

MINUTES
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY
Tuesday, November 14, 2017 - 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.

WEBER COUNTY COMMISSIONERS: James Ebert, Kerry W. Gibson and Jim Harvey.

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

- A. WELCOME** – Chair Ebert
- B. INVOCATION** – Ricky Hatch
- C. PLEDGE OF ALLEGIANCE** – John Bond
- D. THOUGHT OF THE DAY** – Commissioner Harvey

E. CONSENT ITEMS:

- 1. Warrants #1253-1261 and #422703-422894 in the amount of \$1,465,113.16.
- 2. Purchase orders in the amount of \$120,683.24.
- 3. Surplus a 2003 Polaris Ranger from the Weber County Fleet Department.
- 4. Addendum to the Public Defender contract to handle detention hearings in Juvenile Court-M.A. Ellis
Commissioner Harvey moved to approve the consent items; Commissioner Gibson seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

F. ACTION ITEMS:

- 1. **RESOLUTION APPOINTING MEMBERS TO THE ROY WATER CONSERVANCY DISTRICT #5 BOARD – RESOLUTION 46-2017.**

Stacy Skeen, of the Commission Office, stated that there was one vacancy and one applicant reapplied.
Commissioner Gibson moved to adopt Resolution 46-2017 appointing Jay Cottle to the Roy Water Conservancy District #5 Board through 12/31/2021; Commissioner Harvey seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

- 2. **RESOLUTION APPOINTING MEMBERS TO OGDEN VALLEY PARKS SERVICE AREA – RESOLUTION 47-2017.**

Stacy Skeen, of the Commission Office, stated that for this newly organized district there were five vacancies and five applications were received from Nedra Peterson, Maureen Peterson, Nicholas Froerer, Brent Christensen, and M. Lance Quinn, all former Eden Park District members.
Commissioner Gibson moved to adopt Resolution 47-2017 appointing Nedra Peterson, Maureen Peterson, Nicholas Froerer, Brent Christensen, and M. Lance Quinn to the Ogden Valley Parks Service Area; Commissioner Harvey seconded.
Commissioner Gibson drew names for terms. For 1-year terms: Maureen Peterson and Brent Christensen, expiring 12/31/2018 and the remaining were for 2-year terms expiring 12/31/2020.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

- 3. **CONTRACT WITH WASATCH SLOPES CHARIOT RACING ASSOCIATION FOR THE WORLD CHAMPIONSHIP CUTTER & CHARIOT RACING CHAMPIONSHIPS IN 2018, 2019 AND 2020 AT THE GOLDEN SPIKE EVENT CENTER AND SPONSOR THE EVENT FOR DISCOUNTED RATES ON FACILITIES.**
- 4. **CONTRACT WITH WORLD CHAMPIONSHIP CUTTER & CHARIOT RACING ASSOCIATION TO HAVE THE WORLD CHAMPIONSHIP CUTTER & CHARIOT RACING CHAMPIONSHIPS IN 2018, 2019, 2020 AT THE GOLDEN SPIKE EVENT CENTER AND SPONSOR THE EVENT FOR DISCOUNTED RATES ON FACILITIES.**

Duncan Olsen, with the GSEC, presented these two contracts together.
Commissioner Harvey moved to approve the contracts with Wasatch Slopes Chariot Racing Association and with World Championship Cutter & Chariot Racing Association for the World Championships both in 2018, 2019 and 2020 at the Golden Spike Event Center and to sponsor the event for discounted rates on facilities; Commissioner Gibson seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

5. REQUEST TO AMEND THE BLACKSMITH VILLAGE ZONING DEVELOPMENT AGREEMENT ORIGINALLY APPROVED IN OCTOBER 2000. VILLAGE IS LOCATED AT APPROXIMATELY 2145 N. & 5500 E., EDEN

Scott Mendoza, with County Planning, stated that the applicants, Mr. Shawn Clegg and Mr. Pack, were present. He gave a brief history of this project, including that the Blacksmith Shop was constructed in 1898, has been structurally protected, is on the National Register of Historic Places and is listed in the Ogden Valley General Plan as a historic site. It is part of a 1.31-acre commercial parcel that is about 2/3 built out. The original development agreement was approved in 2000 with subsequent amendments. This amendment includes changes to the conceptual site plan, the final un-built commercial Building C (in order to replace it with the historic West Point Canning Co. building), and the proposal to extend the project completion date by five years. However, the Planning Commission and Planning staff recommend eliminating the project completion date because the two front buildings and all landscaping that interface with the public is complete. What remains to be constructed is at the back of the parcel. Commissioner Harvey would prefer including a completion date. The amendment also includes a rustic-looking water tower, retains all applicable conditions, removes all restrictions on uses, and eliminates the not more than two bay restriction for antique car restoration. He showed area maps and both current and proposed concepts and site plans. The recommendation is for approval and the only recommendation difference is that staff recommends a 50-foot tower and the Planning Commission a 40-foot one. He believes that the Planning Commission was concerned with the potential for having aircraft warning lights but the FAA's requirement starts at 200 feet.

Mr. Clegg outlined the restoration project. Their proposal is to rebuild the old canning building (from West Point) to preserve its history. Chair Ebert asked about the 50 ft. water tower and Mr. Clegg stated that it is what they prefer. They plan on a walkable area with continued landscaping. Chair Ebert asked what were the planned uses and Mr. Clegg said that it included a classic car dealership, a physical therapist, etc. Commissioner Gibson commended the applicant for being creative and adding to the community.

Commissioner Gibson moved to approve the amended Blacksmith Village zoning development agreement originally approved in October 2000, at 2145 N. and 5500 E., Eden; Commissioner Harvey seconded. Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

6. APPEAL OF AN ADMINISTRATIVE DECISION, BY THE WESTERN WEBER PLANNING COMMISSION, TO GRANT PRELIMINARY PLAN APPROVAL OF SUNSET EQUESTRIAN CLUSTER SUBDIVISION CONSISTING OF 8 PHASES, 180 BUILDING LOTS, AND 45.2 PERCENT (60.84 ACRES) OF OPEN SPACE.

Courtlan Erickson, Deputy County Attorney, noted that the Commission was acting as the appeal authority. A decision was made by the Western Weber Planning Commission (Planning Commission), acting as the land use authority for preliminary plan approval of this cluster subdivision. The appellant, Shae Bitton, has the burden of proving that the Planning Commission erred in its decision. The County Commission (Commission) must interpret/apply a land use regulation to favor a land use application unless that regulation plainly restricts the land use application, and they need to look at the facts. Based on those facts, the Commission will make findings to make their determination. Mr. Erickson recommended not opening up to public comment because no other information should come in other than what the land use authority considered. As the appeal authority, the Commission is tasked with determining whether the Planning Commission correctly interpreted and applied the plain meaning of the land use regulations. Chair Ebert summarized that the appeal process was designed to evaluate the evidence as it was presented to the original decision maker to see if the evidence they initially had was incorrectly applied/interpreted, so any additional information brought into the appeal process could then contaminate that initial process.

Steve Burton, with County Planning, stated that on 6/13/2017 the Planning Commission reviewed and unanimously endorsed the sketch plan of the project. On 9/12/2017 the Planning Commission reviewed and recommended preliminary approval of the cluster subdivision. Within 15 days of that recommendation the appellant filed an appeal.

Greg Bell, of Taylor, said that he had been asked to speak on the community's behalf and represented 400 appellants. The appeal that Ms. Bitton presented to the planning staff represented a view from several community residents that reviewed the plan. He said that the subdivision covers .17 square miles or 113 developable acres and adding 180 homes is an equivalent density of 1,059 homes/sq. mile, which is the basis for the public's concern. They found several violations to the Cluster Subdivision code, Title 108-3, and said that because neither planning staff nor the Planning Commission discovered them, the developer was granted preliminary approval, including a 45.2% bonus density.

Mr. Burton had stated at the Planning Commission that the proposed cluster subdivision met the open space with requirements of 75 ft. between clusters of lots, that it consisted of several clusters of lots not exceeding 20 lots per cluster, and that the lot size can be reduced below 15,000 sq. ft. based on the outlined criteria. Mr. Bell said that these were false and misinterpreted. In reviewing the plan, there were several places where there were not 75 ft. between cluster boundaries and other areas nor the 50 ft. between the lots and exterior boundaries. They also found that several lots were less than the minimum required 15,000 sq. ft.—code requires all the lots along the subdivision boundary formed by existing streets to be a minimum of 15,000 sq. ft. and any lots adjacent to developed parcels need to be a minimum 15,000 sq. ft., thus did not qualify for the additional reduction to 6,000 sq. ft. It was also discovered that at least in one instance the cluster had less than three lots—the requirement is three lots or more—and that there were at least two instances where a cluster had more than 20 lots. They presented this appeal to planning staff which presented the list of items to the developer. The developer made some corrections, but not all. In some cases, the lots were increased to the minimum 15,000 sq. ft. In the appellant's interpretation the subdivision boundary formed by existing streets and all lots along existing streets need to have a minimum of 15,000 sq. ft. but some have less. They changed the clusters and all now contain no less than three and no more than 20 lots and have the allowed minimum space between clusters.

Mr. Bell said that after the revision, planning staff asked the community to withdraw the appeal based on the new plat. The community did not withdraw to have more time to verify the findings and retain counsel. After review, they found that there are still lots along exterior boundaries of existing streets that are less than 15,000 sq. ft., and that there are still lots along external boundary lines adjacent to several developed parcels that actually got reduced further below the 15,000 sq. ft. on the new plat. Planning staff has now twice reached an erroneous conclusion that the development meets the intent of the land use code and twice the community has found errors and had to enforce the land use code through this appeal process at their own expense to get compliance. The Taylor community has come together and filed this appeal. He highlighted the rural nature of the Taylor community, which has approximately 630 homes. He was representing about 6.5 sq. miles, which is about a bonus density of 95 homes/sq. mile and the subject development is an equivalent bonus density of about 1,056 homes/sq. mile. This development alone increases Taylor's density by 28%, adding this to other pending developments for approval, it increases their density by over 68% within the next five years. The Taylor community feels this is unsustainable growth and creates an insane amount of impacts, some voiced at the Planning Commission include water rights usage, ground water, sewer, school, traffic and agriculture use. He referred to code for the purpose of the A-1 Zone which is to designate farm areas that are likely to undergo a more intensive urban development and setup guidelines to continue agriculture pursuits and direct low density residential development in a continued rural environment. The people in Taylor requested that the Commission utilize some discretion in granting bonus densities. They found that the Planning Commission has been granting the maximum bonus density to developers that ask for cluster subdivisions. In the last year there have been nine subdivisions proposed and every one was granted the max bonus density. Taylor residents asked the Commission to consider their right per the land use code to exercise their discretion regarding bonus densities, which the Planning Commission has not been exercising. Chair Ebert offered to have these conversations at another forum in order to focus on the subject issue.

Mr. Burton said that the appeal letter claims that the approved preliminary plan does not meet all cluster subdivision design requirements and he compared it to the approved preliminary plan and found that the subdivision was out of compliance as follows: 1) there were clusters of lots that were not entirely surrounded by open space; 2) lots located along external boundaries adjacent to developed parcels were not the minimum lot size of 15,000 sq. ft.; and 3) there were clusters of lots that contained more than the maximum amount of allowed lots. He reached out to the developer who then submitted a revised plan that meets all other cluster subdivision requirements. Staff recommends that the administrative decision to grant preliminary approval of this cluster subdivision be upheld based on the applicant revising the plan to resolve the compliance issues related to the cluster subdivision code and all items on the appeal letter having been addressed by this revision. Chair Ebert asked if the appellants had seen this new report and Mr. Burton had sent it to them. Mr. Burton clarified that the Planning Division never asked the appellant to withdraw their appeal; they simply showed them the revised plan. He showed the original preliminary plan that was recommended for approval by the Planning Commission, on which he marked the areas noted in the appeal. He also showed the revision and said that the Planning Division had reviewed it and it was all in compliance with the cluster subdivision code. The appellant had said that some of the lots along the main road needed

to be larger and only two needed to be larger because they are adjacent to a parcel with a home, some of the undersized lots were increased to 15,000 sq. ft., 75 ft. of open space was added between each cluster of lots, and now each cluster of lots does not contain more than 20 lots.

Mr. Bell said that in the revised plan the lots that were reduced in square footage are adjacent to developed lots, with one exception, and so all those lots along this boundary are still out of compliance.

Mr. Burton explained the requirement for the 15,000 sq. ft. stating that where there is no 50 ft. of open space between lots and the subdivision boundary the lots have to be at least 15,000 sq. ft. The developer shrunk lots to create open space but the number of lots remain the same in the open space. The lots in this subdivision can be reduced to 6,000 sq. ft.

Mr. Bell read from the staff report that a lot's minimum area is reduced to 6,000 sq. ft. if the lot is located 50 ft. or more from its own cluster subdivision boundary not including those boundaries formed by existing streets. He pointed out that the homes that are formed by existing streets do not meet the 6,000 sq. ft. minimum. Currently, the only 15,000 sq. ft. lots are 1, 11, 12 and 13. He read from the staff report that a lot's minimum area is reduced to 6,000 sq. ft. if the lot lies within a cluster subdivision that is adjacent to an undeveloped parcel. He pointed out all the lots less than 15,000 that are adjacent to developed parcels. Mr. Burton said that if the developer provides 50 ft. of separation, lots can be under the 15,000 sq. ft.

Mr. Bell said that there is an interpretation difference of what it means to be adjacent to the property; he believes any home and the external boundary of the cluster is adjacent to a developed lot. He said that lots 2, 3, 7 through 10 did not meet the code, "the lot's minimum area is reduced to 6,000 sq. ft. a) it has to be 50 ft. or more from a zone cluster subdivision boundary not including those boundaries formed by existing streets or internal phasing lines if they act as a temporary external boundary, 2) if the lot width lies within a cluster subdivision that is existing to an existing subdivision that contains at least one lot that is smaller or not more than 5,000 sq. ft. larger than the smallest lot line within the subject cluster subdivision. He said that in the adjacent subdivision they are all 1-acre lots. 3) the lots lie within a cluster subdivision that is adjacent to an undeveloped parcel. A parcel is considered undeveloped if it does not contain an existing dwelling or contains an existing dwelling that lies further than 150 ft. away from all external boundaries of the proposed or subject cluster subdivision. The appellants' interpretation is that these homes do not meet those requirements and those existing along streets are the exception to the 6,000 sq. ft. but code is not clear whether it has to meet all three options or to simply not meet one of them.

Commissioner Gibson said that it does not seem to be any dispute from today's discussion that there was a revision made because there were errors in the first submittal. He asked if the Commission was now evaluating the original proposal or the amended one, and that if the Commission was evaluating what the Planning Commission reviewed, then the Commission would be evaluating the original proposal. If the proposal meets the requirements now, should the developer reapply and go through the process with the Planning Commission because they only reviewed the original proposal, and if they erred in approving something that was not correct, should it go back to that body. Mr. Erickson concurred that the Planning Commission's decision was based on the original application. Commissioner Gibson felt that the appeal should be approved because the error was made based on the Planning Commission's decision, which was verified by the fact that changes were made to correct the errors, and that the item should go back before the Planning Commission.

Commissioner Harvey pointed out that the code language is not clear on the word "adjacent" and because of the issues, he did not feel comfortable taking action and recommended sending the item back to the Planning Commission. The commissioners want the code to be revised. Rick Grover, County Planning Division Director, stated that staff is currently working on this code language and that the Planning Commission realized that it makes agriculture not viable. Chair Ebert agreed with the some of the comments made by the other two commissioners. Clarity is needed on specific issues from the Planning Commission that possibly erred on what "adjacent" actually infers regarding the right to have a 6,000 sq. ft. lot rather than 15,000 sq. ft. on 4300 W., and a portion of the overall development sits directly adjacent to an undeveloped property and whether that should apply to the entire project. He said that it is an error to assume that one undeveloped piece of property that is an eighth of the size, or around the edges of the property, meets the "adjacent portion of the statute.

Mr. Bell asked for clarification on Mr. Erickson's comment that the appellants had to prove that the Planning Commission erred in their approval, and if they proved that there was an error that the Commission then was free to make their own determination. Mr. Erickson stated that the Commission could make a determination about disputed facts that may exist. Mr. Bell did not want this to go back to the Planning Commission to just rubber stamp it against the entire community.

Commissioner Gibson moved to uphold the appeal of an administrative decision by the Western Weber Planning Commission to grant preliminary plan approval of Sunset Equestrian Cluster Subdivision for the reason that there were errors made regarding lot size as presented in the original plan and to refer this item back to the Western Weber Planning Commission for additional discussion; Commissioner Harvey seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

7. RATIFY A LEASE AGREEMENT WITH FIRE & ICE PRODUCTIONS INC.

Rick Grover, County Planning Division Director, stated that this company would be using the North Ogden Divide for filming and that area would be closed for two days. Contact was made with public safety and the school district about this item. The company paid a fee for the closure and for Sheriff presence.

Commissioner Harvey moved to ratify a lease agreement with Fire & Ice Productions Inc.; Commissioner Gibson seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

8. CONTRACT WITH WADMAN CORP FOR RV HOOKUP IMPROVEMENTS AT GOLDEN SPIKE EVENT CENTER.

Jennifer Graham, with County Culture Parks and Recreation, stated that this is to complete phase 1 for the RV hookups. It will complete the water, sewer, curb, bollards and electrical conduit.

Commissioner Harvey moved to approve the contract with Wadman Corp for RV hookup improvements at the Golden Spike Event Center; Commissioner Gibson seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

G. PUBLIC HEARINGS:

1.

Commissioner Harvey moved to adjourn the public meeting and convene the public hearings; Commissioner Gibson seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

2. PUBLIC HEARING TO CONSIDER AND TAKE ACTION ON A RESOLUTION RECOMMENDING THE ANNEXATION OF A PARCEL WITHIN UNINCORPORATED WEBER COUNTY INTO OGDEN CITY.

Rick Grover, County Planning Division Director, stated that this is part of the recommendation for annexing unincorporated Weber County property on 3300 S. into Ogden City that had been omitted on 9/5/2017. Chair Ebert invited public comment and none was offered.

3. PUBLIC HEARING FOR NON-PROFIT ORGANIZATIONS AS WELL AS OTHERS TO DISCUSS POTENTIAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECTS (INCLUDING COUNTY PROJECTS).

Commissioner Ebert stated that the purpose of the public hearing is to provide citizens with pertinent information about the CDBG program and to allow for discussion of possible applications for the 2018 funding cycle. The grant money must be spent on projects benefiting primarily low and moderate-income persons. The Wasatch Front Regional Council is expecting to receive approximately \$572,000 in this new program year. All eligible activities that can be accomplished under this program are identified in the CDBG Application Policies and Procedures Manual and interested persons can review it any time. Commissioner Ebert read several of the eligible activities and outlined what past grants were used for. The county has handed out its capital investment plan as part of the regional Consolidated Plan. This list shows which projects the county has identified as being needed in the community. Chad Meyerhoffer stated that there were no non-profit organizations interested in county sponsorship at the How to Apply workshop. The County is looking into applying for funds to update the Moderate Income Plan. Andi Beadles, with the Weber Housing Authority, had been present at the How to Apply Workshop. Today Ms. Beadles stated that the Housing Authority is interested in applying for \$100,000 for property acquisition of one foreclosed property to rent to one low income household.

Chair Ebert invited public comments and none were offered.

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

5. **ACTION ON PUBLIC HEARINGS:**

G.2.-ANNEXATION OF A PARCEL IN UNINCORPORATED COUNTY INTO OGDEN CITY - RESOLUTION 48-2017.

Commissioner Gibson moved to adopt Resolution 48-2017 recommending the annexation of a parcel (08-002-0008) within unincorporated Weber County into Ogden City; Commissioner Harvey seconded.
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

G. 3.-DISCUSS POTENTIAL PROJECTS FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG).

No action was needed.

H. PUBLIC COMMENTS:

Kathy Charters, of Taylor, believes that part of their issue in Taylor is zoning in the cluster subdivision and asked how the public is notified when there is a change in zoning. Rick Grover, County Planning Division Director, stated that those changes require legislative action and outlined the process including that the item is published, and there are hearings by the Planning Commission and County Commission. At next Tuesday's Planning Commission meeting they will discuss the cluster subdivision code, which would be pertinent to Taylor residents. Chair Ebert also suggested tracking Planning Commission agendas.

Rodney Egan, of Uintah Highlands, referred to last year's discussion to increase county salaries. He just received a letter from the Fire Chief who he wants to increase taxes by 37% for the whole county to get a new heavy rescue truck, which is a very heavy hit. The Chief had stated that the truck was needed for two occasions this year—one for an airplane that went down on the freeway. Mr. Egan said it burst into flames and there was no need to rescue anything there. The other time a plate was dropped on a construction worker but they could have used the onsite equipment. Mr. Egan stated that the Fire Chief is going overboard and feels it is time to put the Fire Department back under the County Commission to get some control back. He referred to the many tax increases in our county stating that residents cannot continue to have the increases from entity after entity, and residents cannot afford to live here. He had heard that Commissioner Gibson said that there was a need for a new form of government and said it should be put to a vote. Commissioner Gibson said that it is not wrong to evaluate something that may be done better.

I. ADJOURN

Commissioner Gibson moved to adjourn at 12:14 p.m.; Commissioner Harvey seconded.
Commissioner Gibson – aye; Commissioner Harvey; Chair Ebert – aye

Attest:

James Ebert, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor