

**Minutes  
Public Hearing  
Ashton Planning and Zoning Commission**

May 3, 2017  
7:00 p.m.

**Attendees:** Commission Members: Matt Brady, James Reynolds, Norman Watkins, Administrator Tom Cluff, Ashton City Attorney Sam Angel and Deputy Clerk Jan Warnke.

Also in attendance were Bill Stephens, Lon Atchley, Kathy Atchley, John Grube, Martin Gallagher, Marvin Fielding, Bernetta Hanson, Sheryl Hill, Michele OMalley, Janalee Albertson, Jan Stronks, Dave Garz,

**1. Public Hearing**

1. ACH Holdings, LLC/Michael Chen of 1603 Wynview Lane, South Jordan, UT 84095, proposes to build a hotel and restaurant at 561 N US Hwy 20, in the City of Ashton. The hotel will have 50 rooms, and the restaurant will seat 200 guests.

The purpose of the public hearing is so that the Commission may receive public comments and testimony concerning the additional information requested by the Commission following the previous public hearing held on this matter (March 22<sup>nd</sup>, 2017). The City requests that comments address the new material presented to the Commission, and not repeat comments presented from the previous hearing.

Chairman Hogle was not in attendance therefore City Attorney Sam Angel conducted the hearing.

City Attorney Sam Angel opened the hearing at 7:10 pm. The hearing is a continuation of the public hearing for the City of Ashton Planning and Zoning Commission in regards to the Class II application for a hotel and restaurant. Attorney Angel stated that Deputy Clerk Jan Warnke had posted the notice of the public hearing and it was published according to Idaho State Law. Mr. Angel then asked the commission if they had any conflict of interest that they needed to declare in regards to the Class II Permit Application. There were none. Mr. Angel told the commission that the Administrator would present his updated report on the proposed development. There was no one at the meeting to represent the development so there would be no report from them. Next the time would be turned over to the public for public comment. Mr. Angel informed the public that if they wished to speak to make sure that they had written their name down on the sign in sheet. Next he told the commission that the fire chief and Marvin Fielding would both give presentations. He then turned the time over to Administrator Tom Cluff.

Tom Cluff – This report is to address questions raised by the commission following the last hearing. The 1<sup>st</sup> question was to find out about the water pressure concerns in the area of the proposed development. The 2<sup>nd</sup> question was to find out about bio-solid accumulations and the

life span of the lagoon and if there is a better drawing of the parking lot showing all of the required spaces. It also summarizes the public comments that you received at the last hearing and offered some observation on those. Attached to this report is a copy of the previous report that I gave in case you need to refer to that with answers to the questions from the P & Z. The engineers completed an investigation into the water pressure and bio-solid questions and have presented an addendum to the large scale development study. That report finds that the water pressure problems raised during the public comment are almost certainly the result of service-line problems at individual houses. The engineers went out and tested individual homes of people who were saying that they had low water pressure and tested their water pressure. They found that the system pressure didn't drop when the house pressure did which means there is probably a service line problem. The investigation found there is no indication that there is a problem of system pressure that would affect the City's ability to serve the proposed hotel. The fire chief did some testing of his own, on the water pressure in the city, which reports some numbers. The report shows there is no way to scientifically calculate the difference in bio-solid accumulation with the hotel, but the best estimate changes the expected time before the next required cleaning of the lagoons from 46 years to 43.5 years.

*Administrator's note: The change in the interval between cleaning the lagoons is a maintenance issue and not a system capacity issue. You are not overwhelming the system capacity by changing the maintenance interval. This is going to happen every time there is growth in the demand in the system. However, more demand on the system is not the same thing as exceeding the system's capacity.*

The report also notes that the ratepayers (including the hotel, if it is approved) are already paying for the removal of those bio-solids, as is a cost that is part of the sewer rates that users pay. Connecting the hotel to the system does not generate an impact that the current fee structure does not already cover. There is an updated site plan showing the correct number of parking spaces. Their 1<sup>st</sup> site plan had 61 parking spaces and their new plan has 96 spaces. Some commenters expressed concern about a possible conflict of interest on the part of the engineer completing the Large Scale Development Study. Mr. Cluff discussed this concern with the City's Attorney, and he felt there were no cause to be concerned about the possibility of a conflict. Some comments expressed concerns that not enough information had been investigated in the Large Scale Development Study. The purpose of the large scale development study is to find out if, new public facilities or improvements to existing public facilities, will be needed to serve a new development (17.48D.101A). The study conducted for this project is sufficient to show that the City already has adequate facilities to serve this development and that new facilities are not needed. One comment raised the possibility that the currently-planned improvements would not be complete before the hotel connected to the sewer and asked if the system still had the capacity to serve the hotel. The report from the engineer addresses this concern, pointing out that the system can accommodate the proposed hotel even before the wastewater system improvements are completed. The system's capacity is not increasing. The change in the system is only so the water is no longer discharged into the river. Some of the comments expressed concern about the City's use of EDUs for measuring service capacity and demand. EDUs are an industry standard means of comparing system demand and capacity, there is nothing unusual about Ashton's EDUs. Nor is there any reason to believe that the EDUs adopted by the City are incorrect. The City chose to adopt its connection fees, including the EDU schedules, years ago. Unless the City adopts new EDUs, the P & Z is obligated to honor the current adopted schedule. Some comments were geared towards

concerns that the hotel would harm the City's ability to serve other growth in the future. The City does not have the legal ability to withhold service to applicants because it wants to save that service for someone else. If you have capacity and someone is willing to pay the connection fee, then you have to let them connect (provided, of course, that they meet the other requirements of the code). Furthermore, the Administrator advises that the likelihood that the City will ever exceed its water or sewer service capacity is virtually nil. Some comments expressed concern about where the hotel staff would live. The City has no ordinance or regulation that would allow it to make workforce housing a condition of development approval. You simply cannot base your decision on this concern. Some comments expressed concern that patrons of the hotel would not spend enough money in other businesses. Again, the City has no rule that would allow the P & Z to base a decision on this concern. You simply cannot tell one business that they have to prove that their customers would spend money at other businesses before they can get a permit. Some comments expressed concern about lights, noise, distance from houses, emergency access, etc. Lighting is regulated by the Development Code (17.48B.010B). The hotel will have to comply with the City's rules. Noise is regulated by the Development Code (17.48B.010A). The hotel will have to comply with the City's rules. The distance from the houses is regulated by the Development Code (setbacks and buffering requirements). The hotel will have to comply with the City's rules. Emergency access requirements were addressed by Chief Grube. The hotel will have to comply with the code requirements he describes. Some comments expressed concerns that this property was a wetland. The applicant has completed a wetland study for the property, and it is not a wetland. Additional written comment received April 27, 2017 from Ken and Bernetta Hanson. This comment mostly re-hashed concerns that were already raised in previous comments, or are of little merit in considering this application. There were concerns about the time between the developer's meeting with the City Council in December and when public notices went out for the March hearing. This timeframe is simply a product of the City's processes, applications and meeting schedules take time. There were concerns about the police Chief's need for new office space. No matter what happens with the hotel, or any other application or business in the City, the Police Department needs more space. You cannot deny a permit for a business just because a hypothetical future patron of that business might commit a crime somewhere in the city. Concerns about the use of explosives during construction. When someone builds something in the city they have to follow the Code. They have to build it safely. Concerns about the size of the hotel. This concern appears to be due to a misunderstanding about what you are reviewing. The Large Scale Development Study looked at the impact of a 2-story hotel, and also at a 4-story hotel in case the developer decided to propose a larger building. At this time, the only application the P & Z is reviewing is for a 2-story 50-room hotel. There was a concern about the need for an impact fund to mitigate unforeseen problems. It is not clear what the commenter means by this, but there is no provision in the City's code to require any such thing, or to base a permit denial on completely undefined possible future problems. Essentially you'd be saying, we don't have any reason to deny this permit, but because we don't know what bad thing might happen someday, we're either going to deny it anyway or else require you to deposit a bunch of money in an account for unknown needs before we'll approve it. The bottom-line is, this is a textbook example of arbitrary and capricious decision making and the courts typically overturn that sort of thing. During the public hearing the P & Z discussed that the City's rules allowed these commercial uses in this zone. The Large Scale Development Study found that the City has the capacity to serve this development, no new sewer or water facilities need to be built. The Fire Department has indicated that they do not need additional equipment to serve this development, but that they will require standpipes and hose on each floor of the hotel. The

County EMS Department has indicated that the elevator in the hotel is not large enough to fit their equipment. They have asked that the Applicant be required to increase the elevator size to at least 84 inches in depth. (The width is fine). The applicant has enough land to provide all of the required parking. The new site plan shows that. Much of the discussion surrounding this application, and of the City's sewer and water system capacity, is related to preparing for and protecting the future of the City. For reasons that are very logical, the plans for the water and the sewer system are based on a very moderated rate growth (1% per year) over the next thirty years. This allows the system design to verifiably serve a possible future population, and allows system designers to use these projections when making decisions about the future of the system. However, just because the system designers assumed the city would grow, does not mean that those assumptions are grounded in any scientific or statistical projection of Ashton's future population. Such projections are not available for the City of Ashton at this time. The population has gone down since 1950. This is why I said earlier that the City is unlikely to ever exceed its sewer or water capacity. Now, the P & Z needs to review the application, hearing testimony, and the City's rules; then make a reasoned decision on the application. Regardless of the decision, the P & Z needs to be able to explain, as clearly as possible, why it made that decision. The Administrator recommends that the P & Z approves the application with the following conditions: The applicant will build adequate parking for the hotel as required by the City's ordinances. The applicant will change the building plans to include an elevator that meets the County EMS Department's requirements. The applicant will provide standpipes and hose on each floor of the hotel to meet the Fire Department's requirements. The Administrator shall be authorized to inspect and verify compliance with these conditions of approval. The reasons for approval are: The application is for uses allowed in the Highway Commercial zone. The application, provided the conditions of approval are met, meets the standards of the City's Development Code.

Mr. Angel asked Mr. Fielding or Fire Chief Grube if they had anything they needed to report to the commission. Mr. Fielding did not. Fire Chief John Grube asked to give his report.

Fire Chief John Grube – The fire department conducted some flow tests around the April 19, 2017. He stated that the closer you are to the water system (water tank) the less pressure you are going to have. As you get farther away from the water tank the more pressure you get. He gave the commission the findings that they had gathered.

City Attorney Sam Angel turned the time over to the public for public comment.

Lon Atchley, 84 Spruce – Thanked the water testers for checking the water pressure. He wanted the commission to know that he and his neighbors were still concerned about the water pressure and other issues that have been presented. He understood that the project would still be going through but wanted to be heard.

Sheryl Hill, 238 Idaho St. – She started out by saying that she had a lot to submit but that she didn't expect the commission to read the document or even consider it. She just wanted it on the record. She didn't have a chance to get it in in advance. Ms. Hill said that Commissioner Reynolds had asked her at the last hearing whether she had numbers. She had calculated drinking water and waste water needs back in December based on a 50 unit hotel and a 500 seat restaurant because that's what she had heard about. She didn't get the same end result that Marvin got. She used the same technique. Ms. Hill thinks there is a little miss

characterization on the part of the administrator about her concerns about the use of EDUs. EDUs are for setting sewer rate fees. It is a way of calibrating hotels, houses, restaurants, office buildings etc. But it's really intended to set sewer rates. Not necessarily access how a wastewater treatment facility is going to operate. Marvin is approaching it just from a capacity standpoint. She had questions about excessive BOD & TSS loading that currently exists. She doesn't understand why these comments were not addressed. In regard to alternative calculations she did simple internet search and came up with what the State of New Jersey requires. The point is there is a lot of variability. She does not say that EDUs are unusual or regular or anything like that. She was just simply talking about the use of EDUs determining how a wastewater treatment system will operate. She added that Ashton is disadvantaged. If the City had a capital improvement plan, which is part of the planning process, the city would be able to impose an impact fee. Then if something went wrong with the wastewater treatment plant as soon as the new hotel and restaurant goes on line, there would be funds available to address that. We don't have that in place and that is something that the planning and zoning commission could work on to get in place. It's something you have to work with the city council on. As we have learned, we can be surprised. We don't think there is going to be a big development in Ashton but there is. We really need to get that impact fee and capital improvement plan in place so we can take advantage of that. Ms. Hill doesn't think that the Code limits the Large Scale Development Study from looking at the housing for the staff of the hotel and restaurant. She stated that 30 additional staff members in a town that has no rentals is going to have an impact, especially when these folks will probably be brought in from China and may not speak English. Finally as far as the conflict of interest, that's for the Idaho board of Licensure Professional Engineers and Professional Surveyors. There is Idaho Code to address that. Her issue was the appearance of conflict of interest. She said that it would have been great if Keller and Associates had notified the City at the time that they had started working for the development at the same time that they were working on the wastewater treatment plant facility planning study, that they were doing both. It would have been out in the open, there would not have been the concern of conflict of interest and the public would have become aware of it before December 7<sup>th</sup>.

Commissioner Reynolds asked Ms. Hill if she was for or against the project. Ms. Hill stated that she was very concerned about the process that was used. Again he asked her the same question. She stated that it was not that simple. She said that the process was to allow the residence of the City to have input on how our city grows and changes and because our zoning administrator was eliminated a year ago we didn't have a process in place. Commissioner Reynolds interrupted Ms. Hill and told her that she didn't answer him so they were fine.

City Attorney Angel asked if anyone had any additional comments.

Fire Chief Grube said that they would like to go back through in July and retest all of the lines that they tested this spring.

Administrator Cluff – With respect to what you can require as part of the Large Scale Development Study and whether you can require them to study workforce housing. The large scale development study is to see if new public facilities or improvements to existing public facilities will be required. That does not include where people live. Maybe we should be considering workforce housing when we do permits but we would have to amend the development code. Right now large scale development study only look at city services and

public facilities that the city provides and whether those will be exceeded by the proposed development.

City Attorney Angel asked the Commission if they had any questions. They had none. Mr. Angel then proceeded to inform the Commission of their roles and responsibilities. He then closed the hearing and turned the time over to them for discussion and asked them to articulate reasons why they are taking the action because they do not want the decision to be arbitrary or capricious.

Commissioner Reynolds started out by saying that the commission had come back three times with information each time. In his opinion he is satisfied with the information that they have received. He doesn't doubt that the information is correct. Commissioner Watkins would like to see more of a wall than a fence along the east and south side of the property for a sound barrier. Commissioner Reynolds stated that the P&Z were approving the permit to go to the City Council. Attorney Angel stated that that was not the case. The P&Z will not be making a recommendation to the City Council, they will be deciding whether the permit will be approved. Administrator Cluff asked the commission to look at City Code 17.44.020, it talks about minimum required buffers in each zoning district. There is a table that shows what the buffer has to be between highway commercial and low density residential. It requires a 20 ft. buffer. They can reduce that buffer by adding a wall or other things. Under no circumstance can they reduce that buffer less than 8 feet. Attorney Angel cautioned the P&Z in wanting to require these sorts of things. He stated when they build this as long as they meet one of these requirements then the inspector is going to improve it. They have some choices there. When you start to restrict that, you are infringing on private property rights. Administrator Cluff mentioned that the commission needs to base any requirement on a wall, if any, on something solid.

Commissioner Reynolds made a motion to approve the Class II permit for ACH Holdings to build a hotel and restaurant with the conditions recommended by interim Administrator Tom Cluff which are; elevator to County EMS standards, adequate fire suppression, standpipes on every floor, firehose and nozzles on every floor and adequate parking. Matt Brady second the motion with the conditions recommended by interim Administrator Tom Cluff. Roll call vote: Commissioner Reynolds Yes, Commissioner Brady Yes, Commissioner Watkins Yes.

Minutes respectfully submitted by Jan Warnke