

Exhibit DTW 17

**WASATCH COUNTY
Board of Adjustment Staff Report
January 21, 2016**

ITEM: 1

Don Watts, representative for Rocky Mountain Power, is requesting an appeal of the Planning Commission decision denying the conditional use permit for the proposed new double circuit 138 kv power line with above grade pole heights that are proposed to be between 50 – 85 feet. The proposal is on the west side of Browns Canyon south of the Wasatch/Summit county line in Section 36, Township 2 South, Range 4 East in the JBOZ (Jordanelle Basin Overlay Zone).

BACKGROUND:

This request is for an appeal of the Planning Commission denial of a conditional use permit. This proposal for a conditional use permit for Rocky Mountain Power (RMP) was denied by the Planning Commission on November 12, 2015 (see attached minutes and report of action). The proposal was for a new alignment of a 138 kv line. The proposal is located in the Jordanelle basin south of the Summit/Wasatch County boundary line on the west side of Browns Canyon Road. This is north and adjacent to a newly approved medium density development referred to as Black Rock Ridge phases 4-7. The proposal is a conditional use.

The power line currently runs through the middle of the Promontory development in Summit County in an existing easement that has been in existence for many decades. According to RMP the line needs to be upgraded and Promontory wanted the line moved out of that portion of their property. An easement agreement was reached between RMP and Promontory to relocate the power line into a new easement on Promontory property but in Wasatch County. As far as Planning Staff and other Wasatch County administration is aware there were no discussions with Wasatch County at that time to see if the line and pole locations could be approved.

The poles are proposed to be wood structures (except for the corner pole which would be metal) and it appears that there are 6 poles in the County if the single pole system is used. If the proposal complies with the ridgeline ordinance there will be more poles due to the separation required for the double circuit. Poles are between 50 and 85 feet above grade.

This application was heard by the Planning Commission on August 13, 2015 but the applicant withdrew the proposal prior to the motion being made by the Planning Commission. Prior to the August meeting the Planning Commission continued the conditional use from the March 12, 2015 meeting to the May 14th meeting then to the July 9th meeting and finally to August 13th meeting where, as mentioned, it was

withdrawn prior to the motion. The purpose for all the continuances was for the applicant to work with the County and neighboring property owners to see if there was an acceptable alternative.

The applicant again was scheduled for the November 12, 2015 meeting where some additional options were shown to the County. All additional options other than the preferred option and the second option that complies with the ridgeline ordinance required the County to pay significant amounts of money for the added costs of the options.

The new power line easement is adjacent to a medium density development that is under construction. Dwellings could be within approximately 100' from the poles.

There were several issues with the proposal that needed to be addressed as the Planning Commission reviewed the proposal. They are:

1. The proposal is a conditional use. The use needs to comply with the findings in 16.23.07 (see below) that the Planning Commission must make before it can be determined if a conditional use can be granted.
2. The poles violate the ridgeline ordinance (except for option 2) because from the designated viewing platform at the intersection of Browns Canyon and Highway 248 the poles protrude above the ridge of the mountain to the north.

All properties within 500' of the proposal have been sent a letter regarding this proposal as part of the Board of Adjustment requirements.

PROJECT SUMMARY:

- The applicant has proposed four options for alignments of the power poles. They are:
 1. Running the poles in a mono-pole configuration and violating the ridgeline. Poles would be approximately 85' tall.
 2. Running the poles so they do comply with the ridgeline ordinance which requires a number of additional poles. (no additional cost was identified for this)
 3. Running the poles down Browns Canyon and Highway 248. (cost to the County of \$3,350,000)
 4. Running the poles underground within the promontory property (cost of \$6.8 million)

- Staff feels that there is another option which is keeping the line in the existing easement within Promontory which is not an option identified by RMP. The County has requested information about leaving it in the existing easement but nothing has been provided.
- Options 3 and 4 require additional expenditures that most likely would be paid for by the County. No amount was noted for option 2. RMP can submit any requirements imposed by the County which increase their cost to the Facilities Board (a state board) which can require the County to pay for any increased costs.

ANALYSIS & CONSIDERATIONS:

Under Utah State law the Board of Adjustments review in this matter is de novo. This requires the Board to make findings as to the conditional use application.

As noted in the project summary options 3 and 4 have a cost associated with them that the County would be expected to pay. The County has no intention of paying the additional cost for those options.

We have not been informed if there would be an additional cost for option 2 which is the option that complies with the ridgeline ordinance but requires additional poles.

After considering the costs of two of the options (options 3 and 4) there are only two real options (1 and 2) presented by the Applicant for the Planning Commission to review. The Planning Commission reviewed the various options to determine whether they met the criteria for granting a conditional use and complied with the ridgeline ordinance.

Conditional Use - The zone allows for larger power lines as a conditional use. Typically conditional uses are uses with characteristics that may negatively impact surrounding property. Such negative impacts may cause the use to be inappropriate for the zone unless the impacts can be mitigated by attaching conditions to reduce or eliminate the negative impacts. Therefore a conditional use is often allowed but may require conditions. In this situation the location of the power line was determined prior to approaching the County. **The Planning Commission should have performed their review without any concern for the easement that was purchased without consent by the County.** The determination should have been if the use is appropriate, can the impacts be mitigated and can all the findings listed below from 16.23.07 be met. If they cannot be met in the proposed location then the proposal should be denied.

The applicant has two issues: first is the conditional use and mitigating any impacts. The second is the ridgeline ordinance. If the line is moved farther away from the residents (in

order to reduce the impact to the subdivision) the proposal then violates the ridgeline ordinance.

The italicized comments represents Planning Staff's opinion pertaining to compliance or lack of compliance with the findings the Planning Commission must make in order to approve the request. Section 16.23.07 requires that the Planning Commission must find that the application is in compliance with the following eight items.

Section 16.23.07 requires specifically the Planning Commission to find that:

1. The application complies with all requirements of Title 16;

The applicant has provided photo simulations of option 2 with the proposed poles that would be in Wasatch County and it appears that they will be under the ridgeline however the poles in Summit County that are part of the system will violate the ridgeline. We cannot enforce the ordinance outside of the County boundaries. Along with the ridgeline issue is the impact of the proposal on the neighboring development and if the impacts can be mitigated as part of the conditional use. The impacts of the 50-85' high poles that would be within 100 feet of the neighboring dwellings would need to be mitigated. From a staff perspective, although there may be other detrimental impacts, the impacts we are discussing are aesthetic. Mitigating any impacts, in staffs opinion, would require moving the poles away from the dwellings.

2. The business shall maintain business license if required; *Not applicable*
3. The use will be compatible with surrounding structures in use, location, scale, mass, design and circulation;

There are structures immediately south and there will be structures adjacent to the east. The approved structures to the east have a 35' height maximum and the existing 17-plex structure to the south is around 40-45' high. The poles will be visible above the residential structures and will not fit in with the residential uses. Again staff feels that the impacts created by the use is due to the proximity to the dwellings.

4. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions;

Even with poles below the ridgeline there will still be impacts. Vegetation will

be removed, poles will still be visible and within close proximity to residential uses. Can these impacts be mitigated other than by moving them away from the residences?

5. The effects of any future expansion in use or scale can be and will be mitigated through conditions;

If this proposal is approved any change or expansion in the use would require new conditional use approval.

6. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise, and vibrations have been adequately mitigated through conditions;

The location of the poles with their proximity to the medium density residential uses may not be appropriate and may not be able to be mitigated.

7. The use will not place an unreasonable financial burden on the County or place significant impacts on the County or surrounding properties, without adequate mitigation of those impacts.

The applicant has provided in his submittal a study showing that power lines do not have a detrimental impact to property values. The owner of the development has argued that the proximity of the power line will reduce property values.

8. The use will not adversely affects the health, safety or welfare of the residents and visitors of Wasatch County.

Staff has not heard of conclusive proof of the negative effects of power lines adjacent to residential homes but that issue has been argued by both sides.

Ridgeline Issues - Below is the section of the code governing development on a ridgeline:

16.27.22 Purpose:

- A. It is the intent of this section to protect the valuable views of the ridgelines of Wasatch County by providing regulations, which will limit the building of

structures that protrude above primary and secondary ridgelines, or will mitigate the appearance of such structures if prevention is not possible.

B. Applicability: These regulations apply to all land use applications in Wasatch County for which any portion of a proposed structure protrudes above ridgelines when viewed from the designated viewing platforms as shown on the adopted viewing platform map. Any rezoning, proposed development or building permit shall be subject to compliance with these regulations, irrespective of whether specific reference to the regulations is made in this title. In the event of an overlapping or conflicting requirement of this chapter and other provisions or regulations in this code, the more restrictive provision shall apply. All proposals for development of preexisting lots of record or platted plots that may be located within the primary or secondary ridgeline areas are subject to conditional use approval.

The viewing platform for this area is the intersection of Browns Canyon and Highway 248. The visual simulations are all from the above noted platform.

POSSIBLE FINDINGS:

- The upgraded line is necessary to provide dependable power for the growing population of the Heber Valley.
- RMP purchased the easement adjacent to the development in Wasatch County without performing any due diligence with Wasatch County which created a conditional use with impacts that the Planning Commission felt could not be mitigated.
- The existing power line is currently in the middle of the Promontory development within an easement wholly in Summit County. RMP purchased a new easement in Wasatch County with the intent to re-align the power poles for the benefit of Promontory residents, the development and to the detriment of the residents in Wasatch County.
- State Code 54-14-201. Conditions on siting of facilities by local governments -- Payment of actual excess costs requires entities to pay additional costs for mitigation measures.
- The Planning Commission denied the conditional use at the November 12, 2015 meeting.
- The Planning Commission found that the impacts of the proposal could not be mitigated. (see attached minutes)

- There was not an error in the Planning Commission decision. The findings listed in 16.23.07 that must be made in order to grant a conditional use could not be met.
- The applicant states that “The Planning Commission opposed each of the proposed transmission line alignments through Wasatch County presented by the Company, and failed to accept the mitigation measures proposed by the company to mitigate the anticipated detrimental effects of the project”. There were four options proposed two of which would have cost the county large amounts of money. Options one (the preferred) and two both have impacts that the Planning Commission felt could not be mitigated.
- The applicant states that “Contrary to the grounds for denial in the report of action Commissioner Jacobsmayer’s motion for denial was expressly based on the position that Wasatch County did not want the transmission line within its boundaries and that the line should remain in its current alignment in Summit County”. This however, is clarified by the chair in the motion and accepted as part of the motion. (see attached minutes)
- According to the applicant, “The Board of Adjustment should reverse the Planning Commission decision because that decision was based on insufficient and impermissible grounds, and should approve the company’s application”. The “Company” has not mitigated the impacts as required in 16.23.07.
- The basis of having a use be conditional is that many uses, which may be appropriate in various zoning districts, may not be appropriate due to the facts of a specific request such as proximity to a dissimilar use.
- The Board of Adjustment should review this based on if the Planning Commission erred in their motion and their determination that the impacts were not mitigated by the applicant.

ALTERNATIVE ACTIONS:

1. Uphold the Planning Commission decision. This action can be taken if the Board of Adjustment feels that there was not an error made in the decision by the Planning Commission.
2. Recommendation for continuance. This action can be taken if the Board of Adjustment feels that they need additional information.
3. Agree with the applicant that there was an error in the Planning Commission denial. This action should be taken if the Board of Adjustment feels that there was an error made. If the Planning Commission was incorrect in making a finding that the negative impacts of the proposal could not be mitigated.

Attachments:

Planning Commission staff report from November 12, 2015
Verbatim minutes from the November 12th Planning Commission meeting
Report of action from the November 12th Planning Commission meeting
August 13, 2015 Planning Commission minutes
Letter from the Fire District on the proposed lines proximity to residential
Letter from the Stoel Rives, Applicants Attorney
Letter from neighboring property owner's attorney
Power point presentation from the November 12, 2015 Planning
Commission meeting

Wasatch County
Planning Commission Staff Report
November 12, 2015

ITEM: 4

Don Watts, representative for Rocky Mountain Power, is requesting a conditional use permit for a new double circuit 138 kv line with above grade pole heights that are between 50 – 85 feet. The proposal is on the west side of Browns Canyon south of the Wasatch/Summit county line in Section 36, Township 2 South, Range 4 East in the JBOZ (Jordanelle Basin Overlay Zone).

BACKGROUND:

This proposal is for a new alignment of a 138 kv line. The proposal is located in the Jordanelle basin south of the Summit/Wasatch County boundary line on the west side of Browns Canyon Road. This is north and adjacent to a newly approved medium density development referred to as Black Rock Ridge phases 4-7. The proposal is a conditional use.

This application was heard by the Planning Commission on August 13, 2015 but the applicant withdrew the proposal prior to the motion being made by the Planning Commission. Prior to the August meeting the Planning Commission continued the conditional use from the March 12, 2015 Planning Commission meeting to the May 14th meeting then to the July 9th meeting and finally to August 13th meeting where, as mentioned, it was withdrawn prior to the motion. The purpose for the continuances was for the applicant to work with the stakeholders and discuss how to get the proposal to work within the ordinance as well as look at other options. The applicant has met with the County staff, the developer to the south and east and Promontory, which is the development in Summit County to the north.

The power line currently runs through the middle of the Promontory development in Summit County in an existing easement. According to Rocky Mountain Power (RMP) the line needs to be upgraded and Promontory wanted the line moved out of that portion of their property. An easement agreement was reached between RMP and Promontory to relocate the power line into a new easement in Wasatch County. As far as Planning Staff and other Wasatch County administration is aware there were no discussions with Wasatch County at that time to see if the line and pole locations could be approved. According to RMP, negotiations with Promontory to keep the line in the existing easement or move the line outside of the new easement in Wasatch County have not been well received.

The new power line easement is adjacent to a medium density development that is under construction. Structures could be within approximately 100' from the poles with guy wires closer to the property line than that.

The poles are proposed to be wood structures (except for the corner pole) and it appears that there are 6 poles in the County if the single pole system is used. If the proposal complies with the ridgeline ordinance there will be more poles due to the separation required for the double circuit. Poles are between 50 and 85 feet above grade.

All properties within 500' of the proposal have been sent a letter regarding this proposal as part of the conditional use.

There are four options being presented with this application.

PROJECT SUMMARY:

- The applicant has proposed four options for alignments of the power poles. They are:
 1. Running the poles in a mono-pole configuration and violating the ridgeline
 2. Running the poles so they do comply with the ridgeline ordinance which requires a number of additional poles. (no additional cost was identified for this)
 3. Running the poles down Browns Canyon and Highway 248. (cost of \$3,350,000)
 4. Running the poles underground (cost of \$6.8 million)
- Staff feels that there is another potential option which is keeping the line in the existing easement within Promontory which is not an option identified by RMP. The County has requested information about leaving it in the existing easement but nothing has been provided.
- Options 3 and 4 require additional expenditures that may have to be paid for by the County. No amount was noted for option 2. RMP can submit any requirements imposed by the County which increase their cost to the Facilities Board (a state board) which can require the County to pay for any increased costs.

ANALYSIS:

Options and costs – as mentioned RMP has four options. Option one is the preferred option, according to RMP. The proposal is to run a single set of mono-poles in the new easement. This proposal violates the ridgeline ordinance. RMP feels that the single set of poles is a better option than multiple poles which is required to comply with the ridgeline ordinance. The second option complies with the ridgeline ordinance but has multiple poles that are needed to get the

separation required for the double circuit lines. The other two options are: putting the line underground in the new easement or running the line in Browns Canyon and on Highway 248 rights-of-way. These options are costly alternatives that the county could be required to pay the additional costs.

An option not identified by RMP is to keep the power line in the existing easement within Promontory. The County has requested in writing and in meetings for information regarding the old alignment and the contract. This information has not been provided. From a County standpoint keeping the line in the existing location seems to be the best option.

Below is the state code regarding additional costs if specific conditions are placed on a proposal by a local government:

54-14-201. Conditions on siting of facilities by local governments -- Payment of actual excess costs.

If otherwise authorized by law, a local government may require or condition the construction of a facility in any manner if:

- (1) the requirements or conditions do not impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and
- (2) **the local government pays for the actual excess cost resulting from the requirements or conditions**, except:
 - (a) any actual excess costs that the public utility collects from its customers pursuant to an order, rule, or regulation of the commission; or
 - (b) any portion of the actual excess costs that the board requires to be borne by the public utility.

As noted in the project summary options 3 and 4 have a cost associated with them that the County would be expected to pay. The County has no intention of paying the additional cost for those options.

We have not been informed if there would be an additional cost for option 2 which is the option that complies with the ridgeline ordinance but requires additional poles.

Conditional Use - The zone allows for larger power lines as a conditional use. Typically conditional uses are uses with characteristics that may negatively impact surrounding property. Such negative impacts may cause the use to be inappropriate for the zone unless they can be mitigated by attaching conditions to

reduce or eliminate the negative impacts. Therefore a conditional use is often allowed but may require conditions. In this situation the location of the use has been determined prior to approaching the County. The Planning Commission should perform their review without any concern for the existing easement. The determination should be if the use is appropriate, can the impacts be mitigated and can all the findings listed below from 16.23.07 be met. If they cannot be met in the proposed location then the proposal should be denied.

The applicant has two issues: first is the conditional use and mitigating any impacts. The second is the ridgeline ordinance. If the line is moved farther away from the residents (in order to reduce the impact to the subdivision) the proposal then violates the ridgeline ordinance.

The italicized comments represents Planning Staff's opinion pertaining to compliance or lack of compliance with the findings the Planning Commission must make in order to approve the request.

Section 16.23.07 requires specifically the Planning Commission to find that:

1. The application complies with all requirements of Title 16;

The applicant has provided photo simulations of option 2 with the proposed poles that would be in Wasatch County and it appears that they will be under the ridgeline however the poles in Summit County that are part of the system will violate the ridgeline. We cannot enforce the ordinance outside of the County boundaries. Along with the ridgeline issue is the impact of the proposal on the neighboring development and if the impacts can be mitigated as part of the conditional use. The impacts of the 50-85' high poles that would be within 100 feet of the neighboring dwellings would need to be mitigated. From a staff perspective, although there may be other detrimental impacts, the impacts we are discussing are aesthetic. Mitigating any impacts, in staffs opinion, would require moving the poles away from the dwellings.

2. The business shall maintain business license if required; *Not applicable*
3. The use will be compatible with surrounding structures in use, location, scale, mass, design and circulation;

There are structures immediately south and there will be structures adjacent to the east. The structures to the east have a 35' height

maximum and the 17-plex structure to the south is around 40-45' high. The poles will be visible above the residential structures and will not fit in with the residential uses. Again staff feels that the impacts created by the use is due to the proximity to the dwellings.

4. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions;

Even with poles below the ridgeline there will still be impacts. Vegetation will be removed, poles will still be visible and within close proximity to residential uses. Can these impacts be mitigated other than by moving them away from the residences?

5. The effects of any future expansion in use or scale can be and will be mitigated through conditions;

If this proposal is approved any change or expansion in the use would require new conditional use approval.

6. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise, and vibrations have been adequately mitigated through conditions;

The location of the poles with their proximity to the medium density residential uses may not be appropriate and may not be able to be mitigated.

7. The use will not place an unreasonable financial burden on the County or place significant impacts on the County or surrounding properties, without adequate mitigation of those impacts.

The applicant has provided in his submittal a study showing that power lines do not have a detrimental impact to property values. The owner of the development has argued that the proximity of the power line will reduce property values.

8. The use will not adversely affects the health, safety or welfare of the

residents and visitors of Wasatch County.

Staff has not heard of conclusive proof of the negative effects of power lines adjacent to residential homes but that issue has been argued by both sides.

Ridgeline Issues - Below is the section of the code governing development on a ridgeline:

16.27.22 Purpose:

A. It is the intent of this section to protect the valuable views of the ridgelines of Wasatch County by providing regulations, which will limit the building of structures that protrude above primary and secondary ridgelines, or will mitigate the appearance of such structures if prevention is not possible.

B. Applicability: These regulations apply to all land use applications in Wasatch County for which any portion of a proposed structure protrudes above ridgelines when viewed from the designated viewing platforms as shown on the adopted viewing platform map. Any rezoning, proposed development or building permit shall be subject to compliance with these regulations, irrespective of whether specific reference to the regulations is made in this title. In the event of an overlapping or conflicting requirement of this chapter and other provisions or regulations in this code, the more restrictive provision shall apply. All proposals for development of preexisting lots of record or platted plots that may be located within the primary or secondary ridgeline areas are subject to conditional use approval.

The viewing platform for this area is the intersection of Browns Canyon and Highway 248. The visual simulations are all from the above noted platform.

POSSIBLE FINDINGS:

- The options of running the power line underground or in the Browns Canyon and Highway 248 rights-of-way will cost additional money which very likely will be required to be paid for by Wasatch County.
- The existing power line is currently in the middle of the Promontory development within an easement wholly in Summit County. RMP purchased a new easement in Wasatch County with the intent to re-align the power poles for the benefit of Promontory residents and the development.

- The County was not consulted about the re-alignment prior to the easement purchase.
- A conditional use allows for uses that may be appropriate with conditions to mitigate negative effects.
- The basis of having a use be conditional is that many uses which may be appropriate in various zoning districts, may not be appropriate due to the facts of a specific request such as proximity to a dissimilar use.
- Due diligence was not done to see what approvals, if any, would be required to locate the power line in Wasatch County.
- The Planning Commission should review this based on meeting the required findings in 16.23.07 and should not feel obligated to approve the alignment because of the new recorded easement which.
- If the negative impacts of the proposal cannot be overcome with conditions the proposal should be denied.
- The County is not obligated to fix a problem created by the applicant.

ALTERNATIVE ACTIONS:

1. Recommendation for denial. This action can be taken if the Planning Commission feels that the request does not meet the requirements of the ordinance and negative impacts cannot be mitigated.
2. Recommendation for conditional approval. This action can be taken if the Planning Commission feels that conditions placed on the approval can resolve any outstanding issues.
3. Recommendation for continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.

PROPOSED CONDITIONS (if approved):

1. Poles must be wood if possible.
2. It must be demonstrated that the poles are at lowest height necessary and comply with the ridgeline analysis.
3. If metal poles are used at corner locations they must be rust colored metal.
4. Conductors must be earth toned.
5. If the applicant cannot comply with the ridgeline ordinance they may need to go to the Board of Adjustment for a variance or appeal.

Attachments:

Letter of opposition from neighboring property owner
Fire Marshall letter

12 **COMMISSIONER JACOBSMEYER:** Based upon the
13 information furnished here and the owners in the
14 neighborhood who are vehemently opposed against it. I
15 think that this should be something that we postpone or
16 deny.

17 **CHAIR GAPPMAYER:** I think that you ought to
18 make the choice there if you are making the motion.

19 **COMMISSIONER JACOBSMEYER:** Okay, deny, forget
20 the postponement and if you are going to come back with
21 the same snake oil we don't need it.

22 **CHAIR GAPPMAYER:** We also need to include in
23 your motion that we can't see a way that this can be
24 mitigated.

25 **COMMISSIONER JACOBSMEYER:** I thought that I

1 said that. But there appears to be no chance to
2 mitigate the objections.

3 CHAIR GAPPMAYER: Okay, good. We have heard
4 the motion. Is there a second.

5 COMMISSIONER LEWIS: I will second.

6 CHAIR GAPPMAYER: Okay, it has been moved and
7 seconded. Is there any discussion before we vote? All
8 of those in favor say Aye?

9 COMMISSIONER JACOBSMEYER: By saying Aye we
10 are going for the denial right?

11 CHAIR GAPPMAYER: We are in favor of your
12 motion. Which was denial.

13 COMMISSIONER JACOBSMEYER: Okay, good.

14 COMMISSIONER LEW GILES: Aye.

15 COMMISSIONER LIZ LEWIS: Aye.

16 COMMISSIONER GERALD HAYWARD: Aye.

17 CHAIR GAPPMAYER: Aye.

18 CHAIR GAPPMAYER: The motion passes
19 unanimously. Thank you.

20 (WHEREUPON, the HEARING was concluded.)

21

22

23

24

25

Wasatch County
Planning Commission
Report of Action

Preliminary Approval	_____
For Discussion Only	_____
Resolution	_____
Ordinance	_____
General Plan	_____
Zone Change	_____
Plat Amendment	_____
Road Vacation	_____
Condition Use Permit	___X___
Final Approval	_____
Temp. Use	_____
Master Plan	_____

Meeting Date: Nov. 12, 2015

ITEM #4. Don Watts, representative for Rocky Mountain Power, is requesting a conditional use permit for a new double circuit 138 kv line with above grade pole heights that are between 50 – 85 feet. The proposal is on the west side of Browns Canyon south of the Wasatch/Summit county line in Section 36, Township 2 South, Range 4 East in the JBOZ (Jordanelle Basin Overlay Zone).

Commissioner ___ Gappmayer ___ was present as Chair.

FINDINGS

- The options of running the power line underground or in the Browns Canyon and Highway 248 rights-of-way will cost additional money which very likely will be required to be paid for by Wasatch County.
- The existing power line is currently in the middle of the Promontory development within an easement wholly in Summit County. RMP purchased a new easement in Wasatch County with the intent to re-align the power poles for the benefit of Promontory residents and the development.
- The County was not consulted about the re-alignment prior to the easement purchase.
- A conditional use allows for uses that may be appropriate with conditions to mitigate negative effects.
- The basis of having a use be conditional is that many uses which may be appropriate in various zoning districts, may not be appropriate due to the facts of a specific request such as proximity to a dissimilar use.
- Due diligence was not done to see what approvals, if any, would be required to locate the power line in Wasatch County.
- The Planning Commission should review this based on meeting the required findings in 16.23.07 and should not feel obligated to approve the alignment because of the new recorded easement which.
- If the negative impacts of the proposal cannot be overcome with conditions the proposal should be denied.
- The County is not obligated to fix a problem created by the applicant.

CONDITIONS

1. Poles must be wood if possible.
2. It must be demonstrated that the poles are at lowest height necessary and comply with the ridgeline analysis.
3. If metal poles are used at corner locations they must be rust colored metal.
4. Conductors must be earth toned.
5. If the applicant cannot comply with the ridgeline ordinance they may need to go to the Board of Adjustment for a variance or appeal.

COMMENT

- Doug Smith presented.
- Jon Jacobsmeyer – Concerned that the county was not consulted about the easement.

- Don Watts – Explained that power is necessary for our lives. Feels that they have done a great job with providing clean reliable power.
 - Problem with Wasatch/Summit power supplies was identified in 2007.
 - The property owner met with RMP and requested that they relocate to a new location at the edge of their property.
 - When the easement was obtained in 2011, he understands that the adjacent residential zoning was different and was zoned recreation at the time.
 - Said that they have made some changes to the design in the proposed alignment to bring the poles further away from the property line of the neighboring development.
 - Options 1 and 2 would be built at RMP expense. Option 3 and 4 are not preferred, and additional costs above the preferred option would be above the county's obligation.
 - Bob Gappmayer – Asked why they didn't consider another easement that benefited both property owners and the county?
- Rich – Attorney for RMP –
 - Believes that RMP has been attempting to work with the county.
 - Thinks that the options are a best attempt to work with the county and property owner.
- Todd Stark – Opposed to all of the options. Keep in Summit County out of view.
- Stein Rodgers – Opposed to all of the options. Keep in original easement.
- Suz McDonald – Stated that RMP hasn't reached out to residents or provided a health study as was requested at the last meeting.
- Jeremy Rutzel – No argument about whether power is needed. They have a single pole easement in Promontory and that is the safest way for them to provide the power.
 - Said that they have provided an option of keeping it in Summit so it doesn't impact the BRR property owners as much.
- Jay Price – Said that BRR was approved in 2005, predating the easement. Also stated that in his time on the council he doesn't recall being consulted about the new easement.
 - Requests that it is denied.
- Debbie – Opposed.
- Dan Sharp – Mentioned that the WC Fire Marshal provided a letter suggesting that he is not in recommendation of the power line alignment.

Public Comment Closed

- Jon asked why Promontory doesn't bury the line.
- Gerald – Doesn't think that the power line impacts can be mitigated. The arguments and topics have been a mixed bag, but doesn't see how it can be mitigated in the end.

MOTION

Commissioner ___Jacobsmeier___ made a motion to ___based upon the findings of staff and information presented here and that there is no way to mitigate the impacts, that the CUP is denied___.

Commissioner ___Lewis___ seconded the motion.

VOTE (5 to 0)

Robert Gappmayer	<u>AYE</u>	NAY	ABSTAIN
Jon Jacobsmeier	<u>AYE</u>	NAY	ABSTAIN
Liz Lewis	<u>AYE</u>	NAY	ABSTAIN
Gerald Hayward	<u>AYE</u>	NAY	ABSTAIN
Lew Giles	<u>AYE</u>	NAY	ABSTAIN

Robert J. Springer

Wasatch County Planning Commission Chairman

****Official action of the Planning Commission on this item****

**MINUTES OF THE
WASATCH COUNTY PLANNING COMMISSION
AUGUST 13, 2015**

PRESENT: Lew Giles, Gerald Hayward, Robert Gappmayer, Paul Probst, Jay Eckersley, Brad Lyle
EXCUSED: Commissioner Jon Jacobsmeyer, Commissioner Liz Lewis
COUNTY COUNCIL REP: Councilman Kipp Bangerter
STAFF: Doug Smith, Planning Director; Luke Robinson, Planner; Tyler Berg, Deputy Wasatch County Attorney.
OTHERS PRESENT: On list attached to a supplemental file.
PRAYER: Commissioner Gerald Hayward
PLEDGE OF ALLEGIANCE: Led by Commissioner Paul Probst and repeated by everyone.

Chair Robert Gappmayer called the meeting to order at 7:00 p.m. and excused Commissioner Liz Lewis and Commissioner Jon Jacobsmeyer and indicated that all of the Wasatch County Planning Commissioners will be voting tonight. Chair Gappmayer then welcomed those present and called the first agenda item.

Randall Probst, the Wasatch County Board of Health Director, addressed the Wasatch County Planning Commission and gave a brief review of what is happening in the Wasatch County Board of Health and how the Wasatch County Planning Commission and Wasatch County Board of Health can work together on different items such as clean air, health, immunizations, etc.

APPROVAL OF MINUTES OF JULY 9, 2015 MEETING

Motion

Commissioner Hayward made a motion to accept the minutes of July 9, 2015 as written.

Commissioner Paul Probst seconded the motion.

The motion carries with the following vote:

AYE: Brad Lyle, Jay Eckersley, Paul Probst, Robert Gappmayer, Gerald Hayward, Lew Giles.

NAY: None

ITEM 1 **DON WATTS, REPRESENTATIVE FOR ROCKY MOUNTAIN POWER, IS REQUESTING A CONDITIONAL USE PERMIT FOR A NEW DOUBLE CIRCUIT 138 KV LINE WITH ABOVE GRADE POLE HEIGHTS THAT ARE BETWEEN 50 – 85 FEET. THE PROPOSAL IS ON THE WEST SIDE OF BROWNS CANYON SOUTH OF THE WASATCH/SUMMIT COUNTY LINE IN SECTION 36, TOWNSHIP 2 SOUTH, RANGE 4 EAST IN THE JBOZ (JORDANELLE BASIN OVERLAY ZONE). CONTINUED FROM MAY 14TH AND JULY 9TH**

Staff

Doug Smith, the Wasatch County Planning Director, addressed the Wasatch County Planning Commission and indicated that this proposal is for a new alignment for a 138 kv line which requires Conditional Use Permit approval. Also this proposal is located in the Jordanelle Basin south of the Summit/Wasatch County boundary line on the west side of Browns Canyon Road. This is north and adjacent to a newly approved medium density development referred to as Black Rock Ridge phases 4-7. Doug also indicated that this matter has been continued. The purpose of the continuances was for the applicant to work with the stakeholders and discuss how to get the proposal to work within the ordinance. The power line currently runs through the middle of the Promontory development in Summit County. Also according to Rocky Mountain Power, the line needs to be upgraded and Promontory wanted the line moved out of that portion of their property. There was an easement agreement reached between Rocky Mountain Power and Promontory to relocate the power line into a new easement in Wasatch County and as far as the Wasatch County Planning Staff and other Wasatch County administration are aware there were no discussions with Wasatch County at that time to see if the line and pole locations would be approved.

Doug then indicated that the power line easement is adjacent to a medium density development that is under construction and structures could be within 20-50 feet of the power poles. There is also a possible ridge line problem that is taken from the viewing platform of the intersection of Browns Canyon and Highway 248; structures are not supposed to protrude above the ridge at that location. All property owners within 500 feet of the proposal have been sent a letter regarding this proposal as part of the conditional use.

The possible findings are:

1. The existing power line is currently in the middle of the Promontory development within an easement wholly in Summit County. Rocky Mountain Power purchased a new easement in Wasatch County with the intent to re-align the power poles for the benefit of Promontory residents and the development.
2. The County was not consulted about the re-alignment prior to the easement purchase.
3. A conditional use allows for uses that may be appropriate with conditions to mitigate negative effects.
4. The basis of having a use be conditional is that many uses which may be appropriate in various zoning districts may not be appropriate due to the facts of a specific request such as proximity to a dissimilar use.
5. Due diligence was not done to see what approvals, if any, would be required to locate the power line in Wasatch County.
6. The Planning Commission should review this with no regard to its history or the easement and should not feel obligated to approve the alignment just because of the recorded easement which, again, was purchased without any due diligence on the part of the applicant.
7. If the negative impacts of the proposal cannot be overcome with conditions the proposal should be denied.
8. The proposal does not comply with policy 1.1.2 of the Wasatch County General Plan.
9. The ridge line ordinance refers to structures not dwellings.

The proposed conditions if approved:

1. Poles must be wood if possible.
2. It must be demonstrated that the poles are at lowest height necessary and comply with the ridge line analysis.
3. If metal poles are used at corner locations they must be the rust colored metal.
4. Conductors must be earth tones.
5. If the applicant cannot comply with the ridge line ordinance they may need to go to the Board of Adjustment for a variance or appeal.

Commission

Chair Gappmayer indicated that where this is a new application public comment will be allowed but with the old application public comment was closed. Public Comment will be taken.

Commissioner Brad Lyle then read some comments from a Utah League of Cities and Towns Training Handbook that is handed out to the various planning commission members around the State of Utah. The point it made is that under conditional uses while it is perfect to take public comment even hold public hearings on the granting or denial of individual conditional use permits public clamor is not to be considered because the difference between public clamor and public input is one of substance. Whether or not to grant a conditional use permit is not a political decision or popularity contest but must be based solely on the standards of the ordinance itself. The applicant can either meet the standards in the ordinance for the permit or not meet the standards.

The Wasatch County Planning Commission were all in favor of handling the matter this evening and not to continue the matter further down the road because the applicant has asked for another continuance.

Commissioner Jay Eckersley indicated that he would like to have the Wasatch County Board of Health involved if such a power line matter comes up in the future.

Applicant

Don Watts, representative for Rocky Mountain Power, addressed the Wasatch County Planning Commission and indicated that the region is in need of this power line and will help the local company Heber Light and Power. He also suggested the matter be continued so that a public work session could take place so the property owners could be involved and request that no vote be taken tonight. Don Watts also indicated that the existing easement is not large enough and would require a new easement. Also the line would be a two circuit line which the easement also does not allow for. Don indicated that Rocky Mountain Power would like to hear the various comments from the public tonight so that they can gain a better insight from the public comments. Don also indicated that they have developed a new option where we have poles that are shorter and lower on a ridge line and working with Wasatch County in complying with the ordinances and also provided documentation regarding concerns that have come up previously. Also we have an agreement with that property owner to relocate it to the edge of his property boundary.

Public Comment

Tyler Berg, Deputy Wasatch County Attorney, addressed the Wasatch County Planning Commission and indicated that public comment can only come from property owners in Wasatch County.

Don Watts, representative from Rocky Mountain Power, addressed the Wasatch County Planning Commission and indicated that if the ruling is to go forward with a vote tonight then Rocky Mountain Power would withdraw their application at this point but would still like to hear public comment. The Wasatch County Planning Commission were in favor of hearing the public comment tonight because people are here and ready to voice their concerns.

Renee Rezac, Black Rock Ridge Condo owner, addressed the Wasatch County Planning Commission and requested that the conditional use permit be denied because the due diligence protocol was not adhered to. Also Rocky Mountain Power did not meet with the property and home owners to hear their concerns. So would ask that the conditional use permit be denied.

Steven Rosenbaum, Black Rock Ridge homeowner, addressed the Wasatch County Planning Commission and indicated that with Rocky Mountain Power withdrawing their application does that foreclose any future application by Rocky Mountain Power so this could just be a delay tactic.

Heather Feldman, Black Rock Ridge homeowner and owner of three properties there which are one town home and two condominiums, as of 6:00 p.m. tonight one of my three properties that is personally owned by me was ready to close in a week was cancelled because of the potential of this power line. Also Heather indicated that there could be a health problem with having these power lines close to families. Also such a power line would affect the values of the property in that area and taxes will decrease as a result of lower property values.

Lloyd Abel, Black Rock Ridge property owner, addressed the Wasatch County Planning Commission and indicated that he is against the proposal and concurs with everything that has been said so far.

Beth Holmberg, Black Rock Ridge homeowner, addressed the Wasatch County Planning Commission and indicated that she also has a concern with the possible health implications of such a power line and that should be taken into consideration.

Joy Rocklin, Black Rock Ridge homeowner, addressed the Wasatch County Planning Commission and indicated that she too is concerned about health concerns.

Brian Levine, Black Rock Ridge homeowner, addressed the Wasatch County Planning Commission and indicated that he did not receive notice about the proposal.

Rich Wolper, representative from Mark 25, addressed the Wasatch County Planning Commission and indicated that if Rocky Mountain Power reapplies that conditions are placed on the new application. Chair Gappmayer responded that cannot happen.

Dan Sharp, Black Rock Ridge homeowner, addressed the Wasatch County Planning Commission and indicated that Rocky Mountain Power has dragged this matter on long enough so a vote should be taken tonight.

Chair Gappmayer then closed the public comment period.

Chair Gappmayer then asked Don Watts if he wants to withdraw Rocky Mountain Power's application.

Don Watts then asked that the application be withdrawn.

As a result of that withdrawal no vote on the matter was necessary.

ITEM 2 **JEFF GRAHAM, REPRESENTATIVE FOR VR ACQUISITIONS LLC, IS REQUESTING FINAL PLAT AND SITE PLAN APPROVAL FOR VICTORY RANCH PLAT T, WHICH CONTAINS 13 DETACHED RESIDENTIAL LOTS ON 51.393 ACRES. THIS PLAT WAS PART OF AN AMENDED PRELIMINARY PLAN FOR PHASES 1B, 1C, AND 1D THAT WAS APPROVED MAY 1, 2013. THIS PLAT IS LOCATED ON BOTH THE SOUTH SIDE OF MOON LIGHT DRIVE IN SECTION 6, TOWNSHIP 3 SOUTH, RANGE 6 EAST IN THE JBOZ (JORDANELLE BASIN OVERLAY ZONE).**

Staff

Doug Smith, the Wasatch County Planning Director, addressed the Wasatch County Planning Commission and indicated that this possibly could be a consent item.

Public Comment

Chair Gappmayer asked if there was any public comment pertaining to this matter and there was none so the public comment period was closed.

Motion

Commissioner Probst made a motion that we handle this matter as a consent item and grant the final plat, site plan approval for Victory Ranch Plat T for VR Acquisitions L.L.C. and accept the findings and conditions and accept the staff report.

The findings are:

Wasatch County Fire District



**10420 North Jordanelle Blvd.
Heber City, Utah 84032**

Phone: 435-940-9636
Fax: 435-940-9635

To Whom It May Concern:

It has come to the attention of the Wasatch County Fire District of a proposal to move a high voltage power transmission line out of an existing easement and re located it in the near vicinity of high density housing units such as 4 existing 17 plex housing units with numerous more in the process and hundreds of 1 and 2 family dwellings.

It is the understanding of the Fire District that there is an already preexisting easement a considerable distance from the previous mentioned homes. It is the position of the Fire District that the high voltage transmission line remain in the designated existing easement due to the fact that a fire caused by the transmission lines would be removed from the immediate vicinity of dwellings and thus decreasing the likelihood of loss of life or property in the event of a fire.

This position is substantiated by the experience of the Fire District. In the previous months we have responded to 4 fires that were believed to be caused by electrical transmission lines, 2 of which posed an immediate danger to life and property that required homes be evacuated as extinguishment operations we under way.

It is the responsibility of the Wasatch County Fire District to *"provide a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide safety to fire fighters and emergency responders during emergency operations."* **IFC 101.3** WCFD feels that the relocation of the transmission lines constitutes a distinct danger to the surrounding homes and therefore requests that the transmission lines be maintained in the existing easement.

Sincerely,

Clint Neerings
Fire Marshal
Wasatch County Fire District



201 S. Main Street, Suite 1100
Salt Lake City, Utah 84111
main 801.328.3131
fax 801.578.6999
www.stoel.com

November 20, 2015

D. MATTHEW MOSCON
Direct (801) 578-6985
dmmoscon@stoel.com

BY HAND DELIVERY

Wasatch County Board of Adjustment
c/o Wasatch County Planning Department
55 South 500 East
Heber City, Utah 84032

**Re: Notice of Appeal: Rocky Mountain Power Evanston - Silvercreek 138 kV
Transmission Line Conditional Use Permit**

Dear Members of the Board of Adjustment:

This law firm represents Rocky Mountain Power (the "Company"). On September 4, 2015, the Company filed a conditional use permit application (the "Application") for the portion of the Evanston-Silvercreek 138 kV Transmission Line Project located within Wasatch County (the "Project"). On Thursday, November 12, 2015, the Wasatch County Planning Commission (the "Planning Commission") denied the Application. The Company hereby appeals the Planning Commission's November 12, 2015 decision denying the Application to the Wasatch County Board of Adjustment (the "Board of Adjustment"). This appeal has been submitted within the ten-day appeal period.

The Company alleges that the Planning Commission erred in its decision to deny the Application. While the parties involved in the proceeding, including the Planning Commission, acknowledge that additional transmission facilities are necessary to meet the increasing demand on the Company's electric system within Wasatch and Summit Counties, the Planning Commission opposed each of the proposed transmission line alignments through Wasatch County presented by the Company, and failed to accept the mitigation measures proposed by the Company to mitigate the anticipated possible detrimental effects of the Project.

Wasatch County's land use ordinances require the Company to obtain a conditional use permit prior to constructing the Project. The Planning Commission's denial of the Application prohibits construction of the Project, which is required to provide safe, reliable, adequate, and efficient delivery of electricity to the Company's customers in Wasatch and Summit counties, throughout Utah, and the other states the Company serves.



Wasatch County Board of Adjustment
November 20, 2015
Page 2

The Report of Action issued by the Planning Commission following the hearing indicates that the Application was denied based upon the findings of staff and information presented at the hearing, and the finding "that there is no way to mitigate the impacts" of the proposed transmission line. However, contrary to the grounds for denial identified in the Report of Action, Commissioner Jacobsmeyer motion for denial was expressly based on the position that the Wasatch County did not want the transmission line within its boundaries, and that the line should remain in its current alignment with Summit County. The Report of Action fails to accurately reflect the true basis of the denial as stated during the November 12th hearing. The record before the Planning Commission provides substantial evidence of the nature, scope and adequacy of the mitigation measures proposed by the Company to reduce each of the potential impacts of the Project that were identified by the planning staff and the Planning Commission. The Planning Commission ignored this evidence, and instead relied on unsubstantiated concerns, conjecture, speculation and public clamor as the basis of its decision.

The Board of Adjustment should reverse the Planning Commission's decision because that decision was based on insufficient and impermissible grounds, and should approve the Company's Application.

The Company expressly reserves the right to present both written and verbal corroborating evidence and other arguments to the Board of Adjustment in support of this appeal.

Respectfully submitted this 20th day of November, 2015.

STOEL RIVES, LLP

A handwritten signature in black ink, appearing to read "Matt Moscon", written over a horizontal line.

D. Matthew Moscon
Richard R. Hall
Attorneys for
Rocky Mountain Power

January 13, 2016

Via Email

Wasatch County Board of Adjustment
55 South 500 East
Heber City, UT 84032
dsmith@co.wasatch.ut.us

Re: *Opposition to Rocky Mountain Power's Appeal of the Planning Commission's Denial of Application for Conditional Use Permit*

Members of the Wasatch County Board of Adjustment:

Mark 25, LLC ("**Mark**"), by and through this law firm, responds to Rocky Mountain Power's ("**Rocky Mountain**") Notice of Appeal (the "**Appeal**") of the Planning Commission's denial of its conditional use application (the "**Application**"). Rocky Mountain "has the burden of proving that an error has been made." Wasatch County Code § 16.02.09(I). Yet, the Appeal provides nothing upon which the Board of Adjustment can overturn or modify the Planning Commission's denial. The Appeal is more noteworthy for what it fails to explain.

Rocky Mountain does not need a conditional use permit to upgrade its transmission line. The transmission line at issue sits on an existing easement, which easement allows Rocky Mountain's proposed upgrade. This existing easement and route has been used for nearly a hundred years. Rocky Mountain seeks a conditional use permit in order to move the transmission line into Wasatch County. But Rocky Mountain's proposed new route destroys ridgeline views and substantially extends the length of the transmission line. Rocky Mountain is willing to do this in order to accommodate a large Summit County developer's economic interests (Promontory Investments, LLC, an Arizona company ("**Promontory**"). The issue here is not whether Rocky Mountain can construct a needed upgrade; that is undisputed and does not require Wasatch County's approval. The issue is whether one Summit County developer's economic interests should be valued over efficiency, safety, and Wasatch County and its residents. Rocky Mountain's Appeal simply ignores these issues.

Mark, one of the largest landowners impacted by Rocky Mountain's Application, submits this letter to explain the relevant facts, background, and legal standards that Rocky Mountain's Appeal fails to address.

3165 East Millrock Drive
Suite 500
Salt Lake City, Utah
84121-4704

t (801) 438-2000
f (801) 438-2050
www.btjd.com

Background Information

Wasatch County Planning Commission (the "*Commission*") held a hearing to consider Rocky Mountain's Application for the first time on March 12, 2015. During that hearing, the Commission instructed Rocky Mountain to work with the affected landowners to address their concerns. The Commission then continued the Application hearing until May 14, 2015. Rocky Mountain then requested and received a continuation of the May 14 hearing. When May 14, 2015, arrived, Rocky Mountain had yet to make any effort to consult with or discuss the Application with Mark—the landowner that will suffer the most harm if the Application is granted. It was not until June 18, 2015, that Rocky Mountain met with Mark to discuss the Application. That meeting was held at this law firm's office. Rocky Mountain explained in its meeting with Mark that, if Mark was unwilling to accept the Application as originally proposed, Rocky Mountain would simply make things worse. First, it would move one of the transmission line poles a few feet out of Wasatch County so Wasatch County could not enforce its ridgeline ordinance with regard to that pole. Second, instead of using single tall poles for the portion of the transmission line in Wasatch County, it would use several shorter poles placed next to each other—leaving a shorter but much wider footprint on the mountainside above Highway 248. (This proposal is described in Rocky Mountain's Supplement, filed in connection with its Application, as "Option 2.") In essence, Rocky Mountain told Mark to accept the original Application or it would impose more harm to the mountainside views by seeking Option 2.

Rocky Mountain then revised its Application to include Option 2. The Planning Commission held a hearing on Rocky Mountain's revised Application. Rocky Mountain withdrew the Application during the hearing when it became clear the Planning Commission was going to deny it. Shortly thereafter, Rocky Mountain filed its third iteration of the Application. This time the Application sought the same approval as the previous applications, but also provided additional alternatives—locating the transmission lines along Browns Canyon Road and the highway, or burying the line. But Rocky Mountain claimed it is the County's responsibility to pay for those options if approved. Yet, Rocky Mountain still refuses to consider the obvious route—the route that has existed for nearly one-hundred years.

Despite Rocky Mountain's protestations, it was obvious to all in attendance at the last hearing that the Planning Commission denied the Application because there is no reason to move the transmission line. The best, safest, and most efficient route is the route that Rocky Mountain has had for nearly one-hundred years. The Planning Commission refused to ignore the obvious safety and economic impacts of Rocky Mountain's proposal on Wasatch County and its residents. Rocky Mountain's cozy relationship with a Summit County developer is not a good reason to move the transmission line. A relationship that is putatively governed by a contract, a contract that Rocky Mountain refuses to share with Wasatch County.

Rocky Mountain's Easements

The real issue is whether Rocky Mountain should move the transmission line to satisfy the pecuniary interests of Promontory as it seeks to rid itself of the transmission line at the expense of Wasatch County and its owners and residents. Rocky Mountain currently owns and operates a transmission line that runs through Promontory's property. Rocky Mountain now seeks to move that line into Wasatch County to appease Promontory. It is our understanding that the transmission line currently sits on an easement that Rocky Mountain Power obtained roughly 100 years ago. As Summit County noted in connection with Rocky Mountain's request to upgrade the transmission line in Summit County, the "[e]asements were originally recorded in the early 1900's to allow 'the right to erect, operate and maintain electric power, transmission and telephone circuit and appurtenances, attached to a single line of poles or other supports and necessary fixtures.'" In short, Rocky Mountain has an easement in Summit County and there is no need to move it.

Ridgeline/Viewshed Regulations

Rocky Mountain argues that the Ridgeline/Viewshed Regulations (the "**Ridgeline Ordinance**"), codified in Wasatch County Code § 16.27.22, only "limit," but do not "prohibit" structures that protrude above the ridgeline. Rocky Mountain argues that "limiting" is not synonymous with "prohibiting." This argument amounts to a distinction without a difference. The clear and stated purpose of the Ridgeline Ordinance is to "protect the valuable views of the ridgelines in Wasatch County." Accordingly, the Ridgeline Ordinance limits construction to structures that do not "protrude above primary and secondary ridgelines." Here, Rocky Mountain admits that its options 1 and 4 require construction of towers along protected ridgelines. And while Rocky Mountain claims that Option 2 does not violate the Ridgeline Ordinance because the poles are shorter, that assertion is simply false. Mark hired Gateway Consulting, an engineering firm, to scale and draw the power poles in Rocky Mountain's Option 2 on Rocky Mountain's own Photo Simulation. As demonstrated by the drawing, attached as **Exhibit 1**, any pole over 45 feet will protrude above the ridgeline. Rocky Mountain is proposing poles 50 to 85 feet. Thus, even Option 2 violates the Ridgeline Ordinance. Moreover, Option 2 requires the placement of a large pole directly on top of the ridgeline at issue, destroying the ridgeline view, but moved just outside of Wasatch County to avoid Wasatch County's jurisdiction. This is clearly inconsistent with the Ridgeline Ordinance's purpose.

Rocky Mountain further argues that if it is "impossible" to avoid a violation of the Ridgeline Ordinance, an exception can be made. While this may be true, Rocky Mountain's Application does not qualify for such an exception. Rocky Mountain could locate its transmission line in any number of places without violating the Ridgeline Ordinance, including on the original easement where the transmission line currently sits. The Ridgeline Ordinance is

only at issue because Promontory requested that Rocky Mountain move the transmission line from its existing location. Promontory's self-serving request does not create an "impossibility" sufficient to ignore the Ridgeline Ordinance. Further, even if building the transmission line could not be done without violation the Ridgeline Ordinance, this is not the appropriate process for seeking a variance from the Ridgeline Ordinance. A variance must be granted after an application is made to the Board of Adjustments—not on an appeal from the Planning Commission.

Furthermore, Rocky Mountain argues that power poles are not "structures" so they are not limited from protruding above the ridgeline. Rocky Mountain argues a structure is a dwelling or shelter of some sort. But the term structure is much broader. The Merriam-Webster Dictionary defines "structure" as "something (such as a house, tower, bridge, etc.) that is built by putting parts together and that usually stands on its own." Here, Rocky Mountain wants to construct a transmission line, including its various parts, on top of towers 50 to 80 feet tall. Clearly, these towers qualify as structures. Moreover, if the Ridgeline Ordinance was meant to apply only to dwellings or shelters, it would have said as much. Instead, the Ridgeline Ordinance uses the broader term structure.

Conditional Use Permit Standard

Even if Rocky Mountain's proposed movement and upgrade of the transmission line did comply with the Ridgeline Ordinance, which it does not, Rocky Mountain's Application does not satisfy the conditional use requirements.

a. The visual and safety impacts of the proposed transmission line cannot be mitigated.

In order to grant Rocky Mountain's Application, "all issues of . . . the character of the surrounding development, . . . noise, and vibrations" and "visual or safety impacts caused by the" transmission line must be subject to mitigation. Wasatch County Code § 16.23.07. The impacts of Rocky Mountain's proposed transmission line, however, cannot be mitigated. First, Rocky Mountain seeks to build an enormous transmission line supported by poles that will double the 35 foot height restriction (or, in the case of Option 2, several 50 foot poles carving an 80 foot scar across the mountainside). And the mountainside Rocky Mountain seeks to burden with these poles and carvings is directly in view of Highway 248. The visual impact, under any proposed option, will be enormous. The only way to mitigate the visual impact of the transmission line is to place the line along the existing, original easement and route. Promontory's pecuniary interests are not more important or valuable than Wasatch County's and its landowners' interest in protecting views.

Second, the safety hazards of placing the transmission line right next to a residential neighborhood are undeniable. Rocky Mountain's Supplement includes articles supporting its claim that transmission lines do not cause health problems. But Rocky Mountain misses the point. Even assuming the articles are credible (and we know nothing about the articles' authors or their funding, biases, credentials, and credibility), these articles ignore the obvious fire hazard created by transmission lines. Wasatch County's Fire Marshall went on record with the Planning Commission that Rocky Mountain's Application creates a fire hazard.

Moreover, recently, Rocky Mountain has been sued over massive fires sparked by Rocky Mountain's transmission lines. For example, Rocky Mountain was recently sued in the United States District Court for the District of Utah. See *Allred v. Pacificorp d/b/a Rocky Mountain Power Company*, Case No.: 2:15 cv-00448. The plaintiffs alleged that "a devastating wildfire, known as the Wood Hollow Fire . . . ignited as a result of arcing between high voltage transmission lines which were owned, operated and maintained by" Rocky Mountain. Complaint, p. 2. "The Fire reportedly burned 47,387 acres, over 75 square miles, destroying everything in its path, including forests, woodlands, sage steppes, grasslands, pastures, springs, ponds, streams, homes and other structures, personal property, wildlife, livestock, and other animals, and causing flooding, erosion and destruction of roads, culverts, waters systems and other infrastructures." *Id.* at 3.

The State of Utah, represented by the Utah Attorney General, filed a similar lawsuit in the Sixth Judicial District Court of Utah. See *Utah v. Pacificorp d/b/a Rocky Mountain Power Company*, Case No. 150600053. Similarly, in that case, Utah alleged that "certain electrical transmission lines and/or related components of the electrical facilities owned by [Rocky Mountain] caused ignitions of combustible materials, started a wildfire that grew in size and spread to adjacent lands." Complaint, p. 3. Finally, on July 27, 2015, KSL reported on a fire "near Jordanelle Reservoir." According to KSL, "[t]here was a power bump before the fire, and fire officials believe a power issue probably sparked the fire."

Here, Rocky Mountain says nothing about the fire risks. Instead, it is asking to move its transmission line off the original easement—an easement that has existed for 100 years—right next to an existing residential development. The fire risks are real and important. And, again, the best way to mitigate against these risks is to keep the transmission line where it is—away from ridgelines and existing residential development.

Furthermore, Rocky Mountain's claim that there are no ill health effects of the transmission line is far from conclusive. Again, the studies cited by Rocky Mountain are not conclusive, and Rocky Mountain fails to provide any adequate information about those studies, including the funding and biases of the authors.

Finally, the transmission line will create substantial noise. The best way to mitigate that noise is to keep the line away from the residential development and on the original easement.

b. The transmission line is not consistent with Wasatch County's General Plan.

In order to grant Rocky Mountain's Application, the transmission line must be "consistent with the Wasatch County General Plan." Wasatch County Code § 16.23.07. As explained above, the transmission line is not consistent with Wasatch County's Ridgeline Ordinance. And, even if Rocky Mountain's Option 2 called for placing all of the poles located in Wasatch County below the ridgeline, Option 2 places one pole just a few feet outside of the County's boundary line to avoid the Ridgeline Ordinance, but it still sits directly on the ridgeline top. This hyper-technical gamesmanship is inconsistent with Wasatch County's General Plan. Moreover, the proximity of the proposed transmission line to residences is not typical. The proposed transmission line will parallel the boundary of a residential development. While Rocky Mountain suggests that other residential developments have similar transmission lines nearby, those lines are much less intrusive because they do not closely parallel residences or, in some cases, the affected residences were constructed after the transmission line so the buyers knew what they were getting. Wasatch County's General Plan is better served if the transmission line stays on Promontory's property and away from residences.

Further, it is our understanding that Promontory bought its property with that transmission line on it, and it should not be allowed to unburden the transmission line at the expense of Wasatch County and other landowners (landowners that did not purchase property with a neighboring transmission line) for self-serving reasons.

c. The transmission line will significantly impact surrounding properties.

In order to grant Rocky Mountain's Application, the transmission line must "not place an unreasonable financial burden on the County or place significant impacts on the County or surrounding properties." Wasatch County Code § 16.23.07. Rocky Mountain's proposed transmission line should be rejected because of the enormous impact it will place on the surrounding properties. There is no dispute that granting Rocky Mountain's Application will result in diminished property values for Wasatch County owners, and will directly and negatively impact Mark's ability to market and develop its properties—let alone the impact on hundreds of residents that purchased in the area for its natural beauty.

In an effort to contradict this obvious reality, Rocky Mountain previously cited a power-point presentation from an author in 2005. Yet again, Rocky Mountain provides no information regarding the qualification of the author, the employer of the author, or the

author's funding. Moreover, the author's findings are not conclusive, nor do they weigh in Rocky Mountain's favor. First, the report is not specific to Wasatch County. A transmission line in an urban or commercial area is less likely to diminish property values. But a transmission line in Wasatch County, and more specifically, a location known and sought for its natural beauty, will affect property values and marketability. This conclusion is actually supported by the report cited by Rocky Mountain. On page 4 of Appendix 8 to Rocky Mountain's Supplement filed in connection with its Application, the author concluded: (1) "In some specific cases—single family homes located immediately adjacent to the towers, vacant rural land suitable for residential development—the degree of impact could be somewhat higher"; and (2) "[s]ome studies indicate that the property value impacts are greatest right after a transmission line is constructed or upgraded, and that the impacts decrease over time." It is for these very reasons Promontory that wants to move the transmission line. It wants to avoid the obvious problems of trying to market new homes in a beautiful location sullied by a transmission line. It is disingenuous to claim that a transmission line running parallel to a residential development in Wasatch County does not impact the surrounding properties' value and marketability. This conclusion is supported by the letter attached hereto as **Exhibit 2** from Mark's lender, Bank of American Fork. If Rocky Mountain's Application is approved, the Bank may be unwilling to continue to lend on Mark's project with the transmission line now in the area. The Bank has refused to issue financing on projects with transmission lines nearby.

Finally, placing the transmission line in Wasatch County and near a residential development will undoubtedly cause the County, Mark, and other owners to spend extra resources to mitigate its ill-effects, including fire hazards.

d. The transmission line will adversely affect the health, safety, and welfare of Wasatch County residents.

In order to grant Rocky Mountain's Application, the transmission line must "not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County." Wasatch County Code § 16.23.07. As discussed above, the transmission line creates safety hazards (namely fire) and noise. Moreover, the potential for health issues is increased the closer the transmission line is located to residences. Thus, the transmission line should be left where it is (away from residences) to minimize the safety, noise, and health risks.

Rocky Mountain's Statutory Obligations

Rocky Mountain claims to be in a difficult spot. It claims to have agreed with Promontory to move the transmission line, yet it does not qualify for a conditional use permit. Unfortunately, it is difficult to evaluate this claim because Rocky Mountain is unwilling to share its agreement with Promontory. Nevertheless, the facts are still the facts: Rocky

Mountain has an easement that it is currently operating a transmission line on; Rocky Mountain can still use that easement for its upgraded transmission line; and the existing route is safer and more efficient than any of the routes Rocky Mountain is now proposing. By law, Rocky Mountain is obligated to "use every reasonable effort to protect the public from dangers." Utah Admin. R746-310-5. And it is required to construct its facilities in a safe, efficient manner. Utah Code § 54-14-303. It is disingenuous for Rocky Mountain to ask Wasatch County to ignore the safest, most efficient, and cheapest route in order to please a single landowner (Promontory), a landowner whose property has been subject to an existing transmission line easement for nearly one-hundred years.

Sincerely,

BENNETT TUELLER JOHNSON & DEERE



Jeremy C. Reutzel



August 6, 2015

To whom it may concern,

Bank of American Fork has provided construction financing on several units in the Black Rock Ridge project in Wasatch County. It has come to our attention that there is a proposal to install power lines that would cross over a portion of this project. We have found that power lines often reduce value and make the sale of units difficult. This may effect Bank of American Fork's ability to finance these units. There has been other instances in which Bank of American Fork has declined financing and power lines was one of the deciding factors.

Thank you,

Bret Bushman
Vice President

OREM/PROVO OFFICE
1280 South 800 East
Orem, UT 84097
(801) 224-9227
fax (801) 223-5111
www.bankaf.com



EXISTING CONDITIONS

8:54 AM 4/2/2015 NORTHWEST



PROPOSED CONDITIONS

PACIFICORP OPTION 2 MAP WITH ADDED DATA FOR MARK 25



COALVILLE TO SILVER CREEK
138kV TRANSMISSION LINE | OPTION 2

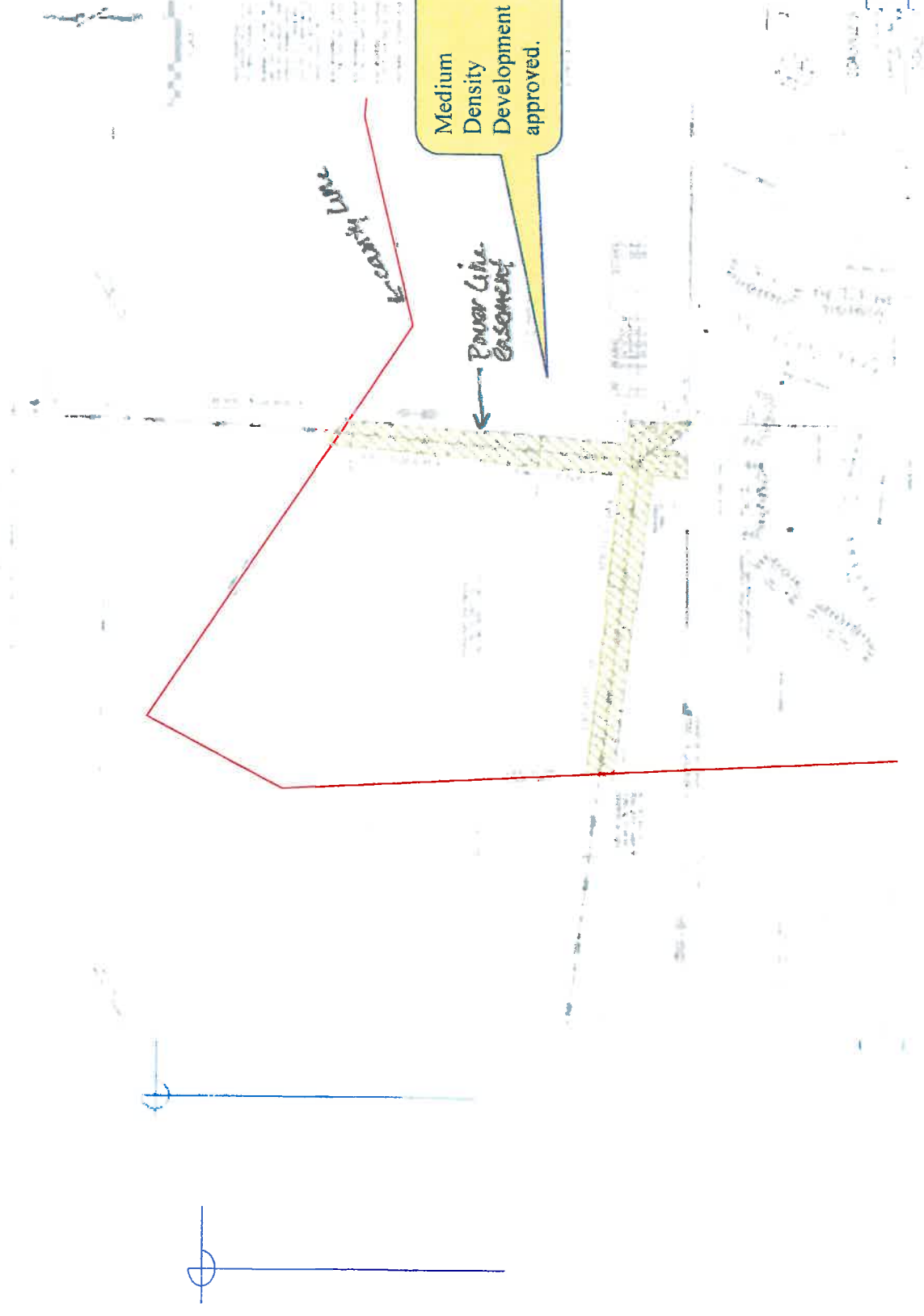
Don Watts, representative for Rocky Mountain Power, is requesting a conditional use permit for a new double circuit 138 kv line with above grade pole heights that are between 50 – 85 feet. The proposal is on the west side of Browns Canyon south of the Wasatch/Summit county line or a second option of running the power poles in the Borwns Canyon and Highway 248 right-of-ways. in Section 36, Township 2 South, Range 4 East in the JBOZ (Jordanelle Basin Overlay Zone).





PROJECT SUMMARY:

- Application started in March continued to May then to July to August 13th where it was pulled from the agenda by the applicant.
- The applicant has proposed four options for alignments of the power poles. They are:
 - Running the poles in a mono-pole configuration and violating the ridgeline (applicant preferred option)
 - Running the poles so they do comply with the ridgeline ordinance which requires a number of additional poles. (no additional cost was identified for this)
 - Running the poles down Browns Canyon and Highway 248. (cost of \$3,350,000)
 - Running the poles underground (cost of \$6.8 million)
- Staff feels that there is another potential option which is keeping the line in the existing easement within Promontory which is not an option identified by RMP. The County has requested information about leaving it in the existing easement but nothing has been provided.
- Additional expenditures noted above may have to be paid for by the County. No amount was noted for option 2. RMP can submit any requirements imposed by the County which increase their cost to the Facilities Board (a state board) which can require the County to pay for any increased costs.



12/7/2015

PLS-CADD Overlay



105ft

Option 1: VIEWS



Option 1: SITE PLAN



OPTION 1 SUBMITTED WITH PREVIOUS CONDITIONAL USE PERMIT



Page 28

COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE

PHOTO SIMULATION OPTION 1
LOCATION MAP

12/1/2015

Option 1: POLE DISTANCE



Option 1: COST

As of the date hereof, the Company now files the CUP Application seeking the approval to construct a double circuit 138kV transmission line as depicted on the Option 1 Plan (See Appendix 1). Under the Option 1 Plan, four (4) power poles would be located within Wasatch County. The proposed route for the Option 1 Plan was selected by the Company through its normal and customary transmission line siting practices and procedures, after evaluating several alternative alignments, and represents the alignment and design the Company would construct in compliance with local regulations as imposed on similar land uses and which do not impair the ability of the Company to provide service to its customers in a safe, reliable, adequate and efficient manner. Utah Code Ann. § 54-14-103(9)(b). Therefore, the Option 1 Plan constitutes the measure for "standard cost" of the required facility. Utah Code Ann. § 54-14-103(9)(a). The estimated cost of the Option 1 Plan for the segment within Wasatch County is Five Hundred Thousand Dollars (\$500,000.00).

Option 2: VIEWS



COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE

PHOTO SIMULATION
OPTION 2
12/11/2015



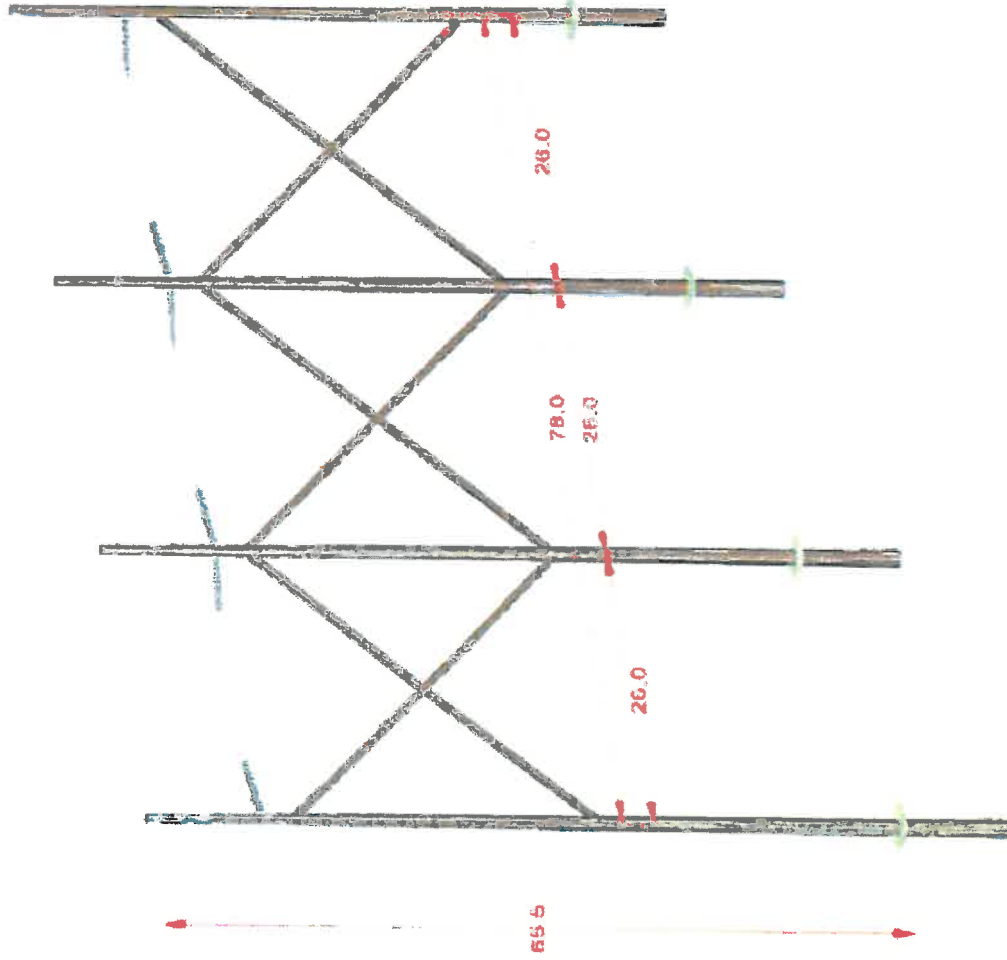
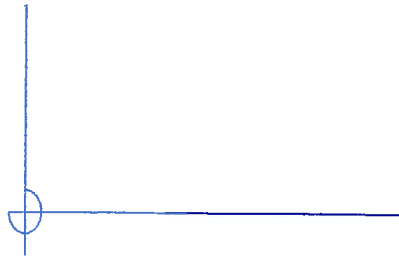
Option 2: SITE PLAN



**COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE**

**PHOTO SIMULATION OPTION 2
LOCATION MAP**

Option 2: Poles



Option 2: POLE DISTANCE



Option 3: VIEWS



**COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE**

PHOTO SIMULATION
OPTION 3

4/7/2015



Page 33

Option 3: SITE PLAN



**COALVILLE TO SILVER CREEK
138kV TRANSMISSION LINE**

**PHOTO SIMULATION OPTION 3
LOCATION MAP**

12/1/2015



Page 30

Option 3: COST

The Option 3 Plan, as depicted on Appendix 5, provides for the underground of the 138 kV facilities through the area of Browns Canyon within Wasatch County. The underground facilities would replace the overhead facilities located within Wasatch County only. The adjoining overhead facilities located within Summit County will remain above ground. The estimated cost of the Option 3 Plan is Six Million Eight Hundred Thousand Dollars (\$6,800,000.00). It is important to note that such estimate is based on preliminary data only and may increase depending geotechnical evaluation or other unknown conditions.

This CUP Application is hereby submitted requesting approval of the Option 1 Plan. The Company, however, could also construct the Option 2 alternative within the scope of the proposed Project. The Option 3 Plan and the Browns Canyon Road Plan could both be constructed in compliance with the County's local land use regulations and ordinances, and would fulfill the need for the Project to provide safe, reliable, adequate, and efficient electric transmission service to the Company's customers. Therefore, the Company invites the County to evaluate whether the Option 3 Plan and the Browns Canyon Road Plan is preferred by the County, with the understanding that the excess costs associated with either of these two alternative facilities over the "standard cost" of the Option 1 or Option 2 Plans will be the responsibility of the County. Utah Code Ann. § 54-14-201(2).

Browns Canyon : VIEWS OPTION 4



COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE

BROWN'S CANYON ROAD OPTION
VIEWPOINT 2 PHOTO SIMULATION

12/1/2015



Page 58

Browns Canyon: OPTION 4 SITE PLAN



COALVILLE TO SILVER CREEK
138KV TRANSMISSION LINE

BROWN'S CANYON ROAD OPTION
VIEWPOINT 2 LOCATION MAP

12/1/2015



Option 4: COST

The Browns Canyon Road Option, as depicted in Appendix 6, provides for a transmission line alignment along Highway 248 and Browns Canyon Road. Similar to the undergrounding alternative, this option is not preferred. The Browns Canyon Road Option will require the installation of sixteen (16) power poles within the roadway rights-of-way along Highway 248 and Browns Canyon Road. The estimated cost of the Browns Canyon Road Option is Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000), excluding any costs associated with rights-of-way acquisition, which may be significant.

This CUP Application is hereby submitted requesting approval of the Option 1 Plan. The Company, however, could also construct the Option 2 alternative within the scope of the proposed Project. The Option 3 Plan and the Browns Canyon Road Plan could both be constructed in compliance with the County's local land use regulations and ordinances, and would fulfill the need for the Project to provide safe, reliable, adequate, and efficient electric transmission service to the Company's customers. Therefore, the Company invites the County to evaluate whether the Option 3 Plan and the Browns Canyon Road Plan is preferred by the County, with the understanding that the excess costs associated with either of these two alternative facilities over the "standard cost" of the Option 1 or Option 2 Plans will be the responsibility of the County. Utah Code Ann. § 54-14-201(2).

POSSIBLE FINDINGS:

- The options of running the power line underground or in the Browns Canyon and Highway 248 rights-of-way will cost additional money which very likely will be required to be paid for by Wasatch County.
- The existing power line is currently in the middle of the Promontory development within an easement wholly in Summit County. RMP purchased a new easement in Wasatch County with the intent to re-align the power poles for the benefit of Promontory residents and the development.
- The County was not consulted about the re-alignment prior to the easement purchase.
- A conditional use allows for uses that may be appropriate with conditions to mitigate negative effects.
- The basis of having a use be conditional is that many uses, which may be appropriate, may not be appropriate due to specific facts such as proximity to a dissimilar use. In other words
- Due diligence was not done to see what approvals, if any, would be required to locate the power line in Wasatch County.
- The Planning Commission should review this based on meeting the required findings in 16.23.07 (Conditional uses) and should not feel obligated to approve the alignment because of the new recorded easement.
- If the negative impacts of the proposal cannot be overcome with conditions the proposal should be denied.
- The County is not obligated to fix a problem created by the applicant.

