

**Planning Commission Meeting
County Administration Building - Duchesne, UT
November 2, 2022**

In Attendance were:

Connie Sweat, Planning Commission Vice-Chairman
Bobby Drake, Planning Commissioner
Shilo Hatch, Planning Commissioner
Jenny Giles, Planning Commissioner
Thomas Winterton, Planning Commissioner

Mike Hyde, Community Development Director
Mike Gottfredson, Assistant Community Development Director
Becky Broadhead, Executive Secretary

Visitors

Chris Floyd
Michael Worthen
Dan Anderson
Mark & Kimberly Stevens
Kelly & Jacqueline Enniss
Kevin Fisher (virtual)
Gary Ivey & Charlotte Atkinson Ivey (virtual)

Commissioner Sweat opened the meeting at 5:04 pm and read the Rules of Order. She asked if any of the Commission Members had any ex-parte contacts or conflicts of interest associated with any item on the agenda. Commissioner Hatch commented that she was involved with the Mushroom Madre Conditional Use Permit. Mr. Hyde, explained that when that item comes up on the agenda she will need to recuse herself and sit in the audience. The meeting proceeded.

Public Hearings

Mike Gottfredson, Community Development Assistant Director, presented:

A. Continuation of the public hearing on a request by Kevin Fisher of Fisher Rental Management LLC for a Conditional Use Permit to operate a short-term rental at 4072 North County Road 274, in the Tabiona area.

Mr. Gottfredson began by clarifying a couple of minor errors on page 6 and page 8 of the Kevin Fisher staff recommendation. On page 6 item F, I am referencing Utah Code Section 17-50-337 and it should reference Utah Code Section 17-50-338. The same should be noted on page 8 item 5. It should reference Utah Code Section 17-50-338 and not 17-50-337.

Mr. Gottfredson noted the other item was that Mr. Fisher had withdrawn his proposal for a shooting range at his short-term rental. A short-term rental consists of a rental of a facility, home or lodge for 30 days or fewer, according to the Utah law. Mr. Fisher has 5-1/2 acres that is zoned R-1 because of his connection to the Hanna water system. He has a cabin with a fire pit and other amenities. He has access to this property from CR #224 and his property has been reviewed by the fire warden and has met the urban interface code standards. The cabin has 3 bedrooms and 3 bathrooms with a detached garage with two storage sheds on the property. There is a 75-foot length shooting range on the south east corner of the property with a loading table and target structures on the opposite end of the range. The parcel of land is sufficiently large for the cabin and will accommodate the

proposed activity in a manner that is not detrimental to the surrounding properties. There was some concern about the impacts of the shooting range, but it is not being considered to be used with this short-term rental. There is no significant outdoor storage. There is no fencing, so it is advisable that Mr. Fisher inform his clients of no trespassing on other people's properties. There is adequate parking for the number of guests that he anticipates having. A short-term rental may have a total of 10 or fewer guests within 5 or fewer bedrooms. This property has an onsite waste water disposal permit from TriCounty Health. The nearest fire hydrant is 650 feet north of the property and meets the R3 owner occupied lodging house/R3 boarding transient house requirements of the building code.

The applicant does desire to place a sign on the property and has been reminded of the Duchesne County Ordinances in order to preserve the residential character of the area. The business is not anticipated to generate a significant amount of noise. The applicant will need to instruct renters to observe the Duchesne County Nuisance Ordinance that allows noise between 7am – 9pm Monday through Friday, on Saturdays between 8:00am – 9:30pm, and 9:00am – 9:30pm on Sundays. The applicant anticipates renting the property for up to 26 weeks per year.

In conclusion, the request by Mr. Fisher will comply with the Conditional Use Permit requirements provided that conditions are imposed

Commissioner Sweat asked if there were any questions from the Planning Commission of the staff report. There were none.

Mr. Kevin Fisher addressed the hearing and indicated that it was his understanding that he could just not market the shooting range, but it doesn't mean that people cannot use it. He asked if that was right? Mr. Gottfredson clarified by stating the shooting range could not be used for commercial purposes or for any of the renters using the short-term rental facility as an amenity per the Conditional Use Permit.

Mr. Hyde clarified that under the staff recommendation, Mr. Fisher, as a property owner would be able to use his shooting range, however, short-term rental guests would not be able to use it and Mr. Fisher will need to remove any reference to that amenity from his advertising. Mr. Fisher replied that he understood and it made sense.

Commissioner Sweat asked if there were any other proponents wishing to speak? There were none.

Commissioner Sweat asked if there were any opponents? There were several. The following individuals came to the podium to state their concerns one at a time:

Kimberly Stevens stated that she is not in opposition to the short-term rental, but is strongly opposed to the shooting range that has been an amenity with this short-term rental in the past. They live above this property on Tabby Mountain. She stated there have been 10-15 times when she has been outside with her husband, grandkids and their dog and had to pull them all in to their cabin because of the shooting going on down below their house. She stated that Mr. Fisher has been running this Airbnb for the last three years without a Conditional Use Permit. Anyone who has rented Mr. Fisher's cabin for the last three years has had the option to use the shooting range and discharge their fire arms. She said they've been up at their cabin when people who are renting Mr. Fisher's cabin are shooting for 5 – 7 hours non-stop. There was one time when she was out on their porch and she heard a big explosion. She ran in to the house and asked her husband if he had heard that noise? He said he had and he

thought it was a propane tank exploding. When her husband went out and looked over the hill towards Mr. Fisher's cabin, he decided it must have been one of those exploding targets because smoke was going up into the air. Their concern up to this point is they do not believe Mr. Fisher has ever had a business license to run this Airbnb. She noted that you can go to the website and look at the calendar and you can see what weeks the rentals are taking place. She explained that every month she goes to her phone and checks the calendar to see if and how long Mr. Fisher's cabin is being rented so they will know how long the shooting will be going on. The main road down past Mr. Fisher's cabin is the road that they and other residents use. There are a lot of 4-wheelers, side-by-sides, kids and anyone else travelling on the main road by Mr. Fisher's cabin. People come up here for the tranquil atmosphere. She noted that her big problem is that in the last three years, his shooting range has not been used for his own private use. She stated her concern as to what will be keeping him from doing the same thing he's been doing for the last three years with renters being able to use the shooting range any time they would like? Mrs. Stevens continued by saying she pulled up Mr. Fisher's web page right before she came here this evening and he has not removed the shooting range as being offered as an amenity to his rental. Her other concern is that if alcohol is involved then we really have a problem! I do know for a fact that last summer things got pretty crazy on Mr. Fisher's shooting range. My husband and one of our neighbors went down to the cabin to speak to Mr. Fisher about the shooting that was going on. They didn't find Mr. Fisher at his cabin. They found the people renting Mr. Fisher's cabin. The renters told her husband and neighbor that Mr. Fisher advertises to bring your own ammunition, your own targets and they were just enjoying the amenities. Mrs. Stevens stated that she is very concerned that Mr. Fisher will really have to abide by the rules of not letting renters use the shooting range amenity or things will continue to be out of hand and hopefully not get worse.

The next opponent, Jaqueline Enniss, stated that she and her husband, Kelly Enniss, reside on Tabby Mountain. Her husband and she live right above Mr. Fisher's property. The way they shoot on the shooting range worries us because if a bullet strays we are not far away. My concern is that Mr. Fisher tried to hide this shooting range from the Planning Commission and most of the neighbors. What is going to guarantee us as the neighbors that any other renters will not be allowed to use the shooting range? This summer was difficult. I was not comfortable sitting out on my deck because of the gun fire. I have a dog and it scares her. She runs in the house and hides under our bed. The neighbor's dog does the same thing and the dogs bark incessantly when the shooting range is active. If Mr. Fisher is not able to allow the shooting range amenity to his renters then I want the shooting range gone. I want any signage that he has in his rental about the shooting range gone. I don't want anything advertised about the shooting range. I don't trust Mr. Fisher given the fact that he tried to rent this under everybody's nose and pretend that it didn't have a shooting range when it did. We called the sheriff and he told us we have to contact the Duchesne County Planning and Zoning Department. We call the Planning and Zoning Department and they say that the shooting range aspect of this permit has been withdrawn. What's going to guarantee me that he is not going to have shooters out there? If you add alcohol with the shooting range it becomes an even bigger problem. I just don't want it near my property at all. I go down on the road in front of Mr. Fisher's cabin frequently, and now I am fearful to be on this main road because the shooting range faces the road. That should be illegal. It is just a very dangerous situation. This past summer, my granddaughter came to visit. She took our side by side down the road in front of Mr. Fisher's cabin and she came back quickly saying there was a lot of shooting down below and wanted to know what was going on? I can't even live a peaceful, quiet retirement life with that shooting range being there. Mr. Fisher has brought this shooting range in right under our noses and what is going to guarantee us as residents that live within 300 – 500 feet from the shooting range that any renters will not use it? He will tell you all you want that he isn't going to have his renters use this amenity, but given the three years that we've all had with him and this shooting range in the past what is going to be done about him allowing his renters to shoot? Who do we call? I have been down to Mr. Fisher's cabin and spoke with renters

who tell us, “We rented this cabin to be able to use this shooting range.” It was still being advertised as a rental with a shooting range as of 3:00 pm today.

Mark Stevens came to the podium next. He stated if you look on the map, you will see a little circle with a bunch of cabins there. That is where most of us live. I am all for Mr. Fisher being able to have an Airbnb. I’m asking that the Planning Commission will put a restriction that he will not be able to have a shooting range as long as he has a conditional use permit on that property. That would eliminate a lot of the problem if you all will look at the situation like that.

Dan Anderson appeared next and said that he is the closest person to Mr. Fisher’s shooting range. You have bullets ricocheting, kids and people driving by and my dogs are going nuts. I just want to know, if my kid gets hit, who do I sue? Do I sue him or the people who let Mr. Fisher have this shooting range? I served in Vietnam. I’ve never heard so much gun fire in all my life. They are clipping off 20 and 30 round clips in these weapons. They have M-16’s, 30/30, 38 caliber pistols. If you let this shooting range happen, then what will happen is other people will say that they have a right to have a shooting range too because Mr. Fisher has a shooting range. In our subdivision, we are not allowed to shoot. Mr. Fisher’s property is in a different subdivision and they are allowed to shoot. They are all sitting on 5 acre lots. When they used an exploding target, it sounded like a damn grenade! I don’t know if he can even get this shooting range in Tabiona Heights insured. Nobody is even there to guide these renters on how to shoot. It is like free range. They’re just loading and firing and it just needs to stop. Someone is going to get hurt or killed!

Kelly Ennis came to the podium next. He stated that there is a shooting range off of State Highway 208 in Tabiona, UT that the locals use. We don’t need another shooting range up by all of us. At this point, Commissioner Drake asked Kelly if this is a public range that everyone can use? Kelly replied that it isn’t a public shooting range, but the county sheriff has said that it has been ok’d as a shooting range for the locals to use.

As there were no others present to speak in opposition, Commissioner Sweat called for anyone wishing to speak in rebuttal.

Mr. Fisher said that he’s had this shooting range on his place for the last 10 years. About two years ago, Mr. Anderson would yell down and make comments that he’s going to call the sheriff. I called Monty Nay, who is with the Duchesne County Sheriff’s Department. I asked him if there was any legal reason why I can’t shoot down here on my property. Sheriff Nay said there was no reason whatsoever. Then I drove up to Mr. Anderson’s house and we had a great conversation for about an hour. I told him about everything going on. I invited him to call Sheriff Nay and talk to him about it. I would invite all the others to do it as well. I have not heard from anybody personally except Mr. Anderson in all these years which wasn’t until about two years ago. We are very safe as far as shooting. I am just fine with taking the shooting range off of the website. I am just fine not marketing it as well as having the Airbnb people not having access to it. That doesn’t bother me at all. As far as me personally, and the guests I bring up with me, to be able to use the shooting range is not even a question because it is not against the law. Honestly, I’ve talked to every person who has shot up there and as far as the lady who stated there has been five and six hours of continual shooting, that is about \$2,000.00 of ammunition. I understand everyone’s concerns. As far as the area of where the shooting range is located, is very safe and has a very good backstop. I am committed at this point to not have it as part of this Conditional Use Permit. Mr. Fisher asked if there were any questions for him at this point? There were none.

As there was no additional rebuttal testimony, Commissioner Sweat called for discussion by the Commission.

Commissioner Hatch asked if there are any restrictions in Duchesne County on firing ranges? Mr. Gottfredson stated that there are no restrictions for an owner shooting on his own property. However, if you are firing towards people, brandishing your weapon and threatening other people that becomes a different story. A public shooting range would require a conditional use permit.

Commissioner Drake had a question for Mr. Fisher. He wanted to reiterate one more time that Mr. Fisher is fine taking the shooting range off his website, and that there won't be any signs up directing his renters that they are able to shoot at your shooting range? Mr. Fisher replied that this understanding was correct.

Commissioner Winterton had a question. I imagine you have repeat customers. Will there be instructions to the repeat guests that they can no longer use the shooting range? Mr. Fisher replied yes and that he is in touch with every person that is up there. I will put that on the check-in and check-out written instructions for our renters. I would be happy to submit this to the board if it needs be. I have no problem with that.

Mrs. Enniss asked if they were allowed to see Mr. Fisher on the video monitor? Mr. Hyde asked Mr. Fisher if he would be willing to turn on his video so she could see him. Mr. Fisher agreed. Mrs. Enniss stepped up to the podium to see what Mr. Fisher looked like and then thanked Mr. Fisher.

Commissioner Sweat asked if the Commissioners had additional questions or discussion. Commissioner Hatch asked if we could require signage on that shooting range portion on his property? Mr. Hyde replied that Mr. Fisher will have that stated in his rental agreement so the people will know what the rules are. He then asked Mr. Fisher if he would be willing to put a sign up on the shooting range instructing renters they are not allowed to use the shooting range or if he felt the rules outlined for the renters was sufficient enough? Mr. Fisher said he believed the rules outlined for each renter would be sufficient enough. Commissioner Drake asked Mr. Fisher how often he and his guests go up there to shoot? Mr. Fisher replied they use the shooting range quite a bit.

Mr. Hyde stated that if the Planning Commission grants the Conditional Use Permit then it becomes a matter of enforcement. If someone is up there shooting then the neighbors are going to be wondering if it is you. They are going to call the county and the county is going to call you. Would you prefer the neighbors call you directly to find out? Mr. Fisher stated that he is fine either way. Mr. Hyde asked if we could get Mr. Fisher's phone number for people who are concerned with anybody who is shooting at Mr. Fisher's shooting range? Mr. Fisher had no problem giving his cell phone to everyone, 801-330-2934. Mr. Fisher said he does not believe the Airbnb calendar shows who is renting the property. He believes it just shows an X. He reiterated he would be fine with people just calling him directly. Mr. Hyde said if there are any problems with this situation going forward, then the Planning Commission has the prerogative to bring the parties back in to a meeting to talk about any issues that have occurred. We would then have a record of that. We would give everybody the opportunity to speak about the shooting range and the Planning Commission could ultimately revoke the permit for the short-term rental or modify the terms of the permit to try to address any problems that have come up.

Mr. Fisher asked, "I assume the main reason would be if any of the paying guests are using the range without permission?" Mr. Hyde replied, "Yes, or a violation of any other terms of the permit to be determined when the Planning Commission closes the hearing and makes their motion. We will put their decision in writing and put the decision in the mail tomorrow. If anyone disagrees with the terms of the permit then they will have 10 days

to file an appeal with the County Commissioners. If the appeal is filed there is a \$150.00 filing fee and then the County Commissioners would need to schedule a public hearing to have a new hearing on the matter.”

Since there were no other comments or questions from the Planning Commission, Commissioner Sweat closed the hearing.

Commissioner Drake moved to adopt the following findings of fact to approve the conditional use permit.

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Fisher Rental Management, LLC, is proposing to operate a short-term rental at a cabin on their property in the East Ridge Subdivision, on Tabby Mountain northwest of Tabiona. Short-term rentals fall within the zoning ordinance definition of a “Resort Lodge,” [*A facility, including either a single building or resort cabins, which serves as a destination point for visitors, and generally has accessory recreational facilities for the use of guests*]. The parcel is zoned R-1 due to a Hanna water connection. Resort Lodges, including short-term rentals, are allowed in the R-1 zone with a conditional use permit. A 75-ft. target shooting range near the SE corner of the property is included as part of the short-term rental activities.

2. DUCHESNE COUNTY ZONING CODE

8-13-1: SCOPE AND PURPOSE:

- A. Issuance: Conditional use permits may be issued as provided by this title for any of the uses for which a conditional use permit is required as identified in the table of uses and the table of site development standards, as set forth in Chapter 6 of this title.
- B. Purpose: The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged or conducted on the site in a particular manner.
- C. Conditions: A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed land use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit may be denied.

8-13-2: APPLICATION FOR PERMIT:

All requests for a conditional use permit shall be made on the application form provided by the county, detailing the nature of the conditional use request. The applicant shall also provide the necessary information identifying the purpose of the conditional use request, and all required information shall be provided to the planning office twenty-one (21) days prior to the planning commission meeting. The planning commission is authorized to render

a final decision on the issuance of a conditional use permit following the review and receipt of a recommendation from the zoning administrator.

8-13-3: PUBLIC HEARING REQUIRED:

All applications for a conditional use permit shall be made in accordance with the provisions of this title, and shall be the subject of a public hearing held before the planning commission for which a minimum of fourteen (14) days' public notice has been provided and the planning staff notifying all property owners by U.S. mail within three hundred feet (300') of the proposed conditional use.

8-13-4: FINDINGS AND CONDITIONS FOR APPROVAL:

A. Findings Required: The planning commission may grant a conditional use permit in compliance with this title if, from the application and the facts presented at the public hearing, it finds:

1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or general welfare. **Findings: The short-term rental use will not be detrimental if the conditional use permit criteria are met. However, a shooting range can be detrimental or injurious to property or improvements in any vicinity, and could be detrimental to public health, safety or general welfare. The applicant proposes to mitigate detrimental effects of shooting through restricting hours of operation, restricting the type of guns and ammunition permitted on the range, and maintaining the minimal nature of the shooting range design. No skeet shooting or shooting in directions other than the provided targets should be allowed. However, the applicant is not always present during the target shooting and these restrictions may be difficult for the applicant and the County to enforce. The shooting range location is very close to the south property line and the County has received reports of guns being shot in the direction of other residences.**

There are water and wastewater facilities in place mitigating potential public health detriments of the short-term rental use.

2. The proposed use will be located and conducted in compliance with the goals and policies of the county general plan and the purposes of this title.

Findings: The Duchesne County General Plan states that future growth and development decisions should be made with sensitivity to rural residential and agricultural interests. The plan indicates that the county wishes to encourage business activity and support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses. The proposal complies with this section of the General Plan as a new business would be supported and more recreational opportunities provided in a manner that does not impact rural residential and agricultural interests. To ensure that all impacts can be mitigated, it may be necessary to prohibit guests from using the applicant's shooting range.

The purposes of the Zoning Ordinance are set forth below:

8-1-2: PURPOSE:

A. The purpose of this title is to implement the goals and policies of the county general plan. This title contains standards, provisions and requirements intended to protect the health, safety and welfare of the citizens of the county by ensuring that neighbors, adjacent and neighboring properties are protected from potential negative impacts in the development and use of land and resources. It is the intent of this title to provide a means of ensuring predictability and consistency in the use of land and individual properties, and to guide and direct the development of land.

B. These purposes are met by:

1. Providing the means of implementing the various policies and other provisions of the county general plan;
2. Generally directing and guiding land development so more intense development is located in areas of the county having the necessary services and facilities sufficient to meet the demands of the proposed development;
3. Promoting the public health, safety and general welfare by regulating the location and use of buildings, structures and land for residential, commercial and other specified uses;
4. Protecting landowners from potential adverse impacts from adjoining uses; and
5. Directing and managing, through the establishment of use districts, the type, distribution and intensity of activity.

Findings: If the applicant meets the conditional use permit criteria and complies with the conditions of approval, the purposes of the Zoning Ordinance will be met.

3. That the property on which the use, building, or other structure is proposed is of adequate size and dimensions to permit the conduct of the use in such a manner that will not be materially detrimental to adjoining and surrounding properties.

The subject property is 5.52 acres in size and includes a secondary residence (cabin) built in 2011. The cabin has three (3) bedrooms and three (3) bathrooms, and is the only structure being considered for short-term rental. There is a detached garage, and two (2) storage sheds also on the property. There is a 75-foot length shooting range in the southeast corner of the property. This includes a loading table and target structures set on opposing ends of the range. Shooting is targeted into a northeast-facing slope that has been dug out.

The parcel is sufficiently large for the cabin; the cabin will accommodate the proposed activity and will permit the business to operate in a manner that is not detrimental to surrounding property owners. However, the property is not large enough to adequately mitigate the impacts of a shooting range on surrounding properties, short of creating an indoor firing range. The nearest dwellings are

located 315 feet to the west, east, and south. Surrounding lands are privately owned and some owners have reported concerns about shooting range noise and safety to the County.

B. Conditions:

1. In approving a conditional use permit, the planning commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purposes of the county general plan and to assure operation of the use in a manner compatible with the aesthetics, mass, bulk and character of existing and potential uses in the general vicinity. Minimum conditions shall be included for produced water disposal facilities, extraction of earth products and residential treatment or secure treatment facilities as indicated in section 8-13-5 of this chapter.
2. When approving a conditional use permit, the planning commission may impose such requirements and conditions as follows: location, construction, maintenance, odor control, operation, site planning, traffic control, dust control, noise, time limits and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

8-13-5-5: ADDITIONAL CONDITIONS SPECIFIED:

These conditions may include:

- A. Landscaping, Design: That the site will be suitably landscaped and maintained and that the design, setbacks, fences, walls and buffers of all buildings and other structures are adequate to protect property and preserve and/or enhance the appearance and character of the area.

Findings: There is no significant outdoor storage of equipment or other materials associated with the short-term rental. Due to the lack of fencing in this area, the applicants should educate clients to not trespass onto properties in other ownerships. With a shooting range, buffering is very important. The location of the applicant's shooting range very close to the south and east property lines makes noise buffering very difficult.

- B. Parking: Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.

Findings: There is safe public access to the property from County Road 274. The parking area is sufficient for up to six (6) vehicles, which is sufficient for the anticipated maximum number of guests. The driveway has a circular turn-around area, and is graveled.

- C. Streets, Water, Sewer, Fire Protection: The provision of required street and highway dedication and improvements, and adequate water supply, sewage disposal and fire protection.

Findings:

Roads: The property is accessed from County Road 274, west of Tabiona, which is sufficient to handle traffic associated with the use.

Water: The property receives water from the Hanna Water and Sewer Improvement District. The proposed short-term rental will have similar impact on water usage as a single-family dwelling.

Sewer: The property has an onsite wastewater disposal system, and is approved for a three-bedroom home by the TriCounty Health Department (Permit #2011-DUWW-0017).

Fire: The nearest fire hydrant is located 650 ft north of the property, at the corner of County Road 274 and 4200 North. The property and building meet Wildland Urban Interface (WUI) code requirements for defensible space. The building will meet R-3 Owner Occupied Lodging House and R-3 Boarding Transient House (approved for five guest rooms and ten total guests' maximum) provided that certain smoke and CO detectors are provided (see Short Term Rental Restrictions for Single Family Dwellings attachment). A building inspection will be required to ensure that these requirements are met, prior to the approval of a business license.

The embankment at the shooting range target area has been excavated to provide shooters with an area to control ricochet, which can spark a wildfire. However, the embankment contains rocks and a ricochet could still occur. The range has some weeds and is surrounded by wooded areas prone to wildfire.

D. Signs: Regulation of signs.

Findings: The applicant desires to place a sign on the property. All signs must comply with Duchesne County ordinances (Title 8-9-14, 8-13-5-5-D) in order to preserve the residential character of the area.

E. Nuisances: The mitigation of nuisance factors, such as noise, vibrations, smoke, dust, dirt, odors, gases, noxious matter, heat, glare, electromagnetic disturbances and radiation.

Findings: This business is not anticipated to generate significant amounts of noise in early morning or late evening hours, when noise impacts are most critical. The applicant proposes to instruct renters to respect adjacent property owners and not create noise problems. The applicant has been given permission to shoot on the property by the County Sheriff's Department and proposes shooting range use only between 9:00 AM to dusk. The applicant indicates that not all short-term rental guests use the shooting range and that those using it do so for typically no more than 20-30 minutes at a time.

The Duchesne County Nuisance Ordinance allows noise between the hours of 7:00 A.M and 9:30 P.M. on weekdays, 8:00 A.M. to 9:30 P.M. on Saturdays, and 9:00 A.M. to 9:30 P.M. on Sundays. Conditions should be considered to ensure that noise, which could disturb others, does not occur earlier or later than these allowed times. However, mitigating gunfire noise in an outdoor gun range is problematic without on-site host enforcement at all times.

F. Operating Hours: The regulation of operating hours for activities affecting normal schedules and functions.

Findings: The applicant anticipates renting the cabin at their property for up to 26 weeks per year. Utah Code Section 17-50-338 defines “Short-term rental” as a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days. Any operator of short-term rentals in the State of Utah must comply with this code.

The applicant indicates he will instruct guests to respect adjacent property owners and to not create a noise problem for them. As indicated in subsection E above, the applicant is required to follow the Duchesne County noise ordinance regulating operating business hours.

8-13-6: TERM OF PERMIT:

Unless there is substantial action under a conditional use permit within a period of eighteen (18) months of its issuance, the permit shall be considered null and void.

8-13-7: REVOCATION OR MODIFICATION OF PERMIT:

A. Authority: If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall hold a public hearing on the question of modification or revocation of a conditional use permit granted under the terms and the provisions of this title.

B. Conditions: A conditional use permit may be modified or revoked if the planning commission finds that one or more of the following conditions exist:

1. The conditional use permit was obtained in a fraudulent manner.
2. The use for which the conditional use permit was granted has now ceased for at least six (6) consecutive calendar months.
3. One or more of the conditions of the conditional use permit have not been met.

C. Modification by Planning Commission: Additionally, the conditions under which a conditional use permit was originally approved may be modified by the planning commission without the consent of the property owner or operator, if the planning commission finds that the use or related development constitutes or is creating a demonstrated nuisance. Should reclamation be necessary, complete restoration, to such an extent that the area will not depreciate the surrounding property or impair the beauty of the landscape, shall be accomplished within a twelve (12) month time frame.

CONCLUSIONS

1. The request will comply with the Conditional Use Permit requirements found in Title 8, Zoning Regulations, of the Duchesne County Code, provided that conditions are imposed.
2. The request is valid.

DECISION

Approval of the Conditional Use Permit requested by Kevin Fisher, on behalf of Fisher Rental Management, LLC, subject to the following conditions:

1. The applicant shall ensure that the Transient Room Tax [TRT] shall be collected from guests.
2. For wildland fire safety, the applicant shall maintain a defensible space and maintain ingress/egress, driveway, and parking areas, to WUI code standards, as determined by the Duchesne County Fire Warden.
3. The “Short Term Rental Restrictions for Single Family Dwellings” document established by the Duchesne County Building Official shall remain in force for the duration of this conditional use permit. To ensure compliance, applicant shall request an inspection by the Department of Building Safety to ensure that the required safety standards have been met. This inspection has an application fee (\$55.55, as of this report), paid to the Department of Building Safety.
4. The applicant shall inform clients of the Duchesne County noise ordinance standards and the property boundaries to deter noise nuisances during the quiet hours specified and to deter trespassing.
5. The applicant shall comply with Utah Code Section 17-50-338, while the cabin is offered for short-term rentals.
6. Signs must follow Duchesne County Code (Title 8-9-14, 8-13-5-5-D). As such, signs must comply with the following:
 - a. Placed on premise only (includes on a gate or fence);
 - b. Are not internally lit;
 - c. Does not exceed 16 ft² in size;
 - d. A sign may be attached to the cabin, if:
 - i. mounted flush to the face of the building,
 - ii. is non-illuminated,
 - iii. does not exceed 2 ft² in size.
7. The applicant shall inform guests that they are not permitted to use the on-site shooting range and shall remove that amenity from any advertising.

8. The applicant shall obtain and maintain a Duchesne County business license for the duration of this conditional use permit.

Commissioner Hatch seconded the motion. The motion passed 4-1, with Commissioner Giles opposed.

Commissioner Sweat opened the hearing for the following request:

B. Request by Starview Retreat LLC for a Conditional Use Permit to operate a short-term rental at 7880 S 27470 W in the area west of Starvation Reservoir.

Mr. Hyde began the presentation of this request for a short-term rental. This is in an A-5 Zone where we allow short-term rentals with a Conditional Use Permit, as a resort lodge. This property is 42.5 acres in size spread over three different parcels. It has a 1979 secondary residence as pictured in the agenda. There are four bedrooms so the building official can allow the use without the sprinkler systems as long as there are not more than 10 guests at a time. They have over 500 square feet of parking area around their residence, so they can park five vehicles there easily. They have access to Highway 40 via the Koch Field road. It’s a county paved road and then on class D roads extending easterly to the site. The applicant has had the County Fire Warden out there to look at the road ways. They met the minimum 12’ wide standard and vertical clearance for emergency vehicles. There is an existing waste water system on the property. They receive water from a private water well. Because of that, we are going to recommend a condition of approval that the water well be checked and tested to make sure it is good water for the public to drink. There is a sign on the entry gate that conforms to county standards to let people

know they have come to the right place. We do want the applicant to have in their rules for renters not to trespass on other people's surrounding property and to also abide by the Duchesne County Noise Ordinance by keeping the noise down during specified hours. If the Conditional Use Permit is approved, the applicant will need to obtain a business license and collect the transient room tax. The Fire Warden found a couple of things that need to be done. The applicant will need to put up an address marker up in the driveway entrance, thin out some of the trees around the cabin and prune them up so there is a clearance of 4' above the ground and remove sage brush within a 45' radius of the cabin. Mr. Worthen has received a copy of that report and knows what he needs to do to get the Fire Warden's approval in order to keep it safe in the event of a wildfire going through that area. Also, the Building Department has received a floor plan that verifies the number of guest rooms. All that needs to be done now is an inspection by the Building Department to make sure the smoke detectors in the building meet code. Also, the applicant has in his rental agreement the noise standards and to keep people from trespassing on other surrounding property. In line with the Utah Code on short-term rentals which again is 17-50-338 and then having that well water tested. I'm not sure how long it's been since Mr. Worthen has had that water tested. If it has not been within the last year we recommend it be tested now.

Commissioner Winterton asked Mr. Hyde if this is just a one-time test? Mr. Hyde replied that we are just recommending it as a one-time thing now. Mr. Hyde asked if there were any other questions of the staff recommendations? There were none.

Commissioner Sweat invited Mr. Worthen to come up to the podium to add anything he felt needed to be addressed.

Mike Worthen said that Mr. Hyde summed up very well what he is trying to accomplish with their family cabin. He stated that first and foremost it is their family cabin and they are interested in renting it out when they are not using it. They try very hard to be very conscious of the surrounding neighbors, and they will work towards it staying that way as their cabin is rented out. He asked if the Planning Commission had any questions of him?

Commissioner Drake asked if he has any problem in addressing what the Fire Warden has asked him to do? Mr. Worthen replied that he hasn't seen the official report yet, but they are happy to do whatever needs to be done. He asked Mr. Hyde if the water testing was just a one time thing or does it need to be on going? Mr. Worthen stated that he has picked up the water testing kit from TriCounty Health to test his water next week. He said that they would be happy to do whatever the Planning Commission recommended. Commissioner Hatch asked how much the testing is? Mr. Worthen replied that when you do the full test you are pushing \$400.00. The bacterial test is a lot more reasonable at about \$50.00. Commissioner Winterton suggested that wells should be tested every two years. Mr. Worthen was fine with every two years. Mr. Hyde asked Mr. Worthen if he had any other issue with the staff recommendations? Mr. Worthen replied, "No. None at all." Mr. Hyde asked who Mr. Worthen lists with? Mr. Worthen stated VRBO and recently Airbnb. Mr. Hyde asked if these services automatically collect the transient room taxes? Mr. Worthen replied, "Yes, and I have an accounting of that if you would like to look at it."

Commissioner Sweat stated that we do not have any proponents or opponents in the room. Are there any other questions of the staff? There were none.

Commissioner Sweat closed the public hearing and called for further discussion or a motion. Commissioner Giles moved to adopt the following findings and approve the Conditional Use Permit:

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Starview Retreat LLC, is proposing to operate a short-term rental at their cabin on their property on the north side of Highway 40, just west of Starvation Reservoir. Short-term rentals are defined in the zoning ordinance as a type of “Resort Lodge,” *[A facility, including either a single building or resort cabins, which serves as a destination point for visitors, and generally has accessory recreational facilities for the use of guests]*. Resort Lodges, including short-term rentals, are allowed in the A-5 zone with a conditional use permit.

2. DUCHESNE COUNTY ZONING CODE

8-13-1: SCOPE AND PURPOSE:

- A. Issuance: Conditional use permits may be issued as provided by this title for any of the uses for which a conditional use permit is required as identified in the table of uses and the table of site development standards, as set forth in Chapter 6 of this title.
- B. Purpose: The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged or conducted on the site in a particular manner.
- C. Conditions: A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed land use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit may be denied.

8-13-2: APPLICATION FOR PERMIT:

All requests for a conditional use permit shall be made on the application form provided by the county, detailing the nature of the conditional use request. The applicant shall also provide the necessary information identifying the purpose of the conditional use request, and all required information shall be provided to the planning office twenty-one (21) days prior to the planning commission meeting. The planning commission is authorized to render a final decision on the issuance of a conditional use permit following the review and receipt of a recommendation from the zoning administrator.

8-13-3: PUBLIC HEARING REQUIRED:

All applications for a conditional use permit shall be made in accordance with the provisions of this title, and shall be the subject of a public hearing held before the planning commission for which a minimum of fourteen (14) days' public notice has been provided and the planning staff notifying all property owners by U.S. mail within three hundred feet (300') of the proposed conditional use.

8-13-4: FINDINGS AND CONDITIONS FOR APPROVAL:

A. Findings Required: The planning commission may grant a conditional use permit in compliance with this title if, from the application and the facts presented at the public hearing, it finds:

1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or general welfare.

Findings: No activities proposed as part of this application are deemed to be detrimental to the general public health, safety, or general welfare. Appropriate water and wastewater facilities are in place. The business caters to small family vacationers and professional business travelers.

2. The proposed use will be located and conducted in compliance with the goals and policies of the county general plan and the purposes of this title.

Findings: The Duchesne County General Plan states that future growth and development decisions should be made with sensitivity to rural residential and agricultural interests. The plan indicates that the county wishes to encourage business activity and support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses. The proposal complies with this section of the General Plan as a new business would be supported and more recreational opportunities provided in a manner that does not impact rural residential and agricultural interests.

The purposes of the Zoning Ordinance are set forth below:

8-1-2: PURPOSE:

A. The purpose of this title is to implement the goals and policies of the county general plan. This title contains standards, provisions and requirements intended to protect the health, safety and welfare of the citizens of the county by ensuring that neighbors, adjacent and neighboring properties are protected from potential negative impacts in the development and use of land and resources. It is the intent of this title to provide a means of ensuring predictability and consistency in the use of land and individual properties, and to guide and direct the development of land.

B. These purposes are met by:

1. Providing the means of implementing the various policies and other provisions of the county general plan;
2. Generally directing and guiding land development so more intense development is located in areas of the county having the necessary services and facilities sufficient to meet the demands of the proposed development;
3. Promoting the public health, safety and general welfare by regulating the location and use of buildings, structures and land for residential, commercial and other specified uses;

4. Protecting landowners from potential adverse impacts from adjoining uses; and
5. Directing and managing, through the establishment of use districts, the type, distribution and intensity of activity.

Findings: If the applicant meets the conditional use permit criteria and complies with the conditions of approval, the purposes of the Zoning Ordinance will be met.

3. That the property on which the use, building, or other structure is proposed is of adequate size and dimensions to permit the conduct of the use in such a manner that will not be materially detrimental to adjoining and surrounding properties.

Findings: The property and surrounding area is zoned A-5, which is an agricultural zone with a five-acre minimum lot size. Short-term rentals [a type of Resort Lodge] are allowed in the A-5 zoning district with a conditional use permit.

The subject property is 42.5 acres in size and includes a secondary residence built in 1979, according to the county tax roll records. The fully-furnished residence has four (4) bedrooms and two (2) bathrooms, and is the only structure on the site being considered for short-term rental. The parcel is sufficiently large, the residence will accommodate the proposed activity and will permit the business to operate in a manner that is not detrimental to surrounding property owners; provided that noise is controlled pursuant to the Duchesne County Nuisance Ordinance and trespass is discouraged. There are no other dwelling units in close proximity and recreational use of the lands in the area is common. Lands to the east are owned by the Bureau of Reclamation as part of the Starvation Reservoir and the Fred Hayes State Park at Starvation.

B. Conditions:

1. In approving a conditional use permit, the planning commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purposes of the county general plan and to assure operation of the use in a manner compatible with the aesthetics, mass, bulk and character of existing and potential uses in the general vicinity. Minimum conditions shall be included for produced water disposal facilities, extraction of earth products and residential treatment or secure treatment facilities as indicated in section 8-13-5 of this chapter.
2. When approving a conditional use permit, the planning commission may impose such requirements and conditions as follows: location, construction, maintenance, odor control, operation, site planning, traffic control, dust control, noise, time limits and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

8-13-5-5: ADDITIONAL CONDITIONS SPECIFIED:

These conditions may include:

- A. Landscaping, Design: That the site will be suitably landscaped and maintained and that the design, setbacks, fences, walls and buffers of all buildings and other structures are adequate to protect property and preserve and/or enhance the appearance and character of the area.

Findings: The property has an entry gate with a facility identification sign mounted on the gate. Since there will be no outdoor storage of equipment or other materials associated with the short-term rental, there is no justification for requiring additional fencing, walls or buffers. However, applicants should educate clients to not trespass onto properties in other ownerships.

- B. Parking: Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.

Findings: There is over 500 square feet of parking area around the residence, which would safely accommodate five vehicles. Ingress and egress to Highway 40 is via the Koch Field Road [County Road #22] and Class D roads extending easterly to the site. An inspection of the roads and building site by the County Fire Warden would ensure that the roads are sufficient for emergency vehicles should the owners or a guest require such services.

- C. Streets, Water, Sewer, Fire Protection: The provision of required street and highway dedication and improvements, and adequate water supply, sewage disposal and fire protection.

Findings:

Roads: The property does not front on a county road, so right of way dedication is not required. The Koch Field Road [County Road #22] is paved and provides good access to Highway 40. Between the county road and the property are graveled roads that are not county maintained. These roads need to be inspected by the County Fire Warden to ensure they will support emergency vehicle operations to the short-term rental location.

Water: The property receives water from a private water well. Since the home is not served by a public water system (where water testing routinely occurs) if the well water has not been tested in the past year, a water quality test should be performed in coordination with the Tri-County Health Department before public use of the water well is authorized. From a water rights standpoint, the proposed short-term rental will have similar impact on water usage as a single-family dwelling.

Sewer: The onsite wastewater disposal system was inspected and approved for operation by the Tri-County Health District on December 14, 2017. The short-term rental use will not exceed that of an occupied single-family dwelling.

Fire: The access roads and building site should be inspected to ensure that they meet Wildland Urban Interface (WUI) code requirements for all-weather access and defensible space. The building will meet R-3 Owner Occupied Lodging House and R-3 Boarding Transient House standards in the building code provided that certain smoke and CO detectors are provided (see Short Term Rental

Restrictions for Single Family Dwellings attachment). Inspections by the County Fire Warden and Building Department are needed prior to the issuance of a business license.

D. Signs: Regulation of signs.

Findings: The applicant does not desire to place additional signage on the property. The existing sign on the gate is sufficient to provide direction to guests arriving at the location.

E. Nuisances: The mitigation of nuisance factors, such as noise, vibrations, smoke, dust, dirt, odors, gases, noxious matter, heat, glare, electromagnetic disturbances and radiation.

Findings: This business is not anticipated to generate significant amounts of noise. The applicant should instruct guests to respect adjacent property owner's lands and not create noise problems. The Duchesne County Nuisance Ordinance allows noise between the hours of 7:00 A.M and 9:30 P.M. on weekdays, 8:00 A.M. to 9:30 P.M. on Saturdays, and 9:00 A.M. to 9:30 P.M. on Sundays. Conditions should be considered to ensure that noise, which could disturb others, does not occur earlier or later than these allowed times.

F. Operating Hours: The regulation of operating hours for activities affecting normal schedules and functions.

Findings: The applicant is required to follow the Duchesne County noise ordinance regulating operating business hours.

The applicant anticipates renting the cabin year-round, with stays ranging from 2 nights to a month at a time. Utah Code Section 17-50-338 defines "Short-term rental" as a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days. Any operator of short-term rentals in the State of Utah must comply with this code. However, any dwelling owner has the right to rent their home on a month-to-month or longer basis.

8-13-6: TERM OF PERMIT:

Unless there is substantial action under a conditional use permit within a period of eighteen (18) months of its issuance, the permit shall be considered null and void.

8-13-7: REVOCATION OR MODIFICATION OF PERMIT:

A. Authority: If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall hold a public hearing on the question of modification or revocation of a conditional use permit granted under the terms and the provisions of this title.

B. Conditions: A conditional use permit may be modified or revoked if the planning commission finds that one or more of the following conditions exist:

1. The conditional use permit was obtained in a fraudulent manner.

2. The use for which the conditional use permit was granted has now ceased for at least six (6) consecutive calendar months.

3. One or more of the conditions of the conditional use permit have not been met.

C. Modification by Planning Commission: Additionally, the conditions under which a conditional use permit was originally approved may be modified by the planning commission without the consent of the property owner or operator, if the planning commission finds that the use or related development constitutes or is creating a demonstrated nuisance. Should reclamation be necessary, complete restoration, to such an extent that the area will not depreciate the surrounding property or impair the beauty of the landscape, shall be accomplished within a twelve (12) month time frame.

CONCLUSIONS

1. The request will comply with the Conditional Use Permit requirements found in Title 8, Zoning Regulations of the Duchesne County Code, provided that conditions are imposed.

2. The request is valid.

DECISION

Approval of the Conditional Use Permit requested by Michael Worthen and Jina Tanner, on behalf of Starview Retreat LLC, subject to the following conditions:

1. A Duchesne County business license shall be obtained and maintained for the duration of this conditional use permit.
2. The Transient Room Tax [TRT] shall be collected from guests.
3. Ingress/egress, driveway, and parking areas shall be improved (as needed) and maintained to WUI code standards, as determined by the County Fire Warden.
4. WUI code defensible space around structures shall be maintained at all times, as determined by the County Fire Warden.
5. The “Short Term Rental Restrictions for Single Family Dwellings” document established by the Duchesne County Building Official shall remain in force for the duration of this conditional use permit. Before issuance of a business license, to ensure compliance, the applicants shall request an inspection by the Department of Building Safety to ensure that the required safety standards have been met. This inspection has an additional fee (\$55.55 as of this report), paid to the Department of Building Safety.
6. Applicant shall inform clients in their rental agreement, or by other means, of the Duchesne County noise ordinance standards and the property boundaries to deter noise nuisances and trespassing.
7. Applicant shall comply with Utah Code Section 17-50-338, pertaining to short term rentals.
8. If the well water has not been tested in the past year, it shall be tested and deemed acceptable by the Tri-County Health Department, prior to the issuance of the business license. In addition, a well water bacterial test shall be conducted every two years.

Commissioner Hatch seconded the motion. The motion passed unanimously.

Commissioner Sweat opened the hearing for the following request:

C. Request by Charlotte A. Ivey of Mushroom Madre, LLC for a Conditional Use Permit to operate an agricultural products processing and storage business at Lot 31 of the Hidden Meadows Subdivision – Phase 1C, near Fruitland.

Commissioner Hatch recused herself and stepped off the dais.

Mike Gottfredson began the presentation of this request. He reported that, many months ago, we were approached by the folks at Mushroom Madre to start discussions of having this agricultural products processing and storage facility constructed in the Hidden Meadows Subdivision in Fruitland. The purpose of this facility is to grow gourmet mushrooms that can be sold to restaurants or other markets. This use requires a Conditional Use Permit in the R1 Zone. The Fruitland Special Service District has approved a water connection for the applicants for commercial use. You can see in your handouts that they have a caretaker dwelling and a home proposed for the site. They will be connected to Fruitland water as well. They have also been approved for an irrigation well to water the proposed orchard. We found that no activities proposed by the applicant would be detrimental as long as they obtain a water connection from the Fruitland SSD and develop waste water facilities permitted by TriCounty Health. The property consists of 4.1 acres. As you can see on the site plan, the spacing of the buildings between the home, the facility, greenhouses and the caretaker dwelling meets the spacing requirements that the county has in place. Since this is within a subdivision, the applicants have been working closely with the Hidden Meadows Corporation to make sure that they are in compliance with the CC&Rs. The property is intended to be fenced with materials that will detour access to the hazelnut orchard by wildlife that could damage trees. Driveways will be lined by low water-use landscaping. The site plan shows that it will enhance the appearance and character of the area. If the Ivey's decide to gate the facility, they will need to coordinate with the emergency response agencies to ensure access in the event of an emergency. At first the applicants were in favor of gating the entrances, but have since decided against it. With the low number of employees, they will have more than adequate parking. They will be required to have two handicapped accessible parking spaces due to the size of the building. However, it should be noted that retail services are not intended for this facility and they do not even intend to have a sign. This is more for on-line sales. They are only about .5 miles south of Highway 40. They would require a road approach permit to 45000 West from the Duchesne County Road Department. The applicant estimates that this will be a low water impact facility, where they will use approximately 1,500 gallons per month for their agricultural activities. With the hazelnut orchard, they are looking to work with Red Creek Irrigation Company for water shares to be used in the irrigation of the orchard. The applicant proposes to dispose of waste water on site. The applicant must meet the WUI Code requirements. The nearest fire hydrants are located to the north near the Fruitland Water Booster Pump and to the south by the neighboring arena. These hydrants will enable fire trucks to refill their tanks, but not pump from the water lines. All proposed development on the property must comply with the WUI Code and is subject to the approval of the Fire Marshall and the Fire Chief. Whether the existing hydrant locations are sufficient and other specifics will be determined during the building permit process. The Fire Warden and Fire Chief may require a fire hydrant be installed closer to the facility.

Mr. Gottfredson asked Shilo Hatch of the Fruitland Water District to talk about the water lines. She informed everyone that it's an 8 inch line until it hits Hidden Meadows and then it becomes a 6 inch line. We previously

thought it was 8 inches. The Fruitland Water system is not a fire rated system so you can't pressure off our hydrants.

In conclusion, Mr. Gottfredson said that the request will comply with the Conditional Use Permit requirements if the suggested conditions are imposed.

Commissioner Winterton asked why the applicant would be required to pave their driveway? Mr. Gottfredson clarified that the applicant's plan states that they intend to pave it even though the county does not require paving.

As there were no additional questions of staff, Commissioner Sweat called for the applicants to speak. Mrs. Atkinson Ivey stated that they are excited to move to Fruitland!

Mr. Hyde noted that paving of the driveways was just discussed. What are your intentions for paving driveways and parking areas? Mr. Ivey replied that they felt like all of the driveway and parking areas need to be paved as part of the aesthetics of the facility. Mr. Hyde asked Mr. Ivey what about the driveways that go between the entrance and the parking area? Mr. Ivey clarified that the entire horse shoe-shaped driveway area would be paved. Commissioner Winterton stated that he just wanted to be clear that he thinks paving the entire area is fantastic and that we weren't requiring a costly item and creating an added burden to them.

Commissioner Drake asked the applicants if there was anything with the staff recommendations that they felt was an undue burden? Mr. Ivey replied that there wasn't anything and he felt like everything was very reasonable and well prepared.

Commissioner Sweat asked if there were any proponents wishing to speak? Shilo Hatch stated that she is excited as we need more jobs and good things to come to Fruitland. They are located close to the G Store and the Fire Department Emergency Services which are right across Highway 40.

Mr. Hyde commented to the commission that perhaps Ms. Hatch could comment on how the Hidden Meadows Subdivision has accommodated this with their CC&R's? Ms. Hatch replied that they have amended some things with their animals that they have approved so Mrs. Ivey can have chickens. There wasn't an awful lot that we had to change to the CC&R's. I'm speaking for Hidden Meadows as the person in charge was ill and couldn't be here tonight. Commissioner Drake stated that was good to hear, and Commissioner Sweat commented that we are excited to have them bringing a new business to Fruitland. Commissioner Winterton commented on what a nice facility it was going to be and what a great addition to the county it will be.

Commissioner Sweat asked if there were any other questions from the staff or any other person? There were none so Commissioner Sweat closed the public hearing.

Commissioner Drake moved to adopt the following findings of fact and approve the conditional use permit as recommended by the staff.

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Mushroom Madre, LLC, is proposing to operate an agricultural retail product processing and storage business on Lot 31 of the Hidden Meadows Subdivision-Phase 1C, in the Fruitland area. The property will receive a

Fruitland Water connection, so the zoning is considered to be R-1; residential with a one-acre minimum lot size. Agricultural retail sales/products processing and storage are allowed in the R-1 zone with a conditional use permit.

2. DUCHESNE COUNTY ZONING CODE

8-13-1 : SCOPE AND PURPOSE:

- A. Issuance: Conditional use permits may be issued as provided by this title for any of the uses for which a conditional use permit is required as identified in the table of uses and the table of site development standards, as set forth in Chapter 6 of this title.
- B. Purpose: The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged or conducted on the site in a particular manner.
- C. Conditions: A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed land use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit may be denied.

8-13-2: APPLICATION FOR PERMIT:

All requests for a conditional use permit shall be made on the application form provided by the county, detailing the nature of the conditional use request. The applicant shall also provide the necessary information identifying the purpose of the conditional use request, and all required information shall be provided to the planning office twenty-one (21) days prior to the planning commission meeting. The planning commission is authorized to render a final decision on the issuance of a conditional use permit following the review and receipt of a recommendation from the zoning administrator.

8-13-3: PUBLIC HEARING REQUIRED:

All applications for a conditional use permit shall be made in accordance with the provisions of this title, and shall be the subject of a public hearing held before the planning commission for which a minimum of fourteen (14) days' public notice has been provided and the planning staff notifying all property owners by U.S. mail within three hundred feet (300') of the proposed conditional use.

8-13-4: FINDINGS AND CONDITIONS FOR APPROVAL:

- A. Findings Required: The planning commission may grant a conditional use permit in compliance with this title if, from the application and the facts presented at the public hearing, it finds:
 - 1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, or general welfare.

Findings: No activities proposed as part of this application are deemed to be detrimental to the general public health, safety, or general welfare. A water connection is available from the Fruitland Water District, and the applicant intends to develop wastewater facilities in accordance with TriCounty Health Department regulations.

2. The proposed use will be located and conducted in compliance with the goals and policies of the county general plan and the purposes of this title.

Findings: The Duchesne County General Plan states that future growth and development decisions should be made with sensitivity to rural residential and agricultural interests. The plan indicates that the county wishes to encourage business activity and support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses. The proposal complies with this section of the General Plan as a new business would be supported that does not impact rural residential and agricultural interests.

The purposes of the Zoning Ordinance are set forth below:

8-1-2: PURPOSE:

- A. The purpose of this title is to implement the goals and policies of the county general plan. This title contains standards, provisions and requirements intended to protect the health, safety and welfare of the citizens of the county by ensuring that neighbors, adjacent and neighboring properties are protected from potential negative impacts in the development and use of land and resources. It is the intent of this title to provide a means of ensuring predictability and consistency in the use of land and individual properties, and to guide and direct the development of land.
- B. These purposes are met by:
 1. Providing the means of implementing the various policies and other provisions of the county general plan;
 2. Generally directing and guiding land development so more intense development is located in areas of the county having the necessary services and facilities sufficient to meet the demands of the proposed development;
 3. Promoting the public health, safety and general welfare by regulating the location and use of buildings, structures and land for residential, commercial and other specified uses;
 4. Protecting landowners from potential adverse impacts from adjoining uses; and
 5. Directing and managing, through the establishment of use districts, the type, distribution and intensity of activity.

Findings: If the applicant meets the conditional use permit criteria and complies with the conditions of approval, the purposes of the Zoning Ordinance will be met.

3. That the property on which the use, building, or other structure is proposed is of adequate size and dimensions to permit the conduct of the use in such a manner that will not be materially detrimental to adjoining and surrounding properties.

Findings: The subject property is 4.18 acres in size. The parcel is sufficient in size for the proposed business activity, and will permit it to operate in a manner not detrimental to surrounding property owners-provided noise is controlled pursuant to the Duchesne County Nuisance Ordinance. The nearest dwellings are located directly across 45000 West (to the east) and on the Hidden Meadow lot abutting to the south.

B. Conditions:

1. In approving a conditional use permit, the planning commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purposes of the county general plan and to assure operation of the use in a manner compatible with the aesthetics, mass, bulk and character of existing and potential uses in the general vicinity. Minimum conditions shall be included for produced water disposal facilities, extraction of earth products and residential treatment or secure treatment facilities as indicated in section 8-13-5 of this chapter.
2. When approving a conditional use permit, the planning commission may impose such requirements and conditions as follows: location, construction, maintenance, odor control, operation, site planning, traffic control, dust control, noise, time limits and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

8-13-5-5: ADDITIONAL CONDITIONS SPECIFIED:

These conditions may include:

- A. Landscaping, Design: That the site will be suitably landscaped and maintained and that the design, setbacks, fences, walls and buffers of all buildings and other structures are adequate to protect property and preserve and/or enhance the appearance and character of the area.

Findings: The property is intended to be fenced with materials that will deter access to the hazelnut orchard by wildlife that could damage the trees. Driveways would be lined by low-water use landscaping. The site plan submitted shows a development that would enhance the appearance and character of the area. If the applicants decide to gate the facility, they will need to coordinate with emergency response agencies to ensure access in the event of an emergency.

- B. Parking: Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.

Findings: Access to the property from 45000 West is planned for two points at the most northern and southern points of the eastern border, acting separately as an entrance and exit. Two handicap-accessible parking spaces are planned for the north east side of the production facility, with an additional 15 spaces for employees and guests in a parking area to the south. All parking and driveways are to be paved with asphalt.

C. Streets, Water, Sewer, Fire Protection: The provision of required street and highway dedication and improvements, and adequate water supply, sewage disposal and fire protection.

Findings:

Roads: The property is accessed from 45000 West [County Road 387] which is paved. County Road 387 accesses Highway 40 0.65 miles to the north. A road encroachment permit for new driveway access to 45000 West is required by the Duchesne County Roads Department prior to construction of these road approaches.

Water: The applicant estimates the agricultural processing water requirements at 1,500 gallons per month. The applicant has received approval from the Fruitland Special Service District Board to supply water to the property for both agricultural processing and regular residential water service. The applicants intend to acquire water from the Red Creek Irrigation Company to irrigate their proposed hazelnut orchard. The Fruitland Water Board has agreed not to protest the drilling of a water well on the property to provide irrigation water should Red Creek Irrigation water not be sufficient.

Sewer: The applicant proposes to dispose of wastewater on-site with an operating permit from the TriCounty Health Department.

Fire: The applicants must meet Wildland Urban Interface (WUI) code requirements for defensible space. The nearest fire hydrants are located to the north near a Fruitland Water District booster pump station and to the south by the neighboring arena. These hydrants will enable fire trucks to refill their tanks but not pump from the water lines. All proposed development on the property must comply with WUI code standards and will be subject to the approval of the Fire Marshall and Fire Chief. Whether the existing hydrant locations are sufficient and other specifics will be determined during the building permit process.

D. Signs: Regulation of signs.

Findings: The applicant does not desire to place a sign on the property.

E. Nuisances: The mitigation of nuisance factors, such as noise, vibrations, smoke, dust, dirt, odors, gases, noxious matter, heat, glare, electromagnetic disturbances and radiation.

Findings: This business is not anticipated to generate significant amounts of noise. The Duchesne County Nuisance Ordinance allows noise between the hours of 7:00 A.M and 9:30 P.M. on weekdays,

8:00 A.M. to 9:30 P.M. on Saturdays, and 9:00 A.M. to 9:30 P.M. on Sundays. Conditions should be considered to ensure that noise, which could disturb others, does not occur earlier or later than these allowed times. The business is not anticipated to produce odors that would be detrimental to surrounding owners.

F. Operating Hours: The regulation of operating hours for activities affecting normal schedules and functions.

Findings: The applicants indicate that employees and clients would be present between 9:00 AM and 5:00 PM, Monday through Friday. These hours are well within the time limits for noise producing activities set forth in subsection E above.

8-13-6: TERM OF PERMIT:

Unless there is substantial action under a conditional use permit within a period of eighteen (18) months of its issuance, the permit shall be considered null and void.

8-13-7: REVOCATION OR MODIFICATION OF PERMIT:

A. Authority: If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall hold a public hearing on the question of modification or revocation of a conditional use permit granted under the terms and the provisions of this title.

B. Conditions: A conditional use permit may be modified or revoked if the planning commission finds that one or more of the following conditions exist:

1. The conditional use permit was obtained in a fraudulent manner.
2. The use for which the conditional use permit was granted has now ceased for at least six (6) consecutive calendar months.
3. One or more of the conditions of the conditional use permit have not been met.

C. Modification by Planning Commission: Additionally, the conditions under which a conditional use permit was originally approved may be modified by the planning commission without the consent of the property owner or operator, if the planning commission finds that the use or related development constitutes or is creating a demonstrated nuisance. Should reclamation be necessary, complete restoration, to such an extent that the area will not depreciate the surrounding property or impair the beauty of the landscape, shall be accomplished within a twelve (12) month time frame.

CONCLUSIONS

1. The request will comply with the Conditional Use Permit requirements found in Title 8, Zoning Regulations, of the Duchesne County Code, provided that conditions are imposed.
2. The request is valid.

DECISION

Approval of the Conditional Use Permit requested by Mushroom Madre, LLC, subject to the following conditions:

1. Applicants shall obtain a road encroachment permit from the Duchesne County Road Department prior to construction of driveways to 45000 West.
2. Applicants shall provide written assurance of water supply to the property authorized by the Fruitland Special Service District.
3. Applicants shall provide the County with a copy of the water shares and/or water well permit supplying irrigation water to the hazelnut tree orchard.
4. Applicants shall obtain an on-site wastewater permit and operating permit from the TriCounty Health Department prior to business operation and human occupancy of structures.
5. Applicants shall pave and maintain ingress/egress, driveway, and parking areas in good repair.
6. Applicants shall maintain perimeter fencing in good repair at all times. A building permit is required if the fencing exceeds 7 feet in height.
7. Applicants shall obtain building permits and Certificates of Occupancy from the County Department of Building Safety prior to business operation and human occupancy of structures.
8. Applicants shall obtain approval of emergency access and fire suppression infrastructure from the Duchesne County Fire Marshall and Fire Chief. This may include the installation of another fire hydrant on the Fruitland Water line should existing hydrants be too far from the business entrance, as determined by the Fire Chief. Emergency access through any gates installed will also need to be arranged.
9. Applicants shall limit noise associated with the business to the hours set forth in the Duchesne County Nuisance Ordinance and shall ensure that no odors are produced that would be objectionable to surrounding residents.
10. Applicants shall obtain and maintain a Duchesne County Business License in effect.

Commissioner Drake made a motion to accept the Findings of Fact for the Charlotte A. Ivey of Mushroom Madre, LLC for a Conditional Use Permit. Commissioner Giles seconded the motion. The motion passed unanimously (4-0).

New Business

There was no new business.

Minutes

Commissioner Sweat asked if everyone had a chance to read the Oct. 5, 2022 minutes?

Commissioner Sweat stated that on page one under Public Hearings in the second paragraph the last word in the second sentence needed to be corrected from “explain ed” to “explained”. Commissioner Drake moved to accept the minutes with the one change noted. Commissioner Hatch seconded the motion. The motion passed unanimously.

Information Only Items

A. Mr. Hyde announced that the next meeting is scheduled for December 7, 2022, but thus far, there are no agenda items. He stated that we still have about a week for people to submit their requests.

B. We have three Commissioner's terms that are ending at the end of this year, so this could be the last meeting for Bobby Drake who has served for two terms and Gary Sorensen, the Chair, has elected to not serve a 2nd term. We will be looking for someone to serve from the Neola area and the Upper Country area to take Bobby and Gary's place.

Connie Sweat is at the end of her first 4-year term and has volunteered to serve a second 4-year term.

C. Mr. Hyde presented the proposed meeting dates for 2023. We will stick with the first Wednesday of every month.

D. Mr. Hyde noted that we introduced Chris Floyd to several of you before the meeting started. Chris is our new Code Enforcement Officer. He has been with the Community Development Department for the last six weeks. He will be working with property owners to ensure ordinance compliance. He has 20 years of law enforcement experience which helps him in this job. He is doing a great job thus far.

Adjournment

Commissioner Drake made a motion to adjourn at 6:42 pm.