

MINUTES
WEBER COUNTY COMMISSION
Tuesday, July 30, 2019 - 10:00 a.m.
Commission Chambers, Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-203, the County Clerk records in the minutes the names of all persons who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

WEBER COUNTY COMMISSIONERS: Scott K. Jenkins, James "Jim" H. Harvey, and Gage Froerer.

OTHER STAFF PRESENT: Ricky D. Hatch, County Clerk/Auditor; Christopher Crockett, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

A. WELCOME - Chair Jenkins

B. INVOCATION - Bryan Baron

C. PLEDGE OF ALLEGIANCE - Taylor Christensen

D. THOUGHT OF THE DAY - Commissioner Harvey

E. PUBLIC COMMENTS: None.

F. CONSENT ITEMS:

1. Warrants #1902-1913 and #441388-441611 in the amount of \$814,314.57.
2. Purchase orders in the amount of \$406,958.78.
3. A new beer license.
4. Set public hearing for August 6, 2019, 10 a.m., regarding amendments to county 2019 calendar year operating & capital budget.
Commissioner Harvey moved to approve the consent items; Commissioner Froerer seconded.
Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

G. ACTION ITEMS:

1. **COOPERATIVE AGREEMENT WITH UTAH DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WILDLIFE RESOURCES, FOR WEBER COUNTY TO CONTROL PHRAGMITES IN WETLAND AREAS THROUGHOUT THE COUNTY.**

Taylor Christensen, with County Roads, stated that this is for a grant to treat wetlands in the county.

Commissioner Froerer moved to approve the Cooperative Agreement with Utah Department of Natural Resources, Division of Wildlife Resources, for Weber County to control Phragmites in wetland areas throughout the county; Commissioner Harvey seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

2. **CONTRACT WITH YOGUINEA TO HAVE GUINEA PIG YOGA AT THE 2019 WEBER COUNTY FAIR.**

Ashton Wilson, County Fair Director, presented this contract.

Commissioner Harvey moved to approve the contract with Yoguinea to have guinea pig yoga at the 2019 Weber County Fair; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

3. **CONTRACT WITH AMANDA HOESSEL TO JUDGE THE FIESTA 4-H YOUTH HORSE SHOW DURING THE 2019 COUNTY FAIR.**

Ashton Wilson, County Fair Director, presented this contract.

Commissioner Froerer moved to approve the contract with Amanda Hoesel to judge the Fiesta 4-H Youth Horse Show during the 2019 Weber County Fair; Commissioner Harvey seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

4. **INTERLOCAL AGREEMENTS WITH THE FOLLOWING: HUNTSVILLE TOWN; MARRIOTT-SLATERVILLE CITY; UINTAH CITY; AND WASHINGTON TERRACE CITY**

Sharlott Sutherland, of the County Sheriff's Office, stated that these agreements are required by the State Tax Commission with each city for which the county collects/reports on beer tax.

Commissioner Harvey moved to approve the Interlocal Agreements with Huntsville Town, Marriott-Slaterville City, Uintah City and Washington Terrace City for the beer tax; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

H. PUBLIC HEARINGS:

1. Commissioner Froerer moved to adjourn the public meeting and convene the public hearings; Commissioner Harvey seconded.
Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye
2. **PUBLIC HEARING TO CONSIDER & TAKE ACTION ON FILE ZTA 2019-04, A REQUEST TO AMEND LAND USE CODE TO UPDATE PROVISIONS RELATED TO CULINARY & SECONDARY WATER REQUIREMENTS IN A SUBDIVISION. THIS AFFECTS TITLES 101, 106, & 108 & MAY ALSO AFFECT OTHER TITLES TO OFFER RELATED ADMINISTRATIVE EDITS.**

Charles Ewert, of the County Planning Division, stated that Hooper Irrigation Company submitted a request to the county to amend its code by requiring more stringent secondary water regulations and connection into the

existing local secondary systems if those are willing and can serve, are within 300 feet from the subdivision boundary multiplied by the number of lots in the subdivision, and to add standards for how secondary systems should be operated. Through this process, other issues in the code regarding water were reviewed, including the approval of dry subdivisions (subdivisions without an approved well).

Under current code, secondary water connection is only required when the culinary water authority requires it. The county is not a culinary water authority and relies on private/quasi public water districts/companies, which often require that developers hook up to a secondary system, but they often do not have control over that secondary system. Because the county is not in the water business, the challenge is how it can go about ensuring that there is an operating/functional secondary system, in order to accommodate for the culinary water company's requirement. One possible solution is to look to existing secondary water companies and ask them to bear that burden, which Hooper Irrigation has asked to do. If a subdivision is within 300 feet of a secondary water system, they would be required to hook into that secondary system if it can serve (which is 300 ft. multiplied by the number of subdivision lots). Other secondary water policy considerations include identifying standards to which secondary systems should exist. One concern that a number of private water companies have brought to the county and districts' attention is that if they condition their culinary service on access to secondary water and the county or the private water company have no standards to which that secondary system should be built, people just dig a pond and pump out of it; there is no regulatory oversight to ensure systems are adequate, and once that culinary connection is made, the culinary company cannot shut it down. Thus it is a challenge on who owns the responsibility to ensure secondary systems work under county and State code. Mr. Ewert feels that culinary systems are responsible to make sure the secondary systems work if the culinary service is conditioned on secondary water. There is the question whether certain culinary systems have the adequate administrative resources to enforce. He and the two planning commissions see this culminating into a much broader discussion about water.

This proposal will also clarify what culinary connections are required and mirrors the 300 feet/lot connection requirement—there was some debate at the planning commissions about whether that should be mandated. There was also dialogue about ensuring that there's overarching government control, with a counter argument about enabling local companies to be their own owners/operators. Regarding private wells, current county code allows the county to approve a subdivision without ever verifying access to adequate water. This puts the onus on the next owner of the lot. Chair Jenkins said that this may perpetuate shallow wells and taking water that has never been allocated. Staff had a bit of internal discussion about the responsibility to drill a private well on each lot and that cost. One argument is that the developer will recoup his cost on the backend by charging more for the lots, which does not always happen, but puts the onus on the next owner to supply the water, who may not be successful. Mr. Ewert spoke with a few other counties—one asks for professional review to verify that there is access to water. Other considerations in the amendment include application requirements related to the culinary water authority and clarifies penalties for removal of required water rights/shares from an assigned parcel after approval. Both Planning Commissions are very concerned about water policy and how to provide for culinary and secondary water. They recommended denial of the request, not because they did not like the idea but because they want more time to address water on a more holistic level, addressing county-wide global-scale water issues. They basically had the same discussions even though they met separately. Mr. Ewert requested approval of this, and that it be done incrementally, but to continue looking at the global scale. A subcommittee of local experts was formed to work through the big issues.

Commissioner Froerer likes much of the presentation and feels that developers need to put forth the right amount of water or at least communicate that to buyers so that they are not expecting a certain amount of water when that is not going to happen, and that the number of acre feet can be addressed with plat approval and CC&Rs. He does not want to put this issue off for long. Mr. Ewert said that the subcommittee will look into how much water will be required—some other counties require a specific number of acre feet per lot. It will be difficult to look at this on a system by system basis. He addressed Commissioner Harvey's questions stating that the first question for the Commission to consider is whether the county should have laws mandating the operation/maintenance of local systems, and if so, in what form that should be. If development continues in the current path in unincorporated areas, he sees that the county may need to take a position whether to be in the water business. Chair Jenkins could support the concept of a dry subdivision if it has small lots to be under a certain amount of water, that secondary water can be expensive and should be looked at, and with an RFP for services.

Public comments:

--**Greg Seegmiller**, of J-U-B Engineers, representing Hooper Irrigation Company (privately owned), stated that the 300 feet/connection is mirrored from State-wide sewer ordinances, that it does not make sense to have a few different water systems on the same street, that it is difficult to change the shares that have been established for 150 years, that each district has its rules on how much water they think should go to the land, and that the Division of Water Rights allows owners to go down 30 feet, and if they go beyond that they need water rights for the sand point wells. If there is a large subdivision and each has a sand point well, at some point they will run dry because they are all tapping into that shallow ground water, and that it makes sense to have two separate systems handling two different water uses (in severe drought it would be easier to shut off the secondary). The proposal came about because of multiple system subdivisions being proposed in the Hooper Irrigation boundary, including two in the

county area. He said that it is difficult to fight with that because the Company has bills to pay, including a loan with the Division of Water Resources, and that it makes sense that if a subdivision is within a certain boundary to compensate the foresight of other systems. To do an RFP would be difficult because Hooper Irrigation has shares in that area. He referred to Brad Blanch, the developer who has 1 – 1½ miles of pipe to install and if this can be incentivized through the county, it could benefit everyone along the way and beyond. He feels that it may be very aggressive to expect the planning commissions to solve this issue in the next 60 days. There are some tough questions to address—whether to start a “monopoly,” where to draw the line, how much to impose on development to make them responsible to get the water to where it needs to go, and what kind of responsibility culinary water has. Some districts will not give culinary connection unless they have secondary.

--**Brad Blanch**, of West Weber, said that existing standards should be maintained. He agrees with the idea of having ‘x’ amount of water for irrigation purposes and disclosing it to the property owner per CC&Rs. He said that there is not enough water for the amount of development that is going to happen in western Weber County and that should not be left to a water providers’ standards. He said that to pull the line from 1½ miles away at his own expense for the 60-acre Terakee Village development that he is working on is unviable to him, noting the additional cost to purchase the shares to access Hooper Irrigation’s system. There are many underground permits throughout western Weber County, most are abandoned, and there are also surface permits, defined bodies of water, of which he has two, that solve his water issues but creates problems if he is forced to hook into Hooper’s system—it is too expensive, and if the county had standards, he could use his own water by creating a secondary water pond. He said that the county should be considering the two pump rights on the lower valley because there are 500-600 acres not used agriculturally or residentially, and if they are smart not to use Hooper Irrigation’s water but to use the lower surface wells it could serve a much broader area than what he currently has defined amounts for. He asked who is going to oversee the policies of the only district in his area. He responded to Commissioner Harvey’s question stating that he has a will serve from Hooper Irrigation for secondary water for the Village as long as he funds a 16 inch line. He can also give himself one, which would be supported by the State. Commissioner Froerer spoke of issues to consider moving forward, including that properties need to be looked at individually for those that will actually be watered based on CC&Rs, etc., that any set policy needs to be flexible and allow other uses (ponds, wells, etc.), and property owners should be given options.

--**Paul Joyce**, of Huntsville, purchased a home in 2017 in the Valley-3 Zone and learned the hard way that the actual appropriated amount of water to irrigate 3-acres of land is 9 acre feet of water. He referred to the proposed code section 106-4-2 requiring connection to the secondary provider if it is within reasonable distance stating that it does not address when that is not the case. His subdivision is not in a culinary water provider/authority area, but is in a secondary. The proposal refers to Utah Code 17-27a-1 having a definition that a culinary “water authority” means the department/agency/public entity with the “responsibility” to review and approve the feasibility of the culinary water system and sources for the subject property. He obtains culinary water by a well through water he leases from the Weber Basin Water Conservatory (Conservatory), which would not identify itself as the culinary water provider or authority or that they have responsibility to approve the feasibility of the culinary water system for his home, but rather that the Division of Water Rights would. The proposal states that a person acting as a culinary water authority pursuant to Utah Code 17 can be the local health department, but he knows that is not correct, or an existing culinary water service provider. He noted the wording change from authority to provider, which does not exist in the case of his subdivision or the new one going up behind his. The secondary water subsection says that when acting as a culinary water authority pursuant to §17-27a-603, the culinary water service provider may require that a secondary water system serve some or all the lots within the subdivision as a condition of committing to serve culinary water.

Mr. Joyce said that the ordinance also states that a private well may be approved by obtaining a survey, and part 3 states they will review some of the logs. The problem is that in their existing subdivision, they all pull out of their wells, but when a new subdivision is approved as a new one literally a thousand feet from his, consisting of nine 3-acre lots, it means approving them to take tens of millions of gallons of water out of the same aquifer that he is pulling out of with no ability to see if he has water, besides reviewing the well log. He owns shares in a ditch company 4,000 feet from his house with no ability to get to it because the code did not require the developer to utilize those secondary resources. His developer entered into a contract with the Conservatory for 1-acre foot of water and handed it to him, who had bought a 3-acre parcel, and was totally unsuspecting, having only enough to water 8,000 sq. ft., not the needed 145,000 sq. ft., and the cost is now \$4,000/year to irrigate his lawn because the code does not demand that the developer utilize the secondary water resources in case that there is no culinary provider, a huge problem that is being missed. He is in a lawsuit against the developer, with a high cost, and this is far from over, because of what he believes is a misinterpretation of this code. He said that when he brought this to the Ogden Valley Planning Commission that they believed the interpretation of the code is only if you’re in a culinary water provider or authority service area. . They also have no fire hydrants and he was required by code to put in a fire suppression system, which was a hard requirement for a shallow well. The code is allowing the developer of the new subdivision behind his to get 1-acre feet of water contracts with the Conservatory but they are in an existing secondary service provider area. His neighbor’s well (about 2,000 feet away), pulling from the same aquifer, has run dry, a concern because of the new subdivision. In his area there is a general shallow aquifer and a primary.

--**Lori Brinkerhoff**, of Hooper, said that Hooper Irrigation is a privately-owned entity and this request is for that water to go to a different development, and if Hooper residents were here they would ask why they're considering serving other developments without that water coming to them first. The current demands being placed on Hooper include that currently there is a subdivision at a standstill and has been declared a dry subdivision. She was told this is because there are no water shares attached to the development, for this calendar year the planning and zoning commission has requests for 800+ lots from developers wanting to build individually, there are many acres for sale, thus a great future demand for water. She would support an RFP.

--**Ruby Raccasi**, Eden Irrigation Company Secretary, said that when the Ogden Valley Planning Commission met, their company president and the Eden Water Works (culinary) representative spoke. She said that they have an 1860 water right that is still the same—they do not have enough fall to pressurize. It is difficult for Eden Water to be able to say how many shares a person has of secondary water because the Irrigation Company cannot tell anyone how many shares of water they need to irrigate a certain amount of ground due to the continual fluctuation of water, that each ditch varies, etc.

--**Nate Hadley**, Uintah Highlands Improvement District Manager, said that they provide water and sewer services. They would love to be included in the required pre-application meetings for any new subdivision in the area. He said that the new ordinance also states that the culinary water service provider bears full responsibility for verifying the secondary water system's capabilities to satisfy, but that should be the responsibility of the secondary water company providing the service. When they provide a will serve letter, it states that they must have secondary water in order to build.

6.

Commissioner Harvey moved to adjourn the public hearing and reconvene the public meeting to discuss 7.H.2; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

7.

ACTION ON PUBLIC HEARING:

H.2-REQUEST TO AMEND THE LAND USE CODE TO UPDATE PROVISIONS RELATED TO CULINARY AND SECONDARY WATER REQUIREMENTS IN A SUBDIVISION. THIS PROPOSAL AFFECTS TITLES 101, 106, AND 108 OF THE LAND USE CODE. IT MAY ALSO AFFECT OTHER TITLES TO OFFER RELATED ADMINISTRATIVE EDITS.

Chair Jenkins felt that this item had been presented too soon, that the planning commissions were not even close to doing the background that is needed on this monstrous issue. He requested holding a joint meeting with the planning commissions to discuss the direction to take, etc. on this issue, and to do so quickly.

Commissioner Froerer moved to table agenda item H.2 to amend the Land Use Code relating to culinary and secondary water requirements in a subdivision, directing staff to set up a meeting within the next 30 days with the planning commissions to give them some direction, in particular discuss items brought up today dealing with private wells, alternative sources of water that could be used, look at standards, look at realistic developers' and homeowners' viewpoints, specifically to protect homeowners once they get into these subdivisions. Mr. Ewert asked to meet with the commissioners to walk through the proposed ordinance in a work session because it accommodates a number of those items. Commissioner Harvey seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

Commissioner Harvey moved to adjourn the public meeting and reconvene the public hearing to discuss items H.4 and then H.3; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

4.

PUBLIC HEARING TO CONSIDER & TAKE ACTION ON A REQUEST TO APPLY THE SOLAR OVERLAY ZONE TO PROPERTY LOCATED AT APPROX. 1700 S. 7500 W., & TO CONSIDER A DEVELOPMENT AGREEMENT FOR THE SAME.

a. Decision on ordinance applying the Solar Overlay Zone to property located at approximately 1700 S. 7500 W.

b. Decision on a Development Agreement with Little Mountain Solar, LLC.

Charles Ewert, of the County Planning Division, showed the project site, current and proposed zoning maps and site plan. Staff and the Planning Commission recommend approval of the request by Stratus Solar to provide solar overlay on about 300 acres. The property owner and applicant were present. A development agreement has been negotiated with Stratus Solar and the land owner. This is next door to the Ogden Bird Refuge and he said that they wanted to ensure the birds were well protected. The distance between this property and the nearest existing residential property is 700 feet, the panels can be up to 15 feet tall, they must have a treated security fence, any accessory buildings need to look agricultural in nature and not be any taller than what is allowed in the A-3 Zone. Commissioner Froerer requested a provision that the developer or owner must screen if any future subdivisions build closer than 700 feet, and whatever the screening is (e.g., slats) that it needs to have no visual impact, that the operation is not visible.

5.

Public comments: Mathew Niesen, with Stratus Solar, said that they would like to start out at 10 feet height for the top of the panels, that they are fine with screening with slats and with the chain link fence. Chair Jenkins said that as people develop around the operation they will have to make those improvements and Mr. Niesen agreed.

Commissioner Harvey moved to adjourn the public hearing and reconvene the public meeting; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

Commissioner Harvey moved to adjourn the public meeting and reconvene the public hearing; Commissioner Froerer seconded. Commissioner Harvey retracted his motion.

7.H.4-ORDINANCE & DEVELOPMENT AGREEMENT TO APPLY THE SOLAR OVERLAY ZONE – ORDINANCE 2019-13

Commissioner Harvey moved to adopt Ordinance 2019-13 amending the Weber County Zoning Map to overlay the Solar Overlay Zone (SOZ) to property located at approximately 1700 South 7500 West for the Little Mountain L.L.C. Solar Farm; Commissioner Froerer seconded but that it include the fence and shielding. Commissioner Harvey amended his motion to include that.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

Commissioner Harvey moved to adjourn the public meeting and reconvene the public hearing; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

H.3-PUBLIC HEARING TO CONSIDER AND TAKE ACTION ON ZTA 2019-07, A PROPOSAL TO AMEND TITLES 101, 102, AND 108 OF THE LAND USE CODE TO CLARIFY AND UPDATE PROVISIONS RELATED TO ENFORCEMENT OF THE LAND USE CODE, AND TO ADD JUNK AND REFUSE STANDARDS.

Rick Grover, County Planning Division Director, noted that for many years there has been a code enforcement issue in the county. The current ordinance requires sending a notice on a violation but there are no fines and ultimately the issues end up in court if they do not comply. On the larger issues, it has been difficult to get their attention because they are making so much money on the violation and they aren't concerned about court. The proposal includes language that looks at fines and leans to go on their property to help expedite the process. First a 14-day notice for compliance is mailed, after that, the first fine is \$100 violation/day, the second is \$200/day and the third is \$400/day. If they still have not complied, a lien is placed on their property. This is not to create revenue for the county but to clean up some of the unsightly areas. Chair Jenkins asked if this addresses the Ogden Valley storage units issue that are out of compliance and Mr. Grover said it did. This proposal also deals with weeds, Junk cars, nightly rentals, etc. Iris Hennon, County Code Enforcement Officer for unincorporated Weber County, explained her many efforts to work with violators after the first certified notice, generally including weekly visits. Currently, violators of a nightly rental that ends up in court only has a \$90 fine and they rather keep going to court. Both planning commissions recommend approval.

5. Public comments: None.

Commissioner Harvey moved to adjourn the public meeting and reconvene the public hearing; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

7.H3-AMENDING THE LAND USE CODE RELATED TO JUNK & REFUSE STANDARDS – ORDINANCE 2019-14

Commissioner Froerer moved to adopt Ordinance 2019-14 amending the Weber County Land Use Code regarding code enforcement procedures and regulations including for junk, refuse, and unkempt yards; Commissioner Harvey seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

I. COMMISSIONER COMMENTS: None.

J. ADJOURN

Commissioner Harvey moved to adjourn at 12:25 p.m.; Commissioner Froerer seconded.

Commissioner Harvey – aye; Commissioner Froerer – aye; Chair Jenkins – aye

Attest:

Scott K. Jenkins, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor