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STAFF REPORT

To: Summit County Council
From: Helen Strachan, Deputy County Attorney & Phil Bondurant, Deputy Director of the Summit County Health Department
Date of Meeting: October 9th, 2019
Type of Item: Amendment to Title 2, Chapter 20 of the Summit County Code
Process: Legislative

Recommendation: On August 28, 2019, the Summit County Council (the “Council”) had a discussion on the proposed changes to Title 2, Chapter 20 of the Summit County Code. At that time, the Council directed staff to streamline the submittal requirements found in Section 2-20-7(C). Attached for the Council’s consideration is a new draft with those requested changes.

Background:

Eastern Summit County Water Conservancy Special Service District (the “District”): In the fall of 2007, in order to tackle the issues regarding waste water treatment in Eastern Summit County, Summit County created the Eastern Summit County Sewer Advisory Committee (ESAC) made up of staff representatives from the Community Development Department, Engineering Department, Health Department, Attorney’s Office, Planning Commission, and other community members. ESAC was set up to address the growing demand for individual septic systems in Eastern Summit County. It was also set up to address the difficulties within the then-Eastern Summit County General Plan and Development Code for major developments with regard to sewer. At the time, Policy 6.2.5 of the General Plan included regulatory language that stated as follows:

All major development shall be required to connect to municipal infrastructure or install a package sewer treatment facility that can be connected to a municipal or sewer improvement district infrastructure in the future. Summit County may consider septic systems only on large lots that comply with the minimum area requirements of the agricultural zone district, including in the AP, AG-100, and AG-160, within which the property is located.

The Development Code further defined major development as subdivisions of six or more lots. This General Plan language was and still is consistent with Utah State's Department of Environmental Quality administrative rules, which require that a "body politic" such as a special service district "sponsor" all large underground wastewater disposal systems that are designed to handle more than 5,000 gallons per day of domestic wastewater. In 2007, the County did not have such a "body politic," separate and apart from the County itself to be a sponsoring body. Moreover, at the time, the Community Development Department had a pending application for a major subdivision, Indian Hollow an eighty-five lot subdivision (later amended to sixty-five) located off Democrat Alley, which added pressure for the County to move towards the creation of the District. The Indian Hollow subdivision was not in a position to connect to municipal sewer, leaving them with the requirement that they have a large system sponsored by a body politic.

In January of 2008, ESAC presented to the Board of County Commissioners (the "BCC") its findings and recommendations, which included the establishment of an Eastern Summit County special service district that would have management and oversight responsibilities over east side waste water facilities. The special service district would be the "body politic" necessary by Utah law to oversee larger systems for major developments. The BCC decided to move forward with the District's creation and it was established in December of 2008. The District, as it currently exists, consists of all of Eastern Summit County with the exception of the municipalities and the Promontory/South Point specially planned areas.

District Structure: The District's structure was codified in Title 2, Chapter 20 of the Summit County Code (see [Exhibit A](#), Title 2, Chapter 20, pages 1-8). The County Council sits as the District's governing board (the "Board"). The Board has appointed the County Manager as the General Manager of the District, whose role is to govern day-to-day operations, prepare an annual budget, provide recommendations to the Board on policies/procedures/regulations, and provide a recommendation on a fee structure. Currently, the County Manager, as the General Manager, is also considered the "final approval" of wastewater systems that serve ten or fewer lots, with the Board retaining the "final approval" for all wastewater systems that serve more than 10 lots. The Board also created ESAC (essentially the same board that was created as part of the District's genesis), as an advisory board to both the Board and the General Manager. ESAC's role is to analyze existing wastewater systems and conduct an inventory of existing systems, create a process for approval of wastewater systems, and review all proposed wastewater systems. ESAC's efforts in its review of wastewater systems essentially duplicates the efforts of what is being done at the staff level in the Health Department. They are to also assist the General Manager in all of his above-described duties and make recommendations to either the General Manager or the Board on all proposed wastewater systems. ESAC is *not* considered an administrative control board under Utah's special service district act and Chapter 20, at this time, does not call for the creation of such an administrative control board. Thus, ESAC is advisory only and does not have the legal authority to govern the District like an administrative control board does.

It is not a stretch to say that that the District is a skeletal district. While it is a legal entity, a dependent special service district created under the laws of the State of Utah, it is little more than that. ESAC

essentially only meets to make recommendations on proposed waste water systems, but has not actively fulfilled its other duties. Likewise, neither the Board nor the Manager have functioned beyond their roles as the approval body for proposed wastewater systems. The District has no policies, procedures, or regulations and has no fee structure. Since 2008, there has been very little need to create a full-fledged District. The County, like the Country, was in the midst of a recession and growth was stagnant in Eastern Summit County. With the exception of Indian Hollow (the proposed sixty-five lot subdivision, whose application goes back to 1998), there have been no pending applications for larger developments in Eastern Summit County. Things are beginning to change, which has led staff to the conclusion that the District needs meat on the bones.

The Master Planned Development Process: The County amended the Code, doing away with the specially planned area process and replacing it with a “master planned development” (“MPD”) process. The MPD process is triggered for, among other things, any subdivision resulting in four or more lots. The Community Development Department has received its first application for an MPD called “Trail Ridge,” a twenty-six lot subdivision in the Cherry Canyon area outside of Wanship. The application is in its infancy and has yet to be before the Commission, however, the developer has already approached the Summit County Health Department, wishing to install individual onsite wastewater systems on each individual lot, rather than installing a large, advanced package system. The proposed individual septic systems were denied by the Health Department and that denial was appealed to the Board of Health, who denied that appeal, favoring a package system for the development. If this MPD is approved and if, as a condition of approval an advanced system is required, the District, who has jurisdiction over this area outside of Wanship, would be the necessary “body politic” that would oversee this system. While staff understands that this project is in its infancy and there are still many moving parts, we anticipate more MPD applications in the near future.

Staff’s Recommended Changes: Earlier this year, Staff had a work session with the County Council to brief them on the fact that the District, as it currently exists, is not really in a position to take on private wastewater systems. We also briefed them on the fact that we will likely be receiving more and more MPD applications. Staff’s recommendation to the County Council was to make some amendments to the Title 2, Chapter 20 of the Code so that the District could be a full-fledged special service district. The County Council was not ready to go that far. Since the County Council, acting in the capacity as the Governing Body of the District, has never seen a wastewater system before them for approval, they decided that they wanted to retain control of the District and see how an application goes through the process first before making any large-scale changes to the District’s structure. What is being proposed then at this point are some minor changes to the District’ structure so that not every single application goes through the District. Here is a summary of the proposed changes to Title 2, Chapter 20. Phil Bondurant has put together a helpful flowchart that explains the process as well. It is found attached to this staff report.

Health Department Review:

- Proposed wastewater systems that serve three or less lots/parcels will be reviewed by the Summit County Health Department. This is consistent with prior practice, however, in the past, not only would these proposed systems be reviewed by the Health Department, but ESAC would make a separate recommendation as well, thus duplicating the efforts of the Health Department. We are doing away with ESAC review for subdivisions of three lots or less.
- Proposed wastewater systems that serve four or more lots (thus triggering the MPD process) will be reviewed by the Health Department, but only if any of the proposed lot sizes are 10 acres in size or greater. The reason for this is because, with the larger lot sizes, you don't run into the same issues (i.e. septic density and private well setbacks) as it relates to individual systems.
- If the proposed development is close to public sewer and public sewer has been determined to be "reasonably available" by the Health Department then it is reviewed by the Health Department and the appropriate sewer provider. Per the Health Code, public sewer is considered "reasonably available" if the allowable sewer connection is within 300' of any part of a parcel. Or, for subdivisions, sewer is considered "reasonably available" if the distance to the allowable sewer connection is less than or equal to the calculated distance for the square footage of proposed lots multiplied by 0.0069.

ESAC Review:

- Proposed wastewater systems that serve four or more lots (thus triggering the MPD process), but only if any of the lot sizes are less than 10 acres in size. Thereafter, depending on the number of lots (less than ten vs. ten or more), ESAC makes a recommendation to either the General Manager of the District (i.e. the County Manager) or the Governing Body of the District (i.e. the County Council).
- If the Health Department, in their sole discretion, thinks that, due to the intensity of the proposed use, it should go to ESAC, then they can send it their way.
- Also, if an applicant willingly decides to put in a community system, then it goes straight to the approving entity, and bypasses ESAC.

ESAC Submittal:

- Initially, staff included a list of requested submittal requirements for an applicant to provide ESAC in order for ESAC to make its recommendation. That list included information such as locations of wetlands, wells, nearest connections to sewer and water, etc. The Council asked for a more streamlined requirement and the Health Department has suggested instead a reference to the Utah Rule that governs this, R317-4, which is the environmental quality rule that governs on-site wastewater systems. I've attached a copy of the pertinent portions of the rule as Exhibit B.

Staff asks that the Council review the attached and come prepared with any questions. Thank you.