

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

COMMISSIONERS PRESENT: Chris Cherniak, Hans Fuegi, David Hampshire, Moe Hickey, Chuck Klingenstein, Rory Murphy, Liza Simpson, David Smith (non-voting), Brian Suhadolc, Leslie Thatcher, Tom Ward

COMMISSIONERS ABSENT: Roger Armstrong, Charlie Wintzer, Katie Wright

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

I. Facilitator's Opening Remarks

Joan Card stated she was acting as meeting facilitator while Craig Sanchez is out of town. Ms. Card reviewed the agenda and reminded Commissioners that any outstanding Oaths of Office or Disclosure Statements should be completed and filed with the City Clerk. Ms. Card raised a discussion about the roles of Leslie Thatcher and David Hampshire on the Commission, both of whom work for the media. Ms. Thatcher indicated KPCW does not have staff to attend Soil Commission meetings. She indicated she would not report on herself, but may from time to time report an item she believes is news. Ms. Thatcher stated she has been a long time member of the community and would like to participate. Ms. Thatcher suggested anyone with concerns should raise them with City staff so the concerns can be addressed. Chris Cherniak hosts a weekly radio show on KPCW and indicated he may discuss Soil Commission business on his show, but would try to discuss facts versus opinion. David Hampshire indicated his Editor at the Park Record has asked him not to report on the Soil Commission, but that he may be a source to a reporter. Liza Simpson indicated she is comfortable with the roles and did other Commissioners.

II. Staff Presentation—Ethics and Open Meeting Law Training

Polly Samuels McLain of the City's Legal Department presented on the Utah Open and Public Meetings Act. The statute requires the training. Ms. Samuels McLain described the spirit of the OPM Act as requiring public bodies to meet, act and make decisions only in public. The OPM Act applies to advisory bodies like the Soil Commission. Ms. Samuels McLain defined a meeting of the Soil Commission as 7 or more members, a

quorum, convening to discuss business. The Legal Department recommends against emails among Soil Commissioners because they may represent a meeting that violates the OPM Act and are subject to public records requests. Ms. Samuels McLain reiterated the importance of not “meeting after the meeting” because that could be a violation. The Soil Commission’s regular meeting place is in Council Chambers. The OPM Act requires an agenda posted at least 24 hours before the meeting that includes specificity. If an item is not on the agenda, it may be discussed, but there may be no action on that item. Ms. Samuels McLain indicated Soil Commission was akin to a legislative body and meetings must be open to the public, but public comment is not required as a matter of law.

Chuck Klingenstein asked if the Soil Commission must have a Chair and the difference between legislative and administrative. Ms. Samuels McLain said there is no requirement for a Chair and that is the Commission’s decision. Joan Card indicated that staff had determined a Chair was not necessarily advisable because of the short life of the Soil Commission. Ms. Samuels McLain indicated that the Soil Commission is a task force recommending potential legislation to the City Council, so that makes it legislative. Administrative action is a permit or variance. Completing the Disclosure Affidavit fulfills the ethical requirements of a member of a legislative body. Ms. Samuels McLain indicated that minutes must be taken and are the official record of the meeting. Minutes should be approved by the body. Violations of the OPM Act are a Class B misdemeanor prosecuted by the state Attorney General or a County Attorney.

Chris Cherniak asked if he wanted to add an item to the agenda if he should email it to Joan Card or to the Commission and Ms. Samuels McLain responded that it should not be emailed to the Commission, but to Ms. Card. Rory Murphy asked if the group should nominate a Chair. There was a question about who would “call the question” on an action item. Ms. Samuels McLain suggested either the meeting facilitator could call the question or the group could elect a Chair for that purpose. Chuck Klingenstein suggested that “referee” is an important role of a Chair. Ms. Samuels McLain suggested that discussion of a possible Chair be added to the next agenda.

III. Guest Presentation—Lead Risk Assessment

Scott Everett, Toxicologist, Utah Division of Environmental Response and Remediation (DERR) presented on lead risk assessment. Mr. Everett quoted that “All things are poison and nothing (is) without poison; only the dose makes that a thing is no poison.” Mr. Everett described there are differences between “risk perception,” “risk assessment,” “risk management.” Risk assessment involves analysis of risk, which is his role with the DERR. Risk assessment involves dose-response assessment, hazard identification, and exposure assessment. Risk management involves control decision, determination of acceptable risk level and control alternatives. Mr. Everett described

risk as equal to toxicity multiplied by exposure. He gave the example of a dose of Tylenol—risk is low if we take the dose (low toxicity and low exposure) and risk increases as dose gets larger (low toxicity and high exposure). Mr. Everett described environmental exposure as a source, a release, a transport mechanism, an exposure route and a receptor. Transport mechanisms include airborne or water runoff and exposure routes include ingestion, inhalation and dermal contact. Dermal exposure is rarely problematic. Ingestion is the most common exposure pathway. Receptors include humans, wildlife and plants.

Mr. Everett described typical dose responsive curves for non-cancer and cancer-causing exposures and EPA methodologies for setting exposure limits. Mr. Everett described the time frames for exposure to toxic substances; “acute” duration lasts seconds to hours, “subchronic” lasts days to months; “chronic” lasts years to a lifetime. Mr. Everett’s work is focused principally on chronic exposure risks. Risk assessments are performed for the benefit of human health—children and other sensitive populations and adults—and ecological health—mammals, birds, fish, benthos and plants.

Mr. Everett described the typical contaminants resulting from mining, milling and smelting, including lead and arsenic. In Utah, we have lead and arsenic naturally occurring in our environment. Lead is the “driver” in lead risk assessment because if we address the lead, we address other potentially harmful metal contaminants. Lead risk assessments are performed differently than other chemical risk assessments because they model predicted human blood lead concentrations from environmental lead exposures. Since 1994, EPA Office of Solid Waste and Emergency Response policy has been 400 parts per million lead at residential sites. This standard is protective of a typical child having a no more than 5% probability of exceeding a 10 microgram per deciliter blood lead level as predicted by the models. This standard is based on assumptions about children ingesting soil daily. Mr. Everett reported that the Centers for Disease Control (CDC) recently concluded that the overall weight of evidence suggest that 10 microgram per deciliter blood lead level is not protective from human health effects and may be lowered to 5. EPA is considering the CDC recommendation. Mr. Everett indicated a standard of 5 would lower the residential site standard for lead from 400 parts per million to about 150 parts per million.

Liza Simpson asked what the implications would be for current cleanups such as the Alice Lode Site administered by the Utah Division of Environmental Response and Remediation. Mr. Everett responded that they don’t know at this time. Chuck Klingenstein asked about the application of the Park City Soil Ordinance to the Alice Lode Site and Joan Card clarified that the Alice Lode Site is not within the Soil Ordinance Boundary. Ms. Card suggested that part of the Commission’s review will be to look at the appropriateness of the current boundary and the current lead standard of 200 parts per million. Mr. Everett suggested that the Commission look at the distinction

between a clean cap and hazardous material. Ms. Card summarized that there is a definition of “clean” and a definition of “contaminated” and they may be different. Brian Suhadolc asked if the depth of a clean cap at a site relates to the standard of “clean.” Mr. Everett described the purpose of a cap is to form a barrier from the contaminated soil. Sometimes a 6 inch barrier is deemed adequate and sometimes the barrier should be thicker. Tom Ward asked if the Soil Ordinance standard has always been 200 parts per million. Jim Blankenau said he would look into that.

IV. Staff Presentation—EPA in Park City—Past, Present and Future

Joan Card began her presentation describing EPA’s authority under the “Superfund” law or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was enacted by Congress in 1980 to address the cleanup of “hazardous waste.” Ms. Card described the chronology of EPA’s activities in Park City at both the Silver Creek Tailings Site, which was the Prospector area, and the Richardson Flat Tailings Site. Both sites were nominated by EPA as National Priorities List sites. Ms. Card stated that the Silver Creek Tailings Site was excluded from the EPA National Priorities List by an Act of Congress, which is the only time such an act has occurred under CERCLA. In 1988, the Park City Soil Ordinance was enacted to protect the residents of Prospector. In 1987-88 air, water and blood lead studies were conducted in Prospector and in 1988 EPA concluded there was “no exposure” to the tailings and recommended a 6 inch cap as a protective measure. Rory Murphy asked if elevated blood lead was found. Ms. Card responded that the report stated the average blood lead in Prospector residents was 7 micrograms per deciliter (under the standard of 10). In 2007, EPA announced it had concluded, or “archived,” its work at the Silver Creek Tailings Site. Rory Murphy asked if the area is covered now and Ms. Card responded that it generally is.

Ms. Card indicated similar studies were conducted by the federal and state agencies at the Richardson Flat Tailings Site in the early 1990s. The Site posed “no apparent public health concern at present” and it was not listed on the National Priorities List. Ms. Card described the early 1990s as a period of great stigma in the Superfund program and legal questions were raised about the applicability of CERCLA to mine related waste. As of 2005, the Richardson Flat Tailings Site Operable Unit (OU) 1 is an active cleanup site managed by United Park City Mines Company and overseen by EPA. The cleanup plan in the 2005 Record of Decision described the cleanup plan as excavate tailings, cap tailings, and allow disposal of tailings from the Park City area “until remedy has been implemented.” Around 2005-2007 the Silver Creek Watershed group conducted a number of meetings with EPA and local stakeholders. In 2008, Summit County adopted its Soil Overlay Zone Ordinance along Silver Creek and soon after EPA designated that area Operable Unit 2. Ms. Card referred to a map called Appendix A which includes the “expanded” Richardson Flat Tailings Site. David Hampshire asked how much of the

Site is in Park City limits. Ms. Card responded that US 40 is the general boundary; City limits are west of US 40.

Ms. Card indicated that in May 2010, EPA notified United Park City Mines Company that tailings from Park City could no longer be disposed at Richardson Flat repository, or OU1. This was a time when Park City was in the middle of major construction projects involving large amounts of soil from the Soil Ordinance boundary. Park City approached EPA Region 8 to determine why the decision was made and how could it be resolved. Ms. Card identified a June 2010 directive from EPA to Park City to prepare a work plan to design a second repository. Subsequently, in a July 2, 2010 letter from EPA, EPA changed the course and “envisio[n] a multi-party agreement to achieve the short and long-term goals of a new repository.” Rory Murphy asked for EPA’s rationale to close down the OU1 repository. Ms. Card encouraged the Commission to read the entire July 2, 2010 letter and summarized the rationale as a capacity issue—OU1 does not have enough capacity for EPA’s cleanup in Silver Creek and Park City’s Soil Ordinance soil. Chuck Klingenstein asked about Summit County’s involvement during this time period. Ms. Card responded that the County was actively involved in the Lower Silver Creek Watershed Group efforts and that the adoption of the County Soil Ordinance occurred shortly before EPA designated the ordinance zone as Operable Unit 2. Mr. Klingenstein stated that the County may be important to the potential solutions. Ms. Card concluded that the Commission should review the letters before the next meeting and they would be reviewed at the next meeting.

V. Commissioner Discussion and Questions to Staff

Chuck Klingenstein asked whether Commissioners were covered under the City’s liability policy. Ms. Card stated she would ask the Legal Department to respond. Mr. Klingenstein also expressed concern that tailings were moved and used in other places in the City. Ms. Card responded that there is anecdotal evidence that this has occurred. This may go to the question of the appropriateness of the Soil Ordinance Boundary. Rory Murphy requested for Park City correspondence during the June 2010 time frame to complete the story.

The meeting was adjourned.