

**MINUTES
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, August 30, 2016 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., 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.

COMMISSIONERS: Matthew G Bell, Kerry W. Gibson and James Ebert.

OTHER STAFF PRESENT: Lynn Taylor, Deputy County Clerk/Auditor; Courtlan Erickson, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

A. WELCOME – Chair Bell

B. INVOCATION – Charles Ewert

C. PLEDGE OF ALLEGIANCE – Charlie Ewert

D. THOUGHT OF THE DAY – Chair Bell

E. CONSENT ITEMS:

1. Purchase orders in the amount of \$211,759.17.
2. Warrants #408402 - #408728 in the amount of \$2,685,697.69.
3. Minutes for the meeting held on August 23, 2016.
4. Ratify agreement for financial advisor services with Zions Bank Public Finance.
5. Retirement Agreement with Michelle Ann Buhrmester.
6. Surplus a 2013 Polaris Sportmans 800 from Property Management.
7. Set public hearing for September 6, 2016, 10 a.m. for consideration & action to vacate the retention basin easement on Lots 4, 5, 6 & 14 of Mallard Springs Subdivision at approx. 2475 S. 4000 W.

Commissioner Ebert moved to approve the consent items; Commissioner Gibson seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

F. ACTION ITEMS:

1. CONTRACT WITH JENNIFER CLARK FOR AN INDIGENT DEFENSE ATTORNEY IN JUVENILE COURT

Bryan Baron, Deputy County Attorney, noted that this is for a contract previously held by an attorney who gave termination notice. Ms. Clark was recommended by the committee that reviewed applications.

Commissioner Ebert moved to approve the contract with Jennifer Clark for an indigent defense attorney in Juvenile Court; Commissioner Gibson seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

2. CONTRACT WITH INTERSTATE DETECTIVE AGENCY FOR AN INDIGENT DEFENSE INVESTIGATOR

Bryan Baron, Deputy County Attorney, stated that this contract replaces the one with Mike Stewart for investigations for public defenders. The committee that reviewed applications recommended that Interstate be awarded the contract.

Commissioner Gibson moved to approve the contract with Interstate Detective Agency for an indigent defense investigator; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

3. FIRST READING OF AN ORDINANCE GOVERNING PARKING

Bryan Baron, Deputy County Attorney, stated that the county has been running parking citations through the Justice Court. This summer the State rejected efile parking citations and the county tried to work with the Justice Court but they were not willing to take paper filed copies. The efile system is new. After discussing the issue with the Sheriff's Office, it was decided to make the parking citations civil violations and develop a civil process. Many surrounding municipalities and counties handle the issue in this manner. The ordinance sets up the civil process. He addressed Commissioner Ebert's question stating that the current process was based on State code, which was to process them through the justice court.

Commissioner Gibson moved to approve the first reading of an ordinance governing parking; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

4. **RELEASE OF PROTECTIVE COVENANTS FOR PROPERTY OWNED BY DAFUSKIE INVESTMENTS, LLC AND ASSOCIATED FOOD STORES INC. IN FARR WEST**

Courtlan Erickson, Deputy County Attorney, on behalf of Douglas Larsen, Weber Economic Development Partnership Director, stated that property in Farr West City, which used to be in unincorporated Weber County and is part of the original Weber Industrial Park, is now owned by Dafuskie. The property is in the process of being sold to Old Dominion Freight Lines, which discovered that there were protective covenants encumbering the property. The county does not own the property, but when the covenants were entered into, it was a party to that. All the parties determined there was no further need for the covenants. This release allows the original owners and successors to release those covenants, which conforms to the terms of the original protective covenants document.

Commissioner Ebert moved to approve the Release of Protective Covenants for property owned by Dafuskie Investments LLC and Associated Food Stores Inc. in Farr West; Commissioner Gibson seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

G. PUBLIC HEARING

1.

Commissioner Gibson moved to adjourn the public meeting and convene the public hearing; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

2. **PUBLIC HEARING FOR THE ADOPTION OF THE 2016 OGDEN VALLEY (VALLEY) GENERAL PLAN**

Two representatives from Logan Simpson, the consultant on the Plan, were present to address any questions. Some Ogden Valley Planning Commissioners were present as well. Charles Ewert, of the County Planning Division, referred to the documents before the Commission including the 4th plan draft, updated 8/26/2016, the resolution, an analysis of how the Cluster Subdivision Code has worked with & without bonus since the creation of zoning in the Valley, and the plan's study, which includes all the public process, comments, and the results of the advisory committee meeting. Most of the 2005 Recreation Element Plan has carried into this plan. He gave a slide presentation of the various elements of the plan.

Community Character - identifies the rural character of the Valley.

Land Use - recommends implementing an agricultural protection and open space overlay zone & to identify areas that are prime open space and keep as open as possible; includes TDR component. The complete analysis of the cap of existing development rights is 18,000-24,000 (15,000 on the Valley floor).

Rural Residential Development & Housing – resounding feeling from public that mixed housing types are needed—not much available for younger families. There is an aging population & a need to find ways to provide for them.

Commercial Development - no new rezoning for commercial area until the local area supports it; design standards is a prevailing commonality; no big box; address neighborhood villages on village-by-village basis.

Transportation & Modality - monitor growth trends; expand active transportation facilities; complete pathway around Pineview Reservoir; pursue path through canyon.

Utilities & Public Services - gain better understanding of water & sewer & encourage alternatives to septic systems; provide for new development to pay their own way; improve stormwater management.

Parks & Recreation - complete the valley-wide pathway network; improvements to trail heads; support for park & park district expansion; pursue better recreation planning around Pineview; balance quantity of recreational opportunities with quality.

County Resource Management Plan - required by the State. The county tried to do good planning from the onset and the County Resource Management was fairly well integrated throughout each of the above elements.

Mr. Ewert had created a General Plan Implementation Program Priorities list. There are 115 implementation strategies in the plan. Not all parts of the plan have to occur at the same time. One of the highest priorities on the list should be working with small areas to create small area plans.

Commissioner Ebert asked Mr. Ewert what had been the number one goal of this plan and he responded that there were seven vision strategies and they related to each element. The primary focus was the philosophy not to “kill the goose that laid the golden egg” and to keep the population to the density rights already allocated for. Commissioner Ebert broke this down into maintaining the Valley’s rural character, protecting farms and having planned growth that looks more of clustering in villages.

Mr. Ewert said that the people want to focus on off-highway trails, on existing infrastructure, open space and viable agriculture. He said that there is a deep love for true agriculture and remorse that it is a waning industry in the Valley. That agriculture doubles as open space, is a big benefit.

Commissioner Ebert asked if during the public comment period people would express what they want the Upper Valley to look like in the future to help the Commission know what tools to use to achieve that. Commissioner Gibson noted that years ago 10-15 Valley residents visited with him and Chair Bell. They presented a map that showed speckling throughout the entire Valley and expressed alarm about that potential outcome; they were greatly concerned and pleaded with the Commission to allocate some resources to study how to change that eventual outcome. Commissioner Gibson's first concern is to protect individual property rights and understood their concerns. He said it was a really terrible what happened to property owners several years ago when they lost 2/3 of their property value (with the 3-acre minimum zoning requirement). He hopes that now there are tools to accomplish what they need.

3. Public comments:

Representative Gage Froerer, of Huntsville, thanked staff, especially Mr. Ewert, for the efforts on what he considers an extremely valuable document to the Valley moving forward. He noted that the Valley was an agricultural environment 60+ years ago and 40+ years ago when he graduated from high school there were about 12 dairies. The Valley is now an open space environment, which leads to the property rights issue that he supports. In the 1990s the county took 2/3 of the Valley landowners' property value—many of the current landowners inherited that property; it was their source of income and planned retirement. He passed the first TDR ordinance in Utah and encouraged the Commission to look at it. He feels very strongly about the bonus density being a tool for this and future commissions. If these tools are not used, there will be regret later. He feels strongly that there needs to be a way to preserve the premium land and that can only be achieved through giving the landowners the opportunity to make the decision of what is right for their property and at the same time encourage them to work out the compromise for what they want—open space, agriculture environment, etc. He urged adoption of this plan and consideration of the bonus density.

Sharon Holmstrom, of Eden, said that every single word in this plan has been crafted by the Planning Commission, citizens and those who conducted the study. She cautioned that when the Commission looks at changing wording, etc., to realize that this plan is a turning point for the Valley and can change the future of how the Valley will look. She said that everyone refers to the Valley as the goose that laid the golden egg—most races, recreation activities, etc. that occur in this county take place in the Valley because of its open space, not wall-to-wall suburbia. She said that there are two critical items for the Commission to consider that will contribute to density and can change the Valley: the bonus density question and valley-wide sewer. It is her understanding that when valley-wide sewer went to west Ogden there was no longer a legal means to prevent the 10,000-acre lot proliferation because of the requirements.

Jeffery Burton, of Huntsville, said that the plan is seriously flawed, that its premise seems to be on how to limit future growth and how to keep it rural. He asked why keep it rural and where would be the human habitat, what about the families and the historical human character of the Valley—individuals own the land. Private property rights are the basis of our government. This plan is not just a guide; it requires conforming to the 115 implementation strategies. The premise needs to be promoting liberty. The 3-acre minimum zoning adopted several years ago has done much to destroy family life in the Valley. The peak elementary school population was years ago because families cannot afford to live in the Valley now. The plan laments the fact that young families do not live in the Valley and proposes that government come up with subsidized housing or require developers to have cheaper housing. He said this is not the answer. The increase in price for the 3-acre minimum zoning stopped families from moving in, but they are still moving in a little bit and now they are trying to regulate them, and if they completely go out then subsidizing is in the plan. Commissioner Gibson asked if he had any specific concerns with the plan and Mr. Burton said that he had many, such as the idea of limiting commercial to a couple of spots, but if people need a loaf of bread they have to drive to Eden now, but on the other hand there is the idea that there are too many cars on the road. If someone wants to open a bread stand, etc., it cannot be done. Market forces are the true representation of the desires/needs of the public and government should not seek to overcome the market forces by artificially making requirements of the future; it does not work. He recommends doing this piece meal, not implement all the strategies at once. Mr. Ewert stated that to execute each implementation strategy will require either an ordinance or program.

Jan Fullmer, of Eden, stated that there is an opportunity to preserve the recreation element and the open space of a beautiful place for the benefit of Weber County. She said that Wolf Creek is an excellent example of a developer working with the community and the development is what the community requested (trails and affordable housing for new families), and it is working. There was a meeting with some of the residents and they talked about changing the use of “will” to “should” in the plan. One area where “will” was changed to “should” was that cost and funding for implementation “should be determined by the Commission as it considers its annual budget” and she asked that this be changed back to “will” because it takes money to make the plan happen. She said that this left people feeling that there is not a real commitment to help out the Valley for the county’s sake. Commissioner Ebert said that he had wanted to address the “wills/shoulds” not because something is not a priority but because this plan is a recommendation document, and it was not appropriate to state “will/should” and create inappropriate expectations. The document starts out clearly stating that it is a recommendation moving forward, but then throughout it had “will” and “should.” The “wills” can be put back but they are not more binding.

Michael Rhodes, of Liberty, asked when and why the bonus density was taken out and yielded his remaining time to Representative Froerer who referred to Summit County and what it has accomplished with the bonus density. Bonus density and trust lands work hand in hand where the remaining parcel can be put into a third party conservation easement and because of the density the economics of that decision work out. He agrees with Mr. Burton’s comment that first and foremost private property rights are the foundation of this country and need to be protected at all cost. The Commission needs to ensure that the incentives and the tools are in place for future County & Planning Commissions to make decisions that benefit open space without impacting private property rights—2/3 were taken away some time ago and we do not want to see that again and need to give some of that back, put the control in the hands of the owners.

Commissioner Ebert said that the County and Planning Commissions have been tasked to preserve open space, strengthen family farms and create clustering in villages to address the upcoming population increase, but the dichotomy at times is that people do not want to use the tools to achieve that goal. He asked about TDRs and bonus densities. Representative Froerer views them as opposite sides of the same coin, both are needed. The free market is determined by property values and it is not the government’s job to dictate to a property owner or to be involved in the TDR valuation. If in the future the TDR ordinance is working, the county can pull back the bonus density but for now both need to be in place. Commissioner Ebert noted that scarcity of resources drives price and may have been a factor that drove the prices. Representative Froerer noted that a 3-acre parcel brings in more money than 1-acre, and he believes that the 3-acre requirement hurt a number of local farmers because they could no longer subdivide an acre and sell to their children/grandchildren. Now is the time to give an opportunity to property owners to have a say in what happens so their children can have ownership in the Valley.

Richard Webb, of Liberty, said that reasonable restrictions in zoning are needed. This is a good plan. He said that the market rules and the county cannot control it. He agrees with TDRs but is not sure about giving more density and creating greater density in the Valley, which will only plug up the place. It may take a few years for TDRs to become viable. The 3-acre zoning increased property values—it is not correct to say that owners gave away 2/3 of their property value. This plan is a consensus of the people; everyone was heard and it is a plan that the majority wants. He asked the Commission to consider seriously that these are the wants/desires of the majority of those who voiced their opinions. Commissioner Ebert asked if the bonus density was used more as a scalpel rather than a blanket to meet a goal of the Planning Commission if that would change his view of a bonus density tool. Mr. Webb responded that TDRs overtime would accomplish the goal. He does not understand the rush to build density. The bonus density as an interim step could work until the TDRs take place and gain value.

Shana Francis, of Eden, loves private property rights; they are fundamental to the success of our nation. This plan takes some of those things away. One of the incorrect premises is allowing individual property owners to do whatever they want with their property because it can impact others’ property values, health and safety. She agrees with a previous comment that one cannot let things go unbridled. There is already an incentive to cluster development. If the county provides bonus density it would be in essence subsidizing a developer. She asked what if a property owner does not have opportunity to cluster and the county would benefit only certain people. She agrees with Mr. Burton that the county should not subsidize.

Eric Storey, of Eden, a lifetime Valley resident, said that when his father was a commissioner during the vote to allow Powder Mountain and Wolf Creek there were Valley residents who said that no more people should be driving the canyon, there was not enough water and they could not have a ski resort and a development with condominiums. His father believed strongly in property rights and if people could prove they would not be harming anyone else they should have those rights. Mr. Storey said that none of his five children live in the Valley; they cannot afford to do so. The county made a serious mistake when it required 3-acre minimum zoning. The issues are water and sewer for the Valley and need to be figured out—the 3-acre zoning alone does not solve these problems.

Chair Bell said that there are 14 sewer districts in the tiny Valley, plus septic (there are a couple districts in the lower valley) and people believe that sewer would hinder growth there; growth will occur. Commissioner Ebert said that sewer treatment is becoming more expensive. The Health Department is not allowing the old septic systems now and there is added expense to homes, and children will not be able to live next door any more. The Commission is not proposing a single treatment plant in the Valley but rather that people work together for an organized plan to address it, not all entities working alone.

Jamie Taylor, Ogden Valley Planning Commissioner, Huntsville resident, found flaws in her own ideologies about the west when she attempted the Big Ideas online survey, which asked her to prioritize. She stated that the residents are unified in wanting to preserve the rural character. Overall the plan reflects the views of the Valley residents and the Planning Division and consultant team have done an incredible job of combining good planning with the visions of the residents. She said that at times there are discrepancies because the residents want clean air and water but at the same time they fear that utilities will bring growth. The residents want their children and grandchildren to be able to afford to live there, however, fear that bonus density and large growth can have negative impact on the Valley. They want to preserve the natural assets, however, most respect personal property rights above all else. She hopes the discrepancies can be hashed out. This is a good document and keeps the eye on the big picture, pointing towards small villages and some farms and the details guide how to make it all happen.

Kimball Wheatley, of Huntsville, has been involved in the Valley's planning for many years. This plan was a 2-year process and part of the problem is staff turnover—the Planning Division staff, the commissioners, etc., are new and the longevity of these processes is difficult to get into perspective at times. The plan probably has a 90% consensus of the Valley residents, which is very high. Chapter 7 of this plan addresses carrying capacity of the Valley and it needs to be put into the equation when considering property rights because it will hurt people if a limit is saturated and they are no longer allowed to develop. In 1998 they assumed the carrying capacity was 6,200 with the required 3-acre minimum zoning. Property owners took the 2/3 reduction for the good of the Valley, but in the 2005 Recreation Element update they learned for the first time that was done in error. They had new GIS technology, which showed the numbers were closer to 15,000-17,000, and people flipped out and the speckled maps started to appear. He helped create those maps but now says they are deceiving because the density itself starts to matter. Ultimately there is a carrying capacity and the biggest private property rights that people will lose in the long haul will happen to anyone who does not develop their land before a lid is put on once one of those limits is saturated. As a recreation place, the current property values are about double that of a median home price of the rest of the county. There are clashing visions—residents want to maintain open space and the rural character but as they move forward, planning needs to be done prudently because there is so much at stake for the county in claiming to be a recreation mecca. This plan was done with a broader vision than just for the Valley residents. The trouble with bonus density is that each one adds to it and there will be loss to someone eventually, and property rights are taken away—this is a big concern.

Commissioner Ebert said that, in an effort to create less speckled building throughout the Valley and to keep open space, the focus is on the village clustering concept. He asked Mr. Wheatley how he sees this happening and he responded that this has been thought about a lot and many things can be done to foster a TDR market, including changing the law a little and it require TDRs for certain things. He had sent a detailed memo to the Commission a month ago with many ideas. Across the state the bonus density is used. However, the idea of giving away more rights really puts an obstacle in the way of the purchase of development rights and the voluntary reduction of development rights. Mr. Wheatley said that the plan calls for taking a look to see if those mechanisms are working and if not, it leaves the idea open to look at bonus density. There may be instances where very limited use of bonus density associated with something specific may be useful towards clustering.

Commissioner Ebert's biggest concern is that of creating a market where it is unsustainable for anyone who has a moderate income to live in the Valley and to pay their property taxes. He asked if there is a tool to provide villages and affordable housing besides the TDR and Mr. Wheatley responded that our properties exist in a national market. Commissioner Ebert feels that the 3-acre minimum zoning has created scarcity in the market and economics is about scarcity and that the Commission is now tasked with figuring out an adjustment. Mr. Wheatley disagrees stating that the old condos at Wolf Creek are old, small and modest income places but they are not cheap. If others were to be built and put on the market they would not go to locals but would be snapped up in the national/international ski market. He said it is naïve to believe we exist in a local market if we saturate the number of lots, etc., and that the market price will make it available to everyone. The market is the driver for many reasons and the wheels were put in motion a long time back. We can look at the Valley as a way to generate ongoing revenue for the county but reducing zoning to 1-acre may end up looking like Riverdale, etc. Commissioner Ebert clarified by reading from the plan that the county will support the transfer of existing development rights as the only means to increase density in suitable project areas while proportionately decreasing density in other areas without offering the bonus density.

Kirk Langford, of Eden, said that the solution is in the latest revised draft plan. It had more citizen input than Logan Simpson has had in the history of their business. The process took two years, with a ton of input and it had a 90%-95% consensus. There are tools today in this planning process that Park City did not when it developed. Even at buildout the plan allows a little open space. Regarding sewer, Mr. Langford recommended adding the residents' input to the plan and not only the 14 sewer districts' to figure out what to do about valley-wide sewer. There are many options. Regarding density, he said that a roadmap/vision is needed for people coming from outside, for those who may invest in the resorts, etc. This plan gives more property rights than the current one and he strongly agrees with that. He said that all but one have been cluster subdivisions since the 3-acre zoning has been in place. He does not agree with giving density bonuses away for free. The Commission made good changes regarding sewer and density and he recommends that the plan be approved.

Chair Bell and Mr. Ewert reiterated that this Plan is a guide and elements will be adopted by ordinance or program.

Richard Menzies, of Liberty, stated that the general objective of the plan was to give guidance from the community and the Planning Commission to those writing/implementing/approving ordinances. He said that Mr. Ewert and others did a tremendous job and obtained a lot of input from a number of disparate people with disparate opinions. The consensus was very high. He urged the Commission to approve the plan.

Barbara Bohannon, of Eden, participated in the process for two years. A lot of money, time, consideration and energy were put into this plan and she said that there is no question that it needs to be passed to guide the community.

Mr. Burton said that the plan is abhorrent for private property rights. There has to be a limited market for TDRs to work and without bonuses developers are not encouraged to do great things. There is already a cap on population (as it relates to water/sewer/ingress/egress). He said that the plan has no wiggle room, that TDRs are now more restrictive, and that density bonuses are a great idea.

Commissioner Gibson stated that the Commission is elected to weigh in and to determine that the public has been heard and to represent and protect all individuals' rights. He feels that most of the basic elements of this plan are very good, that it is a great tool and he did not see anything that violates private property rights. He feels that some people were tremendously harmed with the 3-acre minimum zoning. He said that the county is not giving bonus densities for free but is using it as a tool to encourage behavior and it should be a part of this General Plan. Bonus densities should be allowed in certain circumstances to encourage the type of behavior that the public has stated as a desired outcome—no speckling effect, no checkerboard mentality. He had asked staff to prepare an amendment to the proposed plan.

Commissioner Ebert is amenable to putting “wills” and “shoulds” back, particularly if they are needed to delineate prioritization for the Planning Commission. The county will continue to work towards a coordinated sewer plan. There is a struggle on how to create cluster villages and being sensitive to density. TDRs and bonus densities are great tools. His preference is to take the plan with the tools given by the Planning Commission, start the process moving forward, and review it next year or thereafter and if the anticipated return by the Planning Commission and others is not there, then look at additional tools to make that happen. Bonus density should be a component of TDRs but he is more willing to use the tools the Planning Commission has given to achieve clusters and villages moving forward.

Mr. Wheatley said that in the draft plan about creating the sewer and water plan it limits to only the boards, but those are governed by their missions, by-laws and constituencies that they serve. Far more than half of the property is not contained in those boards/districts. This needs to be a bigger net when they start talking about the overall plan.

4.

Commissioner Gibson moved to adjourn the public hearing and reconvene the public meeting; Commissioner Ebert seconded.
Commissioner Ebert – aye; Commissioner Gibson – aye; Chair Bell – aye

5. **ACTION ON PUBLIC HEARING:**

G.2.-ADOPTION OF THE 2016 OGDEN VALLEY GENERAL PLAN – RESOLUTION 28-2016

Commissioner Gibson moved to adopt Resolution 28-2016 with the following amendment: Minimal density bonuses (the exact amount to be determined by ordinance, master plan, development agreement, etc.) should only be allowed when they are granted to incentivize significant contribution to the advancement of the goals and principles found in this plan; Commissioner Bell seconded. Commissioner Ebert expressed concern with making a major change to the plan without community input and review by the Planning Commission. Chair Gibson disagreed stating that this has been part of the discussion all the way through the process of this plan, including meetings of the Planning Commission, County Commission, public meetings and work sessions, and a topic mentioned by nearly every member of the public today; the current General Plan allows for bonus densities. Chair Bell said that this has been discussed for 3 ½ years, that it is just a plan and nothing goes into effect until due process is followed and adopted by ordinance. Commissioner Ebert needed more time to review this change.
Commissioner Ebert – nay; Commissioner Gibson – aye; Chair Bell – aye

H. PUBLIC COMMENTS:

Cynthia Steadman, Eastwood Blvd. resident, noted serious problems with speeding through the residential neighborhood, the high number of vehicles using that road and the unprotected pedestrian crossings for Uintah Elementary. This is not a problem that occurs only during school hours. Residents have requested a traffic study, help from the Sheriff’s Office, and she has spoken with Chair Bell on the phone. The problem has been further exacerbated because of the Combe Road closing but even before it was closed people were driving the 25 mph zone at 45-50 mph. There are many children in that area and it is a crossing for the Elementary School. Ms. Steadman goes out daily to help students cross to the school and has almost been hit by a car. She suggested that the intersections of Eastwood and Skyline and Eastwood and Jared Way be made 4-way stops and Eastwood and 2250 E. be made a 3-way stop. Chair Bell said that there have been discussions on this issue with the School District and the Sheriff’s Office; he would like a week to follow up on this with county staff. An accurate traffic study cannot be done at this time because of temporary road closures.

I. ADJOURN

Commissioner Ebert moved to adjourn at 12:52 p.m.; Chair Bell seconded.
Commissioner Ebert – aye; Chair Bell – aye

Attest:

Matthew G Bell, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY
JUVENILE COURT**

8-30-2016
51600261

THIS AGREEMENT is made effective the 1st day of January, 2016, by and between WEBER COUNTY, a body politic of the State of Utah, hereinafter referred to as "County," and Jennifer Clark, hereinafter referred to as "Attorney."

WITNESSETH:

WHEREAS, pursuant to Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended, Weber County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty; and

WHEREAS, pursuant to Chapter 6 of Title 78A, *Utah Code Ann.* (1953) and other corresponding provisions and appellate court decisions, the County has the obligation to provide legal counsel in certain other circumstances; and

WHEREAS, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah; and

WHEREAS, Attorney is willing to represent persons in the Second District Juvenile Court when appointed by the Court in accordance with paragraphs 1(A) and 1(B) below;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained hereafter, the parties hereto agree as follows:

1. A. **Delinquency Representation:** Attorney agrees to provide competent legal counsel to any minor defendant, where the court appoints the Attorney as a result of the minor defendant or the minor's parents or legal guardians being deemed by the court to be indigent pursuant to the statutory indigency guidelines or where the court appoints the attorney as otherwise provided in Utah Code Section 78A-6-1111(1)(e), when a delinquency petition is brought by the Weber County Attorney's Office, , and the minor defendant has been charged with a delinquent act be it felony, misdemeanor, status offense, or certification proceeding. The attorney will also represent such minor defendants in juvenile court probation violations hearings, order to show cause hearings and restitution hearings.

- B. **Child Welfare Representation:** Attorney agrees to provide competent legal counsel to any legal parent or legal guardian, where the court appoints the Attorney as a result of the legal parent or legal guardian being deemed by the court to be indigent pursuant to the statutory indigency guidelines, and where the legal parent or legal guardian appears in a Weber County Juvenile Court dependency, neglect, abuse, order to show cause, or termination of parental rights proceedings brought by the Utah Attorney General's Office for the Utah Division of Family Services, pursuant to Utah

Code Section 78A-6-1111 et al.

- C. **Private Termination Representation:** Attorney agrees to provide competent legal counsel to any parent where the following criteria have been met:
- i. The parent is involved in a termination of parental rights proceeding that was brought by a private party;
 - ii. The court has made a finding that failure to appoint counsel will result in a deprivation of due process;
 - iii. The parent is indigent pursuant to the statutory indigency guidelines; and
 - iv. The court has appointed the Attorney to represent the parent.
- D. In the event Attorney is appointed to represent a client as a result of the client's indigency, Attorney agrees to promptly notify the court of any changes with regard to the indigent status of client, which changes would affect the qualifying of the client for court-appointed counsel.
2. Attorney will represent various clients that would typically be assigned to other contract attorneys when the court deems there is a conflict of interest preventing the other contract attorney from representing the client. Any such representation shall be at no additional cost to Weber County, with such assignments being made under the direction of the Coordinating Attorney.
 3. Attorney will provide the Coordinating Attorney with caseload information on a monthly basis on a form approved by the Coordinating Attorney including informing the Coordinating Attorney of any cases which have gone to trial.
 4. Attorney will seek to identify potential conflicts or complaints that persons may have against Attorney and work diligently to avoid any complaints being lodged against Attorney, and will immediately communicate to the Coordinating Attorney any complaints that may be lodged by anyone against Attorney, and work diligently to resolve any such complaint.
 5. Attorney will cooperate in the implementation of a system for the collection from Attorney of files that are closed and the storage of such files in a location deemed appropriate.
 6. Attorney will assist in the development of a list of court approved investigators and expert witnesses and make diligent efforts to utilize only those investigators and expert witnesses found on such list. If Attorney feels it necessary to utilize an expert witness or investigator who is not on the approved list, Attorney agrees to first consult with the Coordinating Attorney before making any such request of the Court.

7. **Attorney shall submit to the Coordinating Attorney an electronic copy of each and every motion, memoranda and appellate brief Attorney files. Attorney is not required to submit said copies prior to the respective due dates, but shall submit copies to the Coordinating Attorney as soon thereafter as is practicable. Attorney will not be required to submit copies of client court reports, or any other such reports, as approved by the Coordinating Attorney.**
8. **Attorney shall submit to the Coordinating Attorney an electronic copy of each request for transcripts, request for appointment of expert witness, or any other motion, request, or stipulation that will require payment by the County, and shall submit such copies simultaneously with the filing of the original documents with the Court. Attorney shall also work to ensure that such requests are necessary for case preparation.**
9. **If at any time Attorney's case load becomes sufficiently burdensome to create an ineffective assistance of counsel issue or could cause the attorney to be in violation of the Rules of Professional Conduct, Attorney shall immediately notify the Coordinating Attorney and determine a proper course of action to remedy the situation.**
10. **Attorney is expected to provide coverage for other contract attorneys when necessary and when Attorney is available to provide coverage. When possible, the attorneys should attempt to trade coverage at the time coverage is procured. When a simultaneous trade is not possible, the attorney whose calendar was covered should make reasonable efforts to reciprocate coverage for the attorney who covered for him/her upon request.**

If the Coordinating Attorney determines that the attorney who provided coverage made reasonable efforts to procure coverage from the attorney for whom he/she provided coverage and the other attorney is unwilling or unable to provide coverage within six months of the original coverage having been provided, the covering attorney shall be compensated by the attorney who was covered the sum of \$250 for having provided coverage. This amount shall be deducted from the paycheck of the attorney whose calendar was covered and added to the paycheck of the covering attorney.

11. **When Attorney will miss her regular court assignment due to trial, vacation, seminar, etc., she shall arrange with another contract attorney to cover Attorney's court. If Attorney fails to procure coverage and does not appear at her court assignment, the sum of \$600 shall be deducted from her pay and paid to the attorney[s] who provided coverage for Attorney (if, indeed, any is provided).**
12. **The term of this Agreement shall be from January 1, 2016 through December 31, 2018.**

13. Weber County agrees to pay Attorney the following amounts annually:

Basis for Amount	Amount
Child Welfare Representation	\$87,500
Child Welfare Discovery Expenses	\$300
Delinquency Representation	\$33,000
Delinquency Discovery Expenses	\$150
Total	\$120,950

Payment shall be made to the Attorney in equal monthly installments of \$10,079.17 per month. The first installment is due before the end of September 2016 and a like sum on the last day of each month thereafter through December 31, 2018.

Weber County agrees to pay Attorney at the rate of \$100 per hour for services provided in Private Termination Cases pursuant to 1(C) above. Attorney agrees to submit invoices for payment to the Civil Division of the Weber County Attorney's Office no longer than 3 months after the work detailed in the invoice was completed. County reserves the right to refuse payment for any work that was performed more than three months prior to the submission of the invoice.

14. Attorney agrees to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to Weber County evidence of the insurance. In addition, Attorney agrees to hold Weber County harmless from all damage, loss or injury it may suffer or be held liable for as a result of the conduct of Attorney.
15. Attorney agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended. Attorney agrees to keep abreast of all current legal trends and to that end shall maintain sufficient continuing professional education credits during the period of this agreement.
16. Throughout the term of this Agreement, Attorney agrees to maintain a bona fide office in Weber County, made available to the clients which she serves under the terms of this Agreement. Attorney agrees to be available and accessible to clients reasonably in advance of any hearing or trial, to make reasonable efforts to visit clients who are incarcerated, to return telephone calls as soon as reasonably possible, and to otherwise be reasonably accessible to all clients.
17. Attorney agrees to use her best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client. The parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent the person charged. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court.

18. Nothing in this agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of clients appointed under this agreement.
19. This Agreement may not be assigned by Attorney. Attorney is an independent contractor and shall not act as an agent for Weber County.
20. Weber County has established a separate indigent expense fund and will continue to fund the expense fund for the term of this Agreement. The expense fund may be used by all attorneys representing indigent defendants in Weber County. Appropriate expenses shall include, but shall not be limited to laboratory costs, transcripts, defense witness fees, and extraordinary investigator fees. Attorney will bear all other expenses in providing the services contemplated herein, including but not limited to, transportation, office, telephone, postage, copying and secretarial costs. While ensuring that Attorney's client receives an adequate and reasonable defense, Attorney hereby agrees to use her best efforts to minimize the cost and expenses to be deducted from the fund.

Before any funds are expended, Attorney shall first consult with the Coordinating Attorney, and then shall make application for approval of expenses in the form of a written motion to the trial judge and shall specify the reasons for the expense. Payment for any expense incurred by the Attorney and not previously approved by the Court, or in excess of that approved by the Court, shall be the sole responsibility of the Attorney. In the event the total court approved expenses exhaust the expense fund for the year, the Attorney shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.

21. Attorney or County may terminate this Agreement without cause upon sixty (60) days written notice to the other party. This Agreement may also be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of Attorney's license to practice law in the State of Utah, a breach of this Agreement or behavior which brings disrepute to other contract attorneys or to County. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven (7) calendar days to cure the breach or violation. Failure of the Attorney to cure the breach or violation within the specified period shall result in termination of this Agreement and the parties hereto agree that Weber County may award this contract to other legal counsel and deduct the costs from the compensation identified in Paragraph 13 of this Agreement.
22. Any notice required by this agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Weber County Attorney
2380 Washington Blvd., Suite 230
Ogden, UT 84401

FOR THE ATTORNEY:

Jennifer Clark
5829 S. 1050 E
Ogden, UT 84405

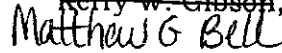
23. In the event this agreement is terminated or is not renewed, Attorney agrees to cooperate with his successor including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information and materials to the successor.
24. This Agreement can be changed, modified or amended only by written agreement of the parties hereto.
25. Attorney is an independent contractor and is responsible to pay any and all taxes and fees which may result from the compensation paid to Attorney pursuant to this Agreement.
26. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
27. This Agreement shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF the undersigned have affixed their respective signatures hereto the dates indicated below.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By 

Kerry W. Gibson, Chair




Commissioner Bell voted

Commissioner Ebert voted

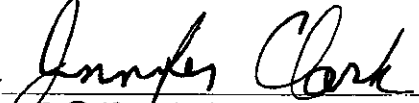
Commissioner Gibson voted

ATTEST:




Ricky Hatch, CPA
Weber County

ATTORNEY

By 

Jennifer Clark
Date August 19, 2016

INDIGENT DEFENSE COORDINATOR

By 

Michael D. Bouwhuis
Date 8/19/16