

PARK CITY BLUE RIBBON COMMISSION ON THE SOIL ORDINANCE AND SOIL DISPOSAL OPTIONS
SUMMIT COUNTY, UTAH
MINUTES OF MARCH 18, 2013
10:00am – 12:00pm
Marsac City Hall Council Chambers

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

COMMISSIONERS ABSENT: Moe Hickey

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

I. Roll Call and Approval of the Minutes

Hans Fuegi moved for approval of the minutes of March 11, 2013. Tom Ward second. Minutes of March 11, 2013 approved.

II. Facilitator's Opening Remarks

Craig Sanchez announced that Joan Card wanted to offer a clarification regarding statements made by John Whitely at the previous meeting. She said that she and Mr. Whitely had discussed that Mr. Whitely made a couple of overstatements about the location and nature of soil contamination in Park City. Ms. Card indicated that we have data about the existence of contamination in certain parts of town, particularly Old Town. She also said that we have anecdotes and witness accounts of tailings being used in utility trenches and as road base in other parts of town in a certain period of Park City's recent history. She hopes the analysis of the issues will be based on facts and data. Mr. Whitely agreed and said that tailings are an issue and they should be dealt with. He said that TCLP failures are rare and there is surface contamination and it can be dealt with if you understand the issues.

III. Commissioner Policy Discussion Cont'd

"5. Is there a non-landfill solution or solutions? (Soil Ordinance changes, residential grant program, negotiated discount at an existing disposal facility, others?)"

Katie Wright asked about the residential grant program. Joan Card responded that the City has implemented a grant program to assist with the cost of importing clean topsoil to meet the capping requirements of the Soil Ordinance. Brian Suhadolc indicated that he participated in the grant program and received about \$500.00. Joan Card indicated

that we might discuss a possible grant program to assist residential property owners with the cost of disposal. Rory Murphy offered a few ideas toward a solution. He said a nearby second repository would be great and he would recommend a feasibility study. Mr. Murphy said he thinks segregation ought to be implemented in the Soil Ordinance. He also would strongly encourage more communication with EPA and the mine company. He said that Kerry Gee of the mine company knows the most about these issues and would be a helpful resource. He said it is not fair to hold United Park City Mines Company for the entire problem and it would be useful to be able to have straightforward discussions with them. Brian Suhadolc asked if segregation would answer the question of how much contaminated soil we have to deal with. Craig Sanchez summarized that was discussed at previous meetings. Chuck Klingenstein said a landfill may not necessary because of a low potential volume of contaminated soil. Mr. Klingenstein agreed that segregation ought to be pursued. He agreed with Rory Murphy that it doesn't make sense to blame a single big company for the problem because so many contributed to the problem over time. In any event, Mr. Klingenstein thinks it is going to take government to steer the private sector to a good solution. Roger Armstrong said it is hard to understand the scope of the problem and the City's involvement in the problem. Mr. Armstrong said we are not in the position to tell all the property owners in the Soil Ordinance to remediate the lead on their property now, at one time. He asked what the City's role should be in lead remediation on private property over time. He suggested maybe we could figure out some portion of the problem could be the responsibility of the City and United Park City Mines Company, but it is not clear to how to do that. Liza Simpson said she would love a final solution, but does not think it is that simple. She said that the segregation option seems like an ongoing solution that might eliminate the need for a landfill solution. Hans Fuegi expressed his concern about EPA's role in a segregation program approval. He also indicated we should be mindful of using taxpayer money for a solution. Chris Cherniak asked Jim Blankenau to explain the residential grant program. Mr. Blankenau said it is a \$450.00 grant for the first time capping of a property. Tom Ward said that incentive program made good sense at the time and it seems to have worked to encourage nearly 100% compliance in the Prospector area. He doesn't feel like an incentive solution makes sense at this time and suggests focusing on segregation seems to make sense. Mr. Ward described his experience with two renovation projects at his home. Charlie Wintzer thought maybe there are four big areas in Park City that remain to be developed and maybe we should test the soils in those areas to determine the scope of the problem for the bigger projects. Rory Murphy said it would be hard to focus on just a few areas of town due to ongoing projects. Joan Card said that Mr. Wintzer's suggestion made good technical sense, but that kind of characterization project would be very expensive and a lot of thought would need to be given to the value of such an investment. Roger Armstrong said a good estimate of the volume of contaminated soils

would aid in the possibility of negotiating a discount with the Clean Harbors facility. He suggested also the possibility of a subsidy program for disposal of soil at Clean Harbors through the creation of a new fund. Chuck Klingenstein said we keep coming back to the need to estimate the volume of contaminated soil and it may make sense to at least take a snap shot of the problem in certain areas with the potential for large developments to determine whether there is an economy of scale. Rory Murphy had a thought that the City might create a city crew with equipment and training to provide transportation for soil disposal. He was uncertain about the fairness of the taxpayer expense of such an option. Craig Sanchez encouraged these kinds of ideas from the Commissioners. Hans Fuegi said the problem becomes much smaller if we are able to segregate soils. Chris Cherniak wanted to be sure the Commission is clear that it makes recommendations rather than attempting to craft solutions. Brian Suhadolc said the big projects like parking garages near PCMR could be managed on site. Chuck Klingenstein clarified that private property owners with big potential projects could characterize their properties at their expense, but if they do it contemporaneously we could leverage the information into discounts or planning for a new disposal facility.

IV. Review and Discussion of the Soil Ordinance and Possible Revisions

Joan Card began the discussion with the Soil Ordinance boundary. She said that staff is presenting this question because of known contaminated soils at residences outside the Soil Ordinance boundary. She said staff is interested to know what information is important to Commissioners in decisions to change the boundary. Charlie Wintzer said we almost need a "Phase I" of town. Jim Blankenau explained that a Phase I is an analysis done by a potential property purchaser to create a defense to CERCLA liability. He said there is an established standard protocol for a Phase I site assessment. It is a non-intrusive review of available information and a visual inspection of the property. Chris Cherniak described the difference between a Phase I and Phase II site assessment. Roger Armstrong asked about Park City Heights and if it should be considered for inclusion in the Soil Ordinance. Joan Card indicated that the owner of Park City Heights, Ivory Homes, is working under the UDEQ Voluntary Cleanup Program (VCP). Rory Murphy said areas that will not be developed should not be priorities for soil ordinance revisions. Katie Wright suggested there is an educational component to being in the boundary that is valuable, but that would need to be balanced with onerous requirements on landowners. Charlie Wintzer suggested that areas of town, like the Thaynes Canyon area, probably do not merit inclusion in the ordinance boundary. Katie Wright summarized that historic mining and milling areas and areas ripe for new development are priorities. Chuck Klingenstein agreed the Phase I analogy for soil ordinance expansion makes sense, but also include historical record and photo analysis and drainage patterns. Leslie Thatcher asked why Park City Heights is in the VCP rather than the Soil Ordinance. Joan Card answered because

the ordinance has not been expanded and the state properly has jurisdiction over the cleanup. She said the federal, state and local governments all can take jurisdiction over contaminated soil. She said the city takes jurisdiction by drawing the boundary. The City cleaned up the transit center under the VCP. Rory Murphy asked if anyone in the Soil Ordinance boundary could participate in the VCP and Ms. Card said yes. She believes the City and VCP would work together as regulator in that instance. Hans Fuegi asked if segregation would be allowed under the VCP and Ms. Card said she believes the state would typically look for the most protective and lower cost options to manage soil and that could include segregation. Chris Cherniak asked whether the state and EPA would review a revised boundary and Ms. Card said yes. Leslie Thatcher said there are no benefits to being in the boundary, so why would we expand it. Ms. Card said the ultimate policy question is how to balance regulatory burden with other benefits. Katie Wright asked about other benefits of expanding the boundary. Ms. Card described that there are homes, such as the Habitat for Humanity homes on the east side of Marsac, which is a known mill site that is contaminated. Ms. Card said the City treated the site as if it was in the Soil Ordinance boundary with a deed restriction and she thought it was appropriate to have done that. Jim Blankenau described the Soil Ordinance as a less cumbersome program than the VCP, especially for residential property owners. Chuck Klingenstein congratulated the City for looking at the problem holistically with a Soil Commission. Rory Murphy asked how EPA would respond if the City said we no longer wanted to implement the Soil Ordinance. Ms. Card responded that they may make the City or portions of it a Superfund site and they may “unarchive” the Silver Creek Tailings Site (Prospector). Liza Simpson said that the Soil Ordinance makes sense for the easily tackled problems, like residential capping and certain projects. She said larger more complicated projects may be more appropriate for VCP. She also expressed her opinion that the City has a responsibility to expand the boundary to areas of known contamination. Tom Ward said that if known impacted areas are not in the boundary they are likely to improperly dispose. Rory Murphy asked if EPA could come present to the Commission. Joan Card said they did not accept a couple of her invitations to present, but maybe the Soil Commission could make an invitation in the future.

Joan Card asked the Commission to discuss the standard of 200 parts per million lead as the definition of clean or approved topsoil. She said that staff wondered if 200 ppm is too stringent knowing that EPA’s standard for lead in soil at playgrounds is 400 ppm. She said, like the Commission, staff recently learned that the 400 ppm standard may be revised lower based on a CDC recommendation. Ms. Card opined that she didn’t think EPA would revise the standard any time soon because of economic and political concerns. Hans Fuegi asked why we wouldn’t tie the standard to EPA standards and Katie Wright asked why we wouldn’t tie the standard to the CDC recommendation. Roger Armstrong asked about the practical difference between the 200 and 400

standards. Jim Blankenau said that there is little difference between the two for finding imported clean cap material, but there may be a significant difference regarding the testing of existing soil. Rory Murphy said that Silver Star would not be under the Soil Ordinance if the standard was 400 ppm. He said 200 ppm is basically natural background, but 400 ppm is likely more processed material. Katie Wright said we should consider the fairness of not changing the standard. David Hampshire asked if we could be forced to change the standard in the future. Ms. Card responded that there was uncertainty about whether EPA, then the state would change the standard and reopen sites.

Joan Card said there is no permit program to implement the Soil Ordinance. The Certificate of Compliance is granted upon “application” of a property owner. She described the origins of the Soil Ordinance as a voluntary program because the City resisted making it a mandatory program. The current ordinance is a product of that philosophy. Staff is currently implementing the program by requiring building permits to be reviewed by Jim Blankenau but the ordinance itself does not require that. Jim Blankenau indicated that the cities of Aspen, Colorado and Eureka, Utah have similar ordinances, but are implemented with permit programs. Both ordinances require a soil permit, separate from a building permit, exempt when a very small amount of soil is disturbed. Ms. Card expressed concern about the apparent lack of authority for the City to enforce the purpose of the ordinance. Leslie Thatcher said EPA has approved this version of the ordinance. Charlie Wintzer assumed there was a permit requirement. He expressed concern about out of town contractors not knowing about the Soil Ordinance. Brian Suhadolc said there should be a minimum disturbance requirement. Katie Wright said there is not much education about being in the Soil Ordinance boundary if you are a buyer or a resident. Tom Ward indicated that there is a disclosure and addendum available for property transactions in the Soil Ordinance boundary. He said there is an education component required by EPA that has not been continued. Commissioners discussed the lack of information typically discovered in a property transaction. Several thought the name of the ordinance should be more descriptive of what it actually is. Rory Murphy said we should be complying with the education component. Jim Blankenau said the requirement is part of the Environmental Management System and he is reviewing that now.

Joan Card pointed to the provision of the current ordinance that prohibits the export of any soil outside the Soil Ordinance boundary for use as fill. Ms. Card said any segregation program should comply with RCRA to be approvable by the state and EPA. Chuck Klingenstein said this goes back to enhancing the ordinance to show EPA that we are serious about solutions and can offer an approvable segregation program. Leslie Thatcher said we should not assume that EPA will approve a segregation program and wondered why we would change a program for EPA when they already

have approved it. She is unaware of any human health problem under the current version of the Soil Ordinance. She is concerned about unnecessarily making the Soil Ordinance more restrictive. Ms. Thatcher suggested we simply propose a segregation program without other more restrictive requirements. She suggested a permit program would make things much more difficult. Other Commissioners said there are concerns about non-compliance that can be addressed with a permit program. Chuck Klingenstein said there was blood testing in the past, but was other analysis done. Ms. Card summarized the results of the blood testing of 1987. He suggested we be proactive, rather than wait for a health problem to arise. Rory Murphy said the Commission is not necessarily convened to look primarily at the health issue, even though that drives the regulation in the first place. He said this effort is more about the new costs of disposing contaminated soil that we face because of regulatory requirements. Jim Blankenau described a new flat work permit requirement, which should help a few more project in the Soil Ordinance boundary come into our oversight. Mr. Blankenau also said there have been cases where a property owner constructed a project and then found out that very expensive disposal requirements apply—a permit program would allow the City to inform applicants of the requirements before they do their projects. Hans Fuegi asked if a fee would be required and staff indicated that would need to be determined. Charlie Wintzer said the flat work permit is only \$15.00. Roger Armstrong asked if the proposed changes would allow clean dirt to leave the Ordinance boundary. Joan Card responded that there is clean dirt, which can be disposed of cheaply once the ordinance is changed, there is hazardous dirt, which must be disposed of at a “hazardous waste” disposal facility, such as Clean Harbors, and there is dirt that is a regulated “solid waste,” which also requires proper management or disposal. She said it is important to recognize segregation is not a “silver bullet” because solid waste still requires proper management and disposal. Commissioners discussed the value of a segregation program as a tool to mitigate the costs of disposal, especially the ability to take clean material out of the ordinance boundary.

V. Prepare Commission Recommendations

VI. Commissioner Discussion and Questions to Staff

Chris Cherniak asked for a copy of the Eureka and Aspen ordinances. Joan Card said that next week’s agenda is to prepare the recommendations.

Chuck Klingenstein moved the meeting adjourned. David Hampshire second.

The meeting was adjourned.