the liability scheme under the City's Soil Ordinance. Ms. Card said it was a fair question and staff would look into it. Roger Armstrong said liabilities are uncertain and this Commission is looking at alternative solutions. He asked whether certain actions might increase or mitigate liability. He also described the US 40 corridor as a high priority area for Summit County. Leslie Thatcher asked David Smith in the audience about the mine company's plans for the Richardson Flat repository and Mr. Smith said that Ms. Card's statements about EPA's priority to use the capacity for additional Silver Creek cleanup are accurate. Rory Murphy asked if this Commission is wasting time going down a path without including EPA. Ms. Card suggested that the Commission could communicate directly with EPA at some point. Mr. Murphy suggested the Commission could take steps to improve the communication with EPA. Liza Simpson said that while communication with EPA has been challenging in the past, the communication is mainly positive now and EPA should see the Commission's effort in a positive light. She said EPA may like to see the community generate a community-generated solution. Moe Hickey asked if there was information to help us understand

how much contaminated soil we are talking about and suggested EPA might help answer that question. He also asked if the City projects have the same restrictions as private projects and Ms. Card responded they do. Rory Murphy and Charlie Wintzer talked about the site specific nature of where and how much contaminated soil will be at a property or project. Mike Sweeney talked about the difference between mill tailings and mineralized ore and said the Commission should address the tailings issues in an environmental sensitive way. Brian Suhadolc asked if the Commission recommended changing the ordinance and building a second repository how long would it take. Joan Card responded the question would be answered by presenters from the state and the private sector at the next meeting. Mark Fischer suggested that the definition of contamination has been variable and that the Commission should relax the standard.

Moe Hickey moved the meeting adjourned. Rory Murphy second.

The meeting was adjourned.