



PLANNING COMMISSION AGENDA

Thursday, January 23, 2020
Morgan County Council Room
6:30 pm

PUBLIC NOTICE is hereby given that the Morgan County Planning Commission will meet at the above time and date at the Morgan County Courthouse, Council Chambers; 48 West Young St., Morgan, Utah. The agenda is as follows:

1. Call to order – prayer
2. Pledge of Allegiance
3. Approval of agenda
4. Declaration of conflicts of interest
5. Public comment

Legislative Discussion:

6. **CONTINUATION – Discussion/Public Hearing/Decision: Fencing Ordinance** – A proposed amendment to MCC 8-2 and 8-12-42 – amending the livestock fencing regulations in order to require fencing out of livestock around new development and in other situations.
7. **Work Session – Commercial Architectural Design Standards**

Other:

8. Business/Staff Questions.
9. Approval of January 9, 2020, Planning Commission minutes.
10. Adjourn.



Planning and Development Services

Planning Commission Staff Report FENCING ORDINANCE AMENDMENT PUBLIC HEARING

SUBDIVISION FENCING ORDINANCE AMENDMENT

Application #19.016

Public Hearing

January 23, 2020

Proposal

Amend the Morgan County Code to address fencing standards around new developments and subdivisions in order to protect any existing agricultural area.

Summary

The proposed amendment is at the direction of the Morgan County Council to add a fencing ordinance to our subdivision code and clarify the requirements in Morgan County Code to avoid any confusion for fencing in future subdivisions in Morgan County.

There have been several work sessions and public hearings on the proposed ordinance. On October 10th, 2019 the Planning Commission recommended approval to the County Council.

The Council held a public hearing on December 3 and January 7, 2020. At the January 7th meeting the Council discussed several recommendations for changes to the ordinance remanded the ordinance to the Planning Commission to discuss the areas of concern. **Attached are a redlined and clean version of the suggested edits.**

Background and Analysis

On June 18, 2019 the Morgan County Council requested the Planning and Development Services Department staff to draft Morgan County livestock fencing regulations and examine the option of requiring property owners to fence out livestock for new developments. Members of the Council prefer that the ordinance is written in such a way that it protects the agricultural heritage of Morgan County and the ranchers and farms that have based their living on raising livestock. The following recommendations were discussed during Council meeting:

1. Draft an ordinance similar to Eastern Summit County – protect from development,
2. Developer to pay costs for fence installation.
3. Keep requirements for subdivisions that are 10 lots or more.
4. Apply to certain zones.
5. Create a plat note or memo of understanding that residents are moving into an agricultural/farming area. Right to farm disclosure.
6. Define “Agriculture Area” and any other related term to provide further clarification.

7. The ordinance should reflect the fence type.
8. Establish a time when fence is required to be complete during the subdivision process.
9. May require an exaction analysis.

Planning staff drafted an ordinance based on reviews of Utah State Code and other county codes regarding requirements for fencing around development. This was presented to the Planning Commission on August 8, 2019. Planning Commission discussed, with staff, the reasoning behind the creation of the ordinance and made suggestions to improve and clarify the code presented to them.

Staff has revised the draft discussed in Planning Commission meeting to include their recommendations and further clarification on the County Council recommendations. Staff has included the draft ordinance into the subdivision code rather than the fencing standards in § 8-6-37, however, staff recommends referencing the subdivision code within § 8-6-37. The proposed ordinance amendment includes a variation of the East Summit Counties fencing ordinance as recommended by the County Council along with the other recommendations they made. This includes the developer to pay for the installation of the fence prior to issuance of a building permit; establishes the requirement within certain zones and clarifies lot size for fencing requirements. The subdivision ordinance, § 8-12-32O, requires a plat note relating to the right to farm provision. Definitions are proposed for agricultural area, agricultural fence, livestock and non-agricultural development along with the requirements for the developer to pay the cost of the fence. A timeframe for installation has been included in the draft ordinance and a statement that clarifies the ownership and maintenance of the fence once it has been installed.

It was requested by the County Council to have an exaction analysis done to ensure that not all the responsibility is removed from owners of livestock. To clarify what an exaction analysis might accomplish, staff has included information from the Utah Property Rights Ombudsman's website for clarification on exactions (<https://propertyrights.utah.gov/exactions/>, September 19, 2019.)

What is an Exaction?

An exaction is a required contribution to a governmental entity imposed as a condition of approval for a proposed land development. Exactions generally take the form of (1) dedication of land to the public; (2) construction of public improvements, (3) money paid in lieu of property dedication or construction, (4) connection fees, or (5) impact fees.

May Local Governments Require Exactions?

Exactions are permitted, provided they meet legal standards established to protect constitutional rights. Exactions that do not satisfy those standards are not allowed. All local governments may impose exactions, including local districts which provide utility service.

What are the Standards for Permissible exactions?

An exaction may be imposed on a proposed development provided that it meets "rough proportionality" analysis, which is:

- 1. An essential link exists between the exaction and a legitimate governmental interest; and*

2. Each exaction is roughly proportionate, both in nature and extent, to the impact of the development.

See Utah Code §§ 10-9a-508 and 17-27a-507.

How is the Validity of an Exaction Determined?

Each exaction must satisfy “rough proportionality” analysis. The local government imposing the exaction has the burden of showing that the exaction meets rough proportionality standards.

What is a legitimate governmental interest?

Government entities have a legitimate interest in promoting the health, safety, and welfare of the public. Activities that improve or promote public well-being are usually considered legitimate interests. These include “traditional” government activities such as roads, parks, water systems, storm water drainage, sewer systems, etc.

What is an Essential Link?

An essential link between an exaction and a legitimate government interest is established if the proposed exaction promotes or advances a public interest. The exaction does not necessarily need to be the most efficient or “best” means of promoting the public interest.

What is the Impact of the Development?

A development’s “impact” is a measure of the increased burden on public services caused by the development.

How May an Exaction be Shown to be Roughly Proportionate to the Impact of the Development?

Rough Proportionality analysis has two aspects: An exaction must be roughly proportionate to the development’s impact, both in nature and extent.

- 1. An exaction is roughly proportionate in nature if the exaction addresses a need created by the development. In other words, the impact may be seen as a problem, and the exaction the solution to that problem.*
- 2. An exaction is roughly proportionate in extent if the expense of compliance is roughly equal to the public cost necessary to address or assuage the impact. The costs do not need to be exactly equal, only roughly equivalent.*

With the clarification on exactions provided by the Utah Office of the Property Rights Ombudsman, staff feels the proposed ordinance is written as such to “promote public well-being” and therefore, provides an essential link between the proposed fencing requirements and the County’s desire to promote public interest regarding the protection of Morgan County’s agricultural heritage.

Utah State Code § 4-25-7, allows county legislative bodies to adopt a fencing ordinance, however, the ordinance is required to specify what constitutes a lawful fence. It states:

§ 4-25-7: County legislative body authorized to adopt fence ordinance--Lawful fence to be specified by ordinance--Dividing the county into divisions for different fencing regulations

(1) A county legislative body may, by ordinance, declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property.

(2) If an ordinance is adopted under Subsection (1), the county legislative body:
(a) shall through ordinance declare and specify what constitutes a lawful fence; and
(b) may divide the county into divisions and prescribe different fencing regulations for each division.

The proposed fencing ordinance appears to meet the requirements of Utah State Code by defining what a lawful fence is through the definition of an agricultural fence, indicating what areas the regulations would apply to and who owns and maintains the fence once it is installed.

Recommended Motion

Recommended Motion for *approval* – “I move that the Planning Commission recommend approval to the County Council and adopt the changes in Morgan County Code Section 8-2: Definitions, Section 8-6-42: Fence, Wall and Screening Regulations and Section 8-12-42: Subdivision Layout, application number 19.016, based on the draft code listed in the staff report dated January 23, 2020.”

Recommended Motion for *approval with additional changes* – “I move that the Planning Commission recommend approval to the County Council and adopt the changes in Morgan County Code Section 8-2: Definitions, Section 8-6-42: Fence, Wall and Screening Regulations and Section 8-12-42: Subdivision Layout, application number 19.016, based on the draft code listed in the staff report dated January 23, 2020, with the following corrections:”

1. List any corrections . . .

Recommended Motion for *denial* – “I move that the Planning Commission recommend denial to the County Council of the amendment to Morgan County Code Section 8-2: Definitions, Section 8-6-42: Fence, Wall and Screening Regulations and Section 8-12-42: Subdivision Layout, application number 19.016, *due to the following findings:*”

1. List any additional findings...

Staff Information:

Lance Evans, AICP
801-845-4015

ATTACHMENTS

Clean and redlined versions of suggested edits by the County Council

SUBDIVISION FENCING ORDINANCE AMENDMENT – **REDLINED VERSION**

File #19.016

January 23, 2020

Proposed Ordinance Amendment Summary:

1. Section 8-2: Definition of “Agricultural Area,” “Non-Agricultural Area,” “Livestock,” and “Agricultural Fence.”
2. Section 8-12-42: Adding the requirement for new subdivisions to install fencing around their development.

The following are the recommended changes and addition to the Morgan County Subdivision Ordinance:

8-2-1: DEFINITIONS OF WORDS AND TERMS:

AGRICULTURAL AREA: For purposes of subsection 8-12-42: Subdivision Layout and Fencing Requirements; land devoted to the raising of ~~useful plants and animals~~ livestock with a reasonable expectation of profit, ~~including: forages and sod crops; grains and feed crops; livestock (as defined in this title); trees and fruits; or vegetables, nursery, floral and ornamental stock; and land that is five or more contiguous acres; and eligible for assessment as agricultural use or qualified under Farmland Assessment Act.~~

AGRICULTURAL FENCE: A fence that complies with the standards set for in the USDA NRCS Woven or Barbed Wire Conservation Practice Job Sheets ~~RI-382 or~~ USDA NRCS wildlife fence recommendations in wildlife migration corridors or critical wildlife habitat.

LIVESTOCK: For purposes of subsection 8-12-42: Subdivision Layout and Fencing Requirements; the term “Livestock” includes cattle, sheep, goats, swine, horses, mules, donkeys, poultry, and any other domestic animal or domestic fur bearer raised or kept for profit.

NON-AGRICULTURAL DEVELOPMENT: A residential subdivision a commercial subdivision or an industrial subdivision and/or a development established with a development agreement.

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Chapter 12: SUBDIVISIONS

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8-12-41: EXPIRATION OF FINAL PLAT:

8-12-42: SUBDIVISION LAYOUT AND FENCING REQUIREMENTS:

8-12-43: LOTS:

....

8-12-42: SUBDIVISION LAYOUT AND FENCING REQUIREMENTS:

- A. The subdivision layout shall conform to the county's standards and ordinances as outlined in this subsection and all other sections in this title. (Ord. 10-16, 12-14-2010)
- B. Livestock Fencing: New, nonagricultural development immediately adjacent to an existing agricultural ~~operation area~~ shall not be approved unless the developer and/or subsequent owners of property within the development install an agricultural fence along the property line between the two properties and assume the responsibility ~~for fencing or paying for~~ all ~~the costs,~~ including labor, materials and perpetual maintenance. All non-agricultural development that borders agriculture ~~land areas~~ shall be subject to the following fencing requirements:
 - ~~1. At the discretion of the adjoining agricultural landowner, prior to platting, t~~he developer may shall be required to pay for all of the cost, including labor and materials for a fence if ~~:~~
 - ~~a. T~~he fence is or becomes a partition fence separating the project site from the an adjoining agricultural ~~area~~landowner's property;
 - ~~b.1. The cost of the fence is reasonable for the type of fence commonly found in that particular area.~~
 - 2. Notwithstanding the above fencing requirement, the developer may, at his or her own discretion, cost and expense, construct a perimeter fence to enclose the development.
 - 3. In project areas including wildlife migration corridors or critical wildlife habitat, as determined by the state division of wildlife resources (DWR), wildlife friendly fencing may be considered.
 - ~~4. A note shall be added to the final plat referencing a fencing agreement between the adjoining agricultural landowner and developer; said agreement shall be recorded prior to the final plat recordation.~~

5.4. The fence shall be installed prior to any building permit issued within the development.

5. This code shall apply to all developments approved after January 1, 2020.

6. If the adjoining property ceases agricultural operations and is no longer considered an agricultural area the fencing and maintenance requirements shall not be required.

SUBDIVISION FENCING ORDINANCE AMENDMENT – **CLEAN DRAFT**

File #19.016

January 23, 2020

Proposed Ordinance Amendment Summary:

1. Section 8-2: Definition of “Agricultural Area,” “Non-Agricultural Area,” “Livestock,” and “Agricultural Fence.”
2. Section 8-12-42: Adding the requirement for new subdivisions to install fencing around their development.

The following are the recommended changes and addition to the Morgan County Subdivision Ordinance:

8-2-1: DEFINITIONS OF WORDS AND TERMS:

AGRICULTURAL AREA: For purposes of subsection 8-12-42: Subdivision Layout and Fencing Requirements; land devoted to the raising of livestock with a reasonable expectation of profit.

AGRICULTURAL FENCE: A fence that complies with the standards set for in the USDA NRCS Woven or Barbed Wire Conservation Practice Job Sheets or USDA NRCS wildlife fence recommendations in wildlife migration corridors or critical wildlife habitat.

LIVESTOCK: For purposes of subsection 8-12-42: Subdivision Layout and Fencing Requirements; the term “Livestock” includes cattle, sheep, goats, swine, horses, mules, donkeys, poultry, and any other domestic animal or domestic fur bearer raised or kept for profit.

NON-AGRICULTURAL DEVELOPMENT: A residential subdivision a commercial subdivision or an industrial subdivision and/or a development established with a development agreement.

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- B. Livestock Fencing: New, nonagricultural development immediately adjacent to an existing agricultural area shall not be approved unless the developer and/or subsequent owners of property within the development install an agricultural fence along the property line between the two properties and assume the responsibility for all costs, including labor, materials and perpetual maintenance. All non-agricultural development that borders agriculture areas shall be subject to the following fencing requirements:
 - 1. The developer shall be required to pay for all of the cost, including labor and materials for a fence if the fence is or becomes a partition fence separating the project site from an adjoining agricultural area;
 - 2. Notwithstanding the above fencing requirement, the developer may, at his or her own discretion, cost and expense, construct a perimeter fence to enclose the development.
 - 3. In project areas including wildlife migration corridors or critical wildlife habitat, as determined by the state division of wildlife resources (DWR), wildlife friendly fencing may be considered.
 - 4. The fence shall be installed prior to any building permit issued within the development.
 - 5. This code shall apply to all developments approved after January 1, 2020.
 - 6. If the adjoining property ceases agricultural operations and is no longer considered an agricultural area the fencing and maintenance requirements shall not be required.

PLANNING COMMISSION MINUTES

Thursday, January 9, 2020
Morgan County Council Room
6:30 pm

Minutes of the Morgan County Planning Commission meeting at the above time and date at the Morgan County Courthouse, Council Chambers; 48 West Young St., Morgan, Utah.

Present PC Members:

Member Sessions
Member Little
Member Wilson
Member Stephens
Member Bass

Staff:

Lance Evans, Planning Director
Bailey Smith, Transcriptionist

Public Attendance:

See Sign-in Sheet

Absent PC Members:

Chairman Ross
Member Mayerle

1. Call to order – prayer
2. Pledge of Allegiance
3. Approval of agenda

Member Bass moved to approve the agenda. Second by Member Little. The vote was unanimous. Motion carried.

4. Declaration of conflicts of interest
5. Public Comment

No public comment.

Legislative Discussion:

6. **CONTINUATION - Discussion/Public Hearing/Decision: Northside Creek LUMC Amendment** - A proposed Amendment to MCC 8-12-60C1 Amendments to Recorded Subdivision Plats (PRUD/PUD Amendments) – Adding verbiage to allow additional building lots to be created if approved by the County Council.

Evans presented the revised amendment for the recorded subdivisions plat code. The PC had concerns with the ordinance from the last meeting. The applicant has made changes and added several elements to the proposed ordinance. Staff has reviewed the document and it does put parameters on amendments of PUD's. It would maintain the open space area and only allow for fifteen percent modification to the number of lots. That would be a one time option that would be coupled with a public improvement of some kind. It would also have to be consistent with the General Plan. Staff is recommending approval.

Member Wilson asked where in the revision it states that they can only do it one time. Evans stated that requirement number five states that the total number of lots included in the applicable originally recorded PUD & PRUD plat. Member Bass asked if she could have a brief overview of the last meeting. Evans explained to her what was proposed and what concerns the PC had. Member Bass asked if the commission and the council changes are there parameters in place to make sure that amendments are done properly. Evans explained that it would still go through the process. Right now, the parameters are that you cannot add a dwelling unit. They are not able to do anything and there is no flexibility at all. Member Sessions asked if they needed a definition of a public benefit. Evans stated that would be up to interpretation. They would need to qualify it and then the complexity snowballs from there. Member

Sessions stated an applicant could come forward to amend the Future Land Use Map to allow them to change the PRUD. Member Sessions asked if there would need to be a new development agreement for the changes. Evans stated there would still have to be a contractual agreement between the county and the developer. There would have to be a plat note referencing that contract.

Member Stephens moved to go into public hearing. Second by Member Wilson. The vote was unanimous. Motion carried

Tina Kelley from Mountain Green stated there were already considerations given at the time to the density. If you do not specify the public benefit is then how will it not be arbitrary? She does not think it should be passed. They were already given a lot of discretion when they had the PRUD's. Any decision like this she hopes they do not take it lightly.

Member Stephens moved to go out of public hearing. Second by Member Little. The vote was unanimous. Motion carried

Member Bass asked what the difference is between a development agreement and a PRUD. Evans stated a development agreement is a more in-depth process. The PRUD's were under the ordinance and a plat with notes on it. Some PRUD's had a development agreement and several that are simply a one-page plat with a few lots, plat notes and dedicated open space. Member Bass asked why they are asking for amendments if there were agreements made. Member Wilson stated the thinking behind it was you could create this if we get that. Member Bass asked how they define what the public benefit is. It is going to be different in everybody's opinion. Member Wilson stated he felt there should be a specific percent of whatever the project is worth. The other problem that they face is whatever they do for one they do for all. Member Bass stated she knows plans change but she also feels that what they got approved they were approved.

Member Sessions stated the question is, can you ever see a public benefit that would be worth allowing a PRUD to increase its density to provide that public benefit. Member Wilson stated it would have to be proportional. Member Stephens stated he feels that it is you scratch my back and I scratch yours type thing. Whatever they do needs to be a public benefit to the county regardless. If it is not a benefit to the county and the public, they should not do it. It was set up that way and if they try to change it is setting them up for letting people do more. Member Wilson asked if Member Stephens sees where it would be a benefit for the construction. Member Stephens stated no, it would be maybe one or two homes and it would not necessarily benefit a company in Morgan. Member Wilson stated it should be reciprocal amounts.

Evans stated he is a little concerned that it has to be an equal amount. It needs to be a public benefit but it does not necessarily have to equal the value they are getting. If they are within the vision of the General Plan and they are willing to do some sort of public benefit how would the county be harmed? He added that the word benefit is broad so maybe it should be a public improvement. The applicant would make a proposal with the public benefit and they would go forward from there. There is a land-use planning law that talks about an improvement having to be related to that development. Member Wilson asked where the 15% number came from. Evans stated it was in part of the discussion during the last meeting. Member Little asked for examples of what benefits were provided when they were developed. Evans stated most of the PRUD's in Morgan County do not have a public benefit at all. They have open space areas that the public cannot use. Member Stephens stated that a lot of it is not publicly accessible. Member Sessions stated the developers of Summer Ridge donated the ground for a park in Enterprise. Member Stephens asked if the county takes on liability down that road that costs them. It was a benefit when it was put in but now it becomes a cost or liability for the county to maintain. Evans stated it would. Member Bass stated that they went into this agreement and they had their plan. That is what they got approved that is what they stick with.

Skyler Gardner stated the county were the ones who removed the ordinance and did not replace it with anything. If the ordinance were still in place they would be allowed to make changes to the PRUD. This gives them the opportunity to make an application. Their property rights have been restricted

78 because of the ordinance. He stated they could throw a few examples in for public improvements. The
79 County Roads Department removed a roundabout out of the development. That would be between a 55
80 and 60 thousand dollar repair that would need to be made. They are proposing to repair that in exchange
81 for some density. The development received approval and a development agreement that was approved
82 but was not recorded. He does not know how they would match the increase with the public improvement

83 Rulon Gardner stated they are not here asking for anything today other than the language adjustment.
84 Cottonwood Canyon Road needs reconstruction. The width of the asphalt is only twenty feet. They have
85 given the Public works department drawings that show the reconstruction of that road. They would like to
86 make a solution to be able to put the roundabout back in or, whatever the county would like to have done
87 there. Member Stephens stated his issue is they want to increase the density. Rulon stated that it would
88 help with the revenues to do public improvements.

89 Member Wilson asked why the county took the roundabout out. Member Sessions stated the council
90 removed it because the semi-trucks could not get around it when they would pick up cattle. Member
91 Sessions stated this is allowing the opportunity for the council to consider this. That doesn't mean they
92 have to approve it. Member Wilson stated they would be giving it to the council who can decide whatever
93 they want. Member Stephens asked if the public could request a code change. Evans stated MCC states
94 that a property owner or individual can request a code change. Member Wilson asked if they wanted to
95 define better what a public benefit is.

96 Member Sessions asked if they see where it damages the county. Member Wilson stated if the public
97 improvement doesn't equal the developer benefit. Member Stephens stated there are some situations
98 where the county would really benefit but other times they may not benefit. Member Wilson suggested
99 using the word substantial to public benefit and then the council could decide what substantial is. Member
100 Sessions stated they would not come to the Planning Commission to amend it the applicant would go
101 straight to the council. Evans explained that they would still have to go in front of the PC because it is a
102 plat amendment and all plats go through them.

103
104 **Member Bass moved to recommend denial to the County Council to amend Morgan County Code**
105 **Section 8-12-60-C: Amendments to Recorded Subdivision Plats (PRUD/PUD Amendments) based**
106 **on the following findings:"**

- 107
108 1. The agreement that all PRUD's entered into that is when the negotiating, density limits,
109 open space limits were decided and they should stick with it.

110
111 **Second by Member Stephens. The vote was not unanimous. Three for, one against, motion carried.**

112
113 **Administrative Discussion:**

114
115 No Items

- 116
117 • **POSTPONED** - The Basin Subdivision Concept Plan was Postponed from October 24, 2019
118 meeting to January 9th but this item is postponed until The Basin Development Agreement is
119 approved by the Morgan County Council.
120
121 • **APPLICATION DISMISSED**— The proposed conditional use permit for a residential mixed-
122 use development for "The Basin" located at approximately 4950 W Old Highway Road in
123 Mountain Green, Utah was postponed on October 24, 2019. Due to code amendment changes for
124 the Town Center zone, a CUP is no longer required in this zoning district. The application is
125 dismissed.

126
127 **Other:**

- 128
129 7. Business/Staff Questions.

131 Evans stated there are two Planning Commission Seats coming open. Staff has sent the notice to the
132 newspaper and posted it on the County Websites. Member Bass asked if there have been applications for
133 the Planner job. Evans stated there have been a few but they are still waiting. Member Stephens asked
134 why the application was dismissed for the CUP. Evans explained that the code amendment made it to
135 where the application was no longer required.

136
137 8. Approval of December 12, 2019, Planning Commission minutes.

138
139 **Member Little moved to approve the December 12, 2019, Planning Commission minutes. Second by**
140 **Member Stephens. The vote was unanimous. Motion carried.**

141
142 9. Adjourn.

143 **Member Stephens moved to adjourn. Second by Member Wilson. The vote was unanimous. Motion**
144 **carried.**