

PARK CITY BLUE RIBBON COMMISSION ON THE SOIL ORDINANCE AND SOIL DISPOSAL OPTIONS
SUMMIT COUNTY, UTAH
MINUTES OF MARCH 11, 2013
10:00am – 12:00pm
Marsac City Hall Council Chambers

COMMISSIONERS PRESENT: Roger Armstrong, Chris Cherniak, Hans Fuegi, Moe Hickey, Chuck Klingenstein, Rory Murphy, Liza Simpson, Leslie Thatcher, Tom Ward, Charlie Wintzer, Katie Wright

COMMISSIONERS ABSENT: David Hampshire, Brian Suhadolc

STAFF PRESENT: Tom Daley, Craig Sanchez, Joan Card, Matt Abbott, Jim Blankenau

I. Roll Call and Approval of the Minutes

Moe Hickey moved for approval of the minutes of March 4, 2013. Charlie Wintzer second. Minutes of March 4, 2013 approved with Chuck Klingenstein abstaining.

II. Facilitator's Opening Remarks

Craig Sanchez summarized that today's agenda involved a discussion of policy questions previously provided to the Commissioners. Mr. Sanchez invited John Whitely to make a public comment. Mr. Whitely provided the Commission costs for soil disposal from a recent project in Old Town. Mr. Whitely described how the requirements for disposal have changed over time. He said some soil fails the TCLP test and some does not. He said prior to requirements tailings were moved throughout town for construction purposes, including bedding in utility trenches and berms. Mr. Whitely described his general knowledge of soil contamination makes it difficult for him to compete economically with contractors who don't understand the history of soil contamination or the Soil Ordinance. Mr. Whitely described the difference in soil handling for projects within the Soil Ordinance Boundary and those without the Boundary. Mr. Whitely does not advise potential clients to test soil if they are not within the Boundary because there is no rule that requires it. Charlie Wintzer asked Mr. Whitely if he thought segregating contaminated soil from uncontaminated soil would be helpful. Mr. Whitely responded that he thinks a potential solution is to allow staging areas in the Soil Ordinance Boundary to place contaminated soils during construction activities then return those soils "back to the hole." Mr. Whitely said we need rules that apply to everyone equally. Commissioners asked Mr. Whitely a few questions.

III. Commissioner Policy Discussion

“1. Assuming the City has no legal obligation to the community in this respect (and staff believes it does not), is Park City’s mine waste soil management challenge a community-wide problem requiring a community-based solution?”

Chris Cherniak responded yes because it impacts the entire community and everyone in the community can participate in the solution. Moe Hickey also responded yes, we have some obligation to address the problem. Liza Simpson passed so she could hear from the group. Leslie Thatcher said she is not convinced the City does not have a legal obligation because of its subdivision approvals. She agrees it is a community problem because contamination is throughout the community. Hans Fuegi said yes because the municipality has projects involving contaminated soil, so in that way the community is impacted by the problem. Tom Ward said yes because the contamination affects lot owners, developers and the municipality. He would like soil segregation to be part of the solution. Roger Armstrong said both the City and the County would like a comprehensive solution. He would be in favor of City action if it would help with a comprehensive solution. Chuck Klingenstein said he is participating as a City resident, but it is hard to disassociate his many years of public service. He said he defines community to include the greater area, including the Snyderville Basin and health and welfare issues for all. He said the resort community economics and quality of life require a greater community-based solution. Katie Wright said yes for health and welfare, but does not know if the cost of any solution should be born equally by the different sectors. Charlie Wintzer responded yes and wants to be sure that new subdivisions are approved in consideration of not expanding the problem. Rory Murphy said the City has an ethical, moral and economic obligation. He is uncertain about the City’s legal obligation and said a court would make the final decision. Mr. Murphy said there are responsible parties out there to be made liable.

“2. Or, is the status quo acceptable (each landowner is solely responsible to meet the disposal requirements of the Soil Ordinance)?”

Charlie Wintzer responded that the status quo increases the odds of people cheating. Rory Murphy agreed cheating may be incentivized by the status quo and it may encourage law suits in certain cases. Katie Wright said she does not think the status quo protects health and welfare. Chuck Klingenstein said it is not acceptable because the playing field is not level within the City and beyond; people may avoid the City because of regulations. Roger Armstrong said the status quo probably is not working. Tom Ward said status quo is not acceptable but has questions about how to change and is concerned about the economic impacts. Hans Fuegi echoed the concerns about economics. Leslie Thatcher said she is torn because it is an issue of fairness for her between those who have incurred costs and those who have not, even though the rules

have changed. Liza Simpson commented on Mr. Murphy's comments about law suits. She said the City Council thinks this should be addressed as a community issue rather than focusing on expensive and complicated litigation. Katie Wright said if there is a clear responsible party they should be made to pay. Several commented that there is not a clear responsible party in most cases. Many people and entities, still existing and not, could be potentially responsible parties (PRP). Hans Fuegi questioned if there is an ongoing liability that would be a reason for someone to participate in the costs of any solution. Mr. Murphy said this type of litigation is problematic because it is too hard to sort out all the records, the facts, and the long history. Liza Simpson said that basically anyone who touched the contamination is a PRP. Charlie Wintzer said if you want a solution you must focus on a solution rather than finding someone to blame. Roger Armstrong said finding someone to agree to financial responsibility will want a release from future liability and that would be inappropriate when so much is unknown. Moe Hickey said the status quo is not working. He is concerned the Soil Ordinance Boundary encourages cheating and may be unduly limited. Involving the County is important. Mr. Hickey added that the municipality may be one of the major defendants in a lawsuit and we would be penalizing ourselves if we turned to litigation. Chris Cherniak said the status quo is not working but leveling the playing field will involve costs, "pain" and a lot of rethinking, oversight, and sampling. Commissioners discussed the issue of increasing the regulatory and enforcement burden.

"3. Assuming the answer to question (1) is yes, what is the municipality/taxpayer role? What is the commercial sector's role? What is the residents' role?"

Chris Cherniak said the municipality is the regulator and is responsible to revisit the issue from time to time. Moe Hickey said the municipality ultimately is responsible for the solution and has a leadership/oversight role. Liza Simpson said the municipality has an obligation to the community for cost effective solutions. Leslie Thatcher said the municipality and taxpayers are not necessarily linked. The municipality is the regulator and the taxpayer might not have an obligation to fix this problem. Hans Fuegi said the City should establish and enforce the rules to look out for the wellbeing of the community but the rules should not be unduly costly. He said residents should be protected from undue costs. Tom Ward agreed the best economically feasible option ought to be selected by the municipality, but the municipality should keep the process going all the way to "the finish line." Roger Armstrong said on a short term basis there ought to be a comprehensive cleanup from Prospector to I-80 as quickly as possible. He said individual property owners ought to be responsible for their properties, but the City appropriately can help figure out an economically feasible option for property development. Chuck Klingenstein said we are all in this together and we will thrive or suffer together. Mr. Klingenstein says he likes a vibrant community and we need to address this problem in perpetuity. He likes the idea of treating this problem with short

and long term solutions with an entrepreneurial spirit and public private partnerships. Katie Wright said the municipality should work with partners, including the County, and balancing health and economics. She thinks we ought to have a discussion about the commercial sector role. She also thinks the municipality should increase education and awareness and the health issues should be handled carefully. Charlie Wintzer said the City is the only one who can lead the search for a solution and then the economics will follow. Katie Wright asked about the role of the County Health Department. Liza Simpson said she would be the newest Summit County Health Board member. Joan Card stated that the Commission heard from the UDEQ toxicologist who has a very specific knowledge about the health issues here. Leslie Thatcher said she asked early on if there is even a human health problem. Rory Murphy said it does not appear to be a human health problem. Liza Simpson said if there was no need to excavate soil then we would not have a health problem, but we are dealing with a community lifecycle issue and if the soil is exposed it may present a problem. Rory Murphy said the contamination is inert and digging it up creates the issues. He said EPA tested people in Park City for lead and did not find a health problem. Joan Card added that there is a health aspect, an environmental aspect and a regulatory aspect and sometimes the three are linked and sometimes they are separate. Rory Murphy agreed that the municipality should be regulator and provide up-front costs. He said any fees associated with the solution should reflect the actual costs and the commercial sector may need to pay more than others. Roger Armstrong added that PRPs ought to participate in the costs and others agreed.

“4. How does the Commission feel about a landfill solution? What additional questions or issues should be explored?”

Charlie Wintzer said he would like to know the size of a landfill. There are questions that need to be answered about location, costs, esthetics before he could support a landfill option. John Whitely offered an idea for a potential landfill location. Katie Wright said if we are planning to deal with this in perpetuity we will need a lot of space. She also said some nonprofits have told her that water quality is of concern to them, including issues with the current Summit County landfill and we should explore potential impacts on water quality as part of the landfill analysis. Chuck Klingenstein said his inclination is to come up with a landfill solution, but details will be important. He said we need a feasibility study to determine if a landfill is in the realm of possibility. He said political issues should be considered, including possible locations. He said public private-partnership might also be a possibility. Chris Cherniak said he has concerns about a landfill solution because of the cost, efforts and other requirements, but he agrees it should be explored. Roger Armstrong said a landfill does not feel like a great solution. He would like to know more about the economic model because it seems like a costly solution over the long term. He also said he thinks there are advantages to

taking the hazardous waste to the current permitted facility out of our jurisdiction. Rory Murphy and Joan Card reiterated that the waste that fails the TCLP test cannot go in a local landfill and must go to Clean Harbors anyway. Mr. Murphy expressed concern that a local landfill would not address the whole problem. Joan Card described the two kinds of landfills—solid waste and hazardous waste. The Clean Harbors facility is a hazardous waste landfill and we have been talking about a solid waste landfill for contaminated soil that passed the TCLP test. She said the staff did not present a hazardous waste landfill option to the Commission because of the significantly more stringent regulatory requirements and higher costs (than a solid waste landfill). Ms. Card clarified that contaminated soil with a TCLP above 5 must be treated as hazardous waste for disposal and a contaminated soil with a TCLP below 5 may be treated as a solid waste for purposes of landfill disposal. Ms. Card and Liza Simpson clarified that though contaminated soil with TCLP below 5 could be disposed at the Summit County landfill, and had in the past, they made a decision to reserve capacity in that landfill for municipal sanitary waste. Tom Ward said it is the solid waste (segregated from the hazardous waste) that is the real problem. Moe Hickey agreed we probably ought to address the segregation issue and highlighted Mark Fischer's previous presentation to the Commission. Mr. Ward thought it was better to discuss Soil Ordinance revisions than a landfill. Roger Armstrong reiterated that a short term plan could be to look at property already in an EPA operable unit and get it quickly constructed and capped. The longer term development waste landfill presents long term issues. Joan Card explained that any activity in the operable units will be determined by EPA's Superfund Program through a process that involves future planning, disclosure and public comment. Roger Armstrong asked if Park City needs to address contaminated soils from the 2010 projects in the cleanup of the operable units. Ms. Card said those soils are being managed in a staging area under state and EPA oversight, but a permanent solution will need to be determined. Liza Simpson said that waste could be sent to Clean Harbors and is not necessarily a reason to build a landfill.

VI. Commissioner Discussion and Questions to Staff

Craig Sanchez asked the Commission to look at the remaining policy questions and potential Soil Ordinance changes for next week's meeting. Leslie Thatcher asked how we can get a CERCLA repository. Joan Card said EPA would need to determine such a repository is a necessary component of a Superfund cleanup action. The discussions with EPA and the mine company over the last two years were about a second CERCLA repository that EPA would agree to include in its cleanup plan (in the context of an agreement that ultimately was not reached). Ms. Thatcher asked if we could approach EPA and ask again. Ms. Card responded that EPA did not agree then and may not have a different response, but we could discuss the Commission approaching EPA with such a request. Chris Cherniak asked if a CERCLA repository could be operated for

profit. Joan Card responded probably not, but she is not aware of any rules on the topic. Rory Murphy asked about the EPA proposal to allow a small amount of City development waste to be disposed at Richardson Flat after the May 2010 EPA memorandum closing the repository to waste from Park City. That was described as a “carrot” and a “tactic” to encourage Park City to reach an agreement for a second repository. Ms. Card believes that offer is off the table now. Moe Hickey stated that he is not certain commercial developers should be asked to contribute more because we don’t want to be punitive against commercial developers who already pay higher taxes.

Joan Card asked the Commission if there are any remaining liability questions. She offered the Commissioners information about liability from EPA’s web site, which addresses federal law on the topic of potentially responsible parties.

Moe Hickey moved the meeting adjourned. Chris Cherniak second.

The meeting was adjourned.