

MINUTES
WEBER COUNTY COMMISSION
Tuesday, January 9, 2018 - 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 H. "Jim" Harvey, James Ebert and Kerry W. Gibson.

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

A. WELCOME – Chair Harvey

B. INVOCATION – Christopher Crockett

C. PLEDGE OF ALLEGIANCE – Bill Ross

D. THOUGHT OF THE DAY – Commissioner Gibson

E. PRESENTATIONS:

1. PRESENTATION ON #WINNINGINWEBER.

Sasha Clark, with the Dicio Group, presented the #winninginweber initiative started by the Commission a few months ago and showed a video of the 2017 wrap-up highlighting some extremely successful areas in the community. They are averaging one video/week addressing how the general public and government is winning in Weber County.

2. PRESENTATION OF A CAREER ACHIEVEMENT AWARD TO CHIEF DEPUTY KEVIN BURTON.

County Sheriff Terry Thompson stated that Chief Deputy Kevin Burton, who will soon retire, is the type of person that gets things done and behind the scenes. He is grateful for the Chief's phenomenal work and stated that he is a shining example of the best they have to offer in his office. He read the achievements award that listed the Chief's long list of accomplishments and great leadership. Chief Burton said that he worked hard, that it had been a great career and the staff is amazing. Chair Harvey expressed his thanks.

F. CONSENT ITEMS:

1. Warrants #424453-424621 in the amount of \$1,970,980.33.
2. Purchase orders in the amount of \$265,302.77.
3. New beer licenses.

Commissioner Ebert moved to approve the consent items; Commissioner Gibson seconded.
Commissioner Gibson – aye; Commissioner Ebert – aye; Chair Harvey

G. ACTION ITEMS:

1. FINAL READING OF AN ORDINANCE MODIFYING THE FEE SCHEDULE FOR PEERY'S EGYPTIAN THEATER – ORDINANCE 2018-1.

Kassi Bybee, Ogden Eccles Conference Center General Manager, noted that this item was presented last week and there had been no changes since then.

Commissioner Gibson moved to adopt Ordinance 2018-1 modifying Peery's Egyptian Theater's fee schedule; Commissioner Ebert seconded.

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

2. RATIFY SPENDING IMPACT FEES (\$34,402.50) AND OTHER COUNTY FUNDS (\$10,000) FOR THE WOLF CREEK DRIVE PATHWAY (WOLF CREEK EDEN).

Bill Ross, of County Operations, presented this ratification to more accurately reflect how the item was listed on last week's agenda.

Commissioner Gibson moved to ratify spending impact fees (\$34,402.50) and other county funds (\$10,000) for the Wolf Creek Drive Pathway (Wolf Creek Eden); Commissioner Ebert seconded.

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

3. APPEAL OF AN ADMINISTRATIVE DECISION BY THE WESTERN WEBER PLANNING COMMISSION TO GRANT FINAL APPROVAL OF SUNSET EQUESTRIAN CLUSTER SUBDIVISION PHASE 1.

Steve Burton, of County Planning, noted that the Commission heard this item on 11/14/2017 and remanded it to the Western Weber Planning Commission (Planning Commission) for consideration of the revised preliminary plan based on the finding that the Planning Commission erred in its interpretation and application of applicable county ordinances, including lot size requirements. The Planning Commission heard this item again on 12/12/2017 and reviewed the revisions to the preliminary plan and unanimously recommended approval of the preliminary plan because they found that the revisions brought the project into compliance. They recommended final approval of the Sunset Equestrian Cluster Subdivision Phase 1.

An appeal was filed within 15 days of that decision claiming that final approval of the subject subdivision was granted without a true preliminary approval. Staff's response is that by granting approval of a revised preliminary plan, the Planning Commission gave preliminary approval. Because the County Commission remanded the preliminary plan to the Planning Commission based on these errors, the Planning Commission was only able to consider a revision based on those errors. The Planning Commission recommended approval of the revised preliminary plan because those errors were addressed.

Christopher Crockett, Deputy County Attorney, who had advised the Planning Commission in that meeting, stated that one of the requirements for this item is that there be a preliminary plan approval and this occurred on 9/12/2017. The appeal was timely filed and certain violations were alleged that included lot size requirements, development standards for lots adjacent to undeveloped parcels, and that certain clusters were not adequately surrounded by open space. The appeal clearly described the error under the county code 102-3-5 and State Code 17-27a-703(1). Before the plan even came before the County Commission there were legitimate errors in the original approval for the preliminary plan. Based on that, the Planning Division worked with the applicant in order to correct those errors and to have a revised plan submitted. That revised plan was taken before the County Commission and they determined that it would not be appropriate to evaluate the revised plan without giving a fair opportunity for the Planning Commission to evaluate those changes. The County Commission granted the appeal, reversed the September preliminary plan approval and remanded it to the Planning Commission for further action. Mr. Crockett quoted from the Notice of Decision that the decision was based on the finding that the Planning Commission erred in its interpretation/application of applicable ordinances including lot size requirements stated in county code, and while subsequent proposed revisions may or may have not corrected those errors, the Planning Commission's decision in the appeal were based on the original application and they had not yet had the chance to make a decision based on proposed revisions. He noted his respect for the arguments brought forth by the appellant in the original appeal because if those had not been brought forth a subdivision application that did not comply with the ordinance would have gone forward.

Mr. Crockett was tasked with providing advice to the Planning Commission. When this appeal was heard, it was based on the errors that were alleged by the appellant, who identified the issues that the County Commission would hear. The County Commission responded based on those allegations. Mr. Crockett interpreted the order to mean that it was not being sent back to do a completely new/start-over process but rather to determine if the errors identified by the appellant had been addressed. During the Planning Commission meeting Mr. Crockett specifically advised the commissioners to limit the review to only revisions made to the preliminary plan in order to determine if those errors that caused the reversal were sufficiently addressed and that the revisions were brought into legal compliance. The County Commission is the body that determines if that order was interpreted correctly. A legal issue for consideration is to determine if the developer had actually obtained any vested rights under the law, which would require limitation on the scope of review that the Planning Commission could undertake. State code 17-27a-508(1)(ii) states that an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use regulations in effect when a complete application is submitted and all application fees have been paid.

In his research Mr. Crockett identified an additional facet to the vesting doctrine. It has been interpreted to mean that once approval is given to an application the application is deemed to fully comply with local ordinances. The rights deemed to have vested are no longer subject to review and cannot be taken away, except in limited circumstances. This case does not fit squarely with this facet of this doctrine (because of the appeal). Technically, there has been no final approval of the preliminary plan. The Planning Division reached out to the State's Property Ombudsman for an informal opinion and the response was that in order to determine whether vesting has actually occurred, one has to look at the factual circumstances of the case and should ask what were the mistakes raised in the first appeal, how those mistakes did not comply with subdivision code, and if the mistakes were considered material or minor revisions. The Ombudsman stated that if the mistakes are minor vesting is generally considered to continue. Mr. Crockett's opinion was that the mistakes were minor and revisions could satisfy the identified errors, and he determined that vesting occurred to some degree, but that degree was up for debate. His opinion is that the developer vested and it was not appropriate for the Planning Commission to go beyond what mistakes were alleged and identified. If no mistakes remain, statute requires that the application be approved. Mr. Crockett identified another legal principle which is analogous to the best doctrine and is instructive—the doctrine of waiver. The issue before the Commission is to determine whether any remaining mistakes that were alleged in the first appeal continue or whether they have been satisfied. Because he believes there was vesting, there was no reason to reopen other issues already determined to be in full code compliance. If there are no mistakes going forward, the County Commission's decision to approve the revised preliminary plan would constitute

preliminary approval. Commissioner Ebert stated that the initial appeal was for a variety of issues, more specifically regarding lot size and it was remanded to the Planning Commission for review and, in conjunction with county planning and legal counsel, they felt that the lot size met the requirements. Mr. Crockett stated that the appellant is raising the issue that the Planning Commission only looked at the revisions, not the application as brand new and that preliminary approval did not occur and that it was inappropriate to approve the final. He reiterated that the question before the County Commission was to determine if the Planning Commission sufficiently addressed the mistakes identified and the reason it was sent back. If so, approval of the preliminary plan constitutes preliminary approval across the board. Commissioner Ebert said that the concept of law on appeal is to only review the information being sent on the appeal.

Greg Bell, of Taylor, stated that their appeal is based on the 12/12/2017 Planning Commission decision. They feel it was not a preliminary approval because the entire application was not reviewed but only small revisions to that proposal. The Planning Commission was given direction to only focus on the items specifically listed in the appeal letter and the last bullet point only mentioned the lot size requirements but there were many things pointed out at the appeal that were addressed but some were not during preliminary—mainly what it means to be adjacent to a developed parcel. He said that Commissioner Ebert had made a comment at the appeal that to assume that an undeveloped piece of property that is an 8th the size around the edges meets the adjacent part of the statute is an error and that he would like that to be addressed, but it was not addressed during the Planning Commission meeting and the planning commissioners were advised to exclude any discussion on bonus density because that was already approved, as well as the layout of the subdivision.

The appellants contend that the bonus density is directly tied to the correct application of the land use code. Mr. Bell said that the first bullet point in the appeal Decision Letter makes it clear when it states that the appeal is granted and the 9/12/2017 Planning Commission decision granting preliminary plan approval of this Subdivision is reversed. He said that it reversed the entire decision, and not only did it grant preliminary plan approval but also approved 180 building lots, 40 agricultural parcels, 50 open space common areas and 45.2% bonus density—based on meeting code intent. They feel that preliminary plan approval was incomplete/inaccurate upon reversal from the appeal authority, that vesting did not occur for the developer because the developer has yet to provide a plan that addresses all the errors identified by the appeal authority, specifically the lot sizes adjacent to parcels as well as those lots whose boundaries are formed by existing roads, and that the bonus density is not mutually exclusive and was directly tied to the compliant land use code. They proposed that the County Commission uphold the appeal reversing the granting of final approval, remand the decision to the Planning Commission to review the entire application, including the issuance of bonus densities, layout, and any other items that may need to be revised to bring the plan into compliance to applicable land use ordinance.

Rick Grover, County Planning Division Director, responded to Commissioner Ebert's questions that included the interpretation of smaller pieces of property as open space. Mr. Grover showed a map, tracing around the development that identified the different clusters in relationship to surrounding development. The Planning Commission had reviewed lot sizes, the standards for lots adjacent to vacant or undeveloped parcels, and the roads, and this met the intent of the code and so the preliminary subdivision was approved.

Doug Nosler, property owner/representing the owners, Kaysville resident, stated that this has been a challenge, that they have been working on it for over a year trying to conform with the regulations and maximize their benefit. They will not get what they planned financially but if they get cut back to the original intent, it would be financially detrimental. Commissioner Gibson asked about the comment "if we get cut back to the original intent" and Mr. Nosler said that the residents requested that they go to 1-acre minimums, assuming no bonus density would be allowed. Chris Haertel, applicant/property developer, stated that these items were originally brought up in the appeal and they complied with the concerns prior to the meeting with the county in November, and by technicality it was pushed back because they made mistakes, then addressed and readdressed them to meet the requirements and feel they have met the intent.

Mr. Burton addressed Commissioner Ebert's questions stating that this revision came before the County Commission during the appeal and County Planning's recommendation was to uphold the Planning Commission's decision based on this revised plat, which is what came before the County Commission during the appeal and is the plat that complies with all land use regulations. Commissioner Ebert noted that the interpretation from County Planning and the Planning Commission is that there are no mistakes. Specific to this appeal, he asked if there has been a mistake in the process that needs mitigating and Mr. Crockett had not identified a mistake in the process. He stated that it hinged on whether the County

Commission determined there was a mistake, if there was no mistake there is no legal reason to deny, that County Planning sees no mistake remaining and he has not been able to identify one sufficient enough to reopen the entire issue.

Commissioner Gibson said that the appellant brought up a statement attributed to Commissioner Ebert about being adjacent to other parcels and if that was specifically mentioned as something that needed to be looked at on appeal but was not at the Planning Commission. He asked if this would constitute a procedural issue. Mr. Crockett said that the Notice of Decision does not state the specific reasons for the remanding, but rather it was being remanded to address errors, “including (meaning there could be others) lot size requirements. Mr. Burton stated that when County Planning received the Notice of Decision after the original appeal was granted, there was nothing in that decision or motion that made County Planning ask the question to the Planning Commission—that the Planning Commission as well as the Planning Division inherently understood what that language was saying. The current Cluster Subdivision language defines what being adjacent to an undeveloped parcel means and it was brought up during that Planning Commission meeting. Commissioner Gibson can understand why they did not bring up items that seemed to have already been settled and he asked if the things that the County Commission asked to be revisited by the Planning Commission were appropriately done from the procedural standpoint. Mr. Burton said that they had, that the Cluster Subdivision ordinance requirements were met, that the Planning Division does not feel any procedural errors occurred and that the Planning Commission addressed the County Commission’s concerns. The bonus density could not be approved until the other items were cleared up. Mr. Burton stated that the appellant had said that 10% bonus density was granted because the Planning Commission felt the subdivision met the purpose/intent, even though it did not initially see the error.

Courtlan Erickson, Deputy County Attorney, clarified that Mr. Crockett was representing the Planning Commission in the decision made there. Mr. Erickson’s position was to be the independent legal advisor to the County Commission in this meeting. One of Commissioner Gibson’s concerns was the appellant’s statement that there were specific items mentioned by the County Commission that they wanted the Planning Commission to look at. One item was not looked at because the Planning Commission was advised not to. Mr. Erickson responded that when this item was brought back before the Planning Commission it had the revised plan and was faced with the decision whether or not to grant preliminary approval. The County Commission’s previous motion and decision in the Notice of Decision was to reverse the decision that had been made, refer it back for additional discussion/action, and the Notice listed some findings, including the lot size requirement error. The Planning Commission had made an error in interpreting and applying the relevant ordinances and it was sent back. The Planning Commission minutes clearly state that the item was remanded to review if the plan put forward after the initial appeal met the criteria of the ordinance. Mr. Erickson’s opinion is that if the Planning Commission did not address something mentioned in the course of discussion in the County Commission meeting it does not make this procedure defective. The Planning Commission looked at the application, and even if they did not address specific concerns that may have been discussed in the minutes, if the application met all the criteria of the ordinance, then the County Commission’s job is to determine if they made a mistake in approving it.

Commissioner Gibson asked if the bonus density number would change if this went to the Planning Commission now and Mr. Grover said that the ordinance’s purpose/intent talks about decreasing road sizes, clustering, etc., and it was met in the beginning of the development and meets it now, and while the open space is an interpretation call, the Planning Commission felt that it is meeting those items with the original September proposal and with the current. He noted that this was a difficult case; they had to respect the property owners’ and the appellant’s rights and the code. He said that the concern is the vesting but they feel it was there because the changes were minor and did not affect the road layout, etc., and they felt the 10% bonus density was met in both the original approval and with the small revisions. He said that the purpose and intent is somewhat vague but the Planning Commission looks at this, and the setbacks are clear. Planning staff is currently revising both the PRUD and the Cluster Subdivision ordinance.

Commissioner Ebert moved to uphold the Planning Commission’s recommendation to deny the appeal of the administrative decision by the Western Weber Planning Commission to grant final approval of Sunset Equestrian Cluster Subdivision Phase 1 because it clearly states in the Planning Commission minutes that they based their motion upon review of the original plan and then changes made to meet statutory requirements; Commissioner Gibson seconded stating that it is based on legal counsel’s advice regarding the discussion of whether the proposal meets the code at this time, and it does.

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

4. **CONTRACT WITH BROKEN HEART RODEO TO HOLD THE INTERMOUNTAIN ICEBREAKER HIGH SCHOOL INVITATIONAL RODEO AT THE GOLDEN SPIKE EVENT CENTER (GSEC).**

Duncan Olsen, GSEC Division Director, presented this contract.

Commissioner Ebert moved to approve the contract with Broken Heart Rodeo for the Intermountain Icebreaker High School Invitational Rodeo at the GSEC; Commissioner Gibson seconded.

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

5. **CONTRACT AMENDMENTS WITH THE FOLLOWING FOR INDIGENT DEFENSE AND JUVENILE COURT ATTORNEYS:**

ANDREW HEYWARD	JONATHON PACE
AMMON NELSON	MARY ANN ELLIS
CAROL MORTENSEN	RICHARD WILLIAMS
JENNIFER CLARK	

Bryan Baron, Deputy County Attorney, stated that Chair Harvey had worked very hard for over six months to find a long-term solution to provide coverage at detention hearings. The indigent defense attorney's submitted a counter proposal to the county's—they will each contribute \$100/month to have Ms. Ellis cover those hearings. Their contracts reflect that. He noted the two changes to Mr. Hayward's contract—he no longer has juvenile drug court and he will receive an additional \$935/year to correct last year's contract. Chair Harvey commended Mr. Baron on an awesome job. This solution is fiscally responsible.

Commissioner Gibson moved to approve contract amendments with the following for indigent defense and Juvenile Court attorneys as listed above; Commissioner Ebert seconded.

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

H. PUBLIC COMMENTS:

Greg Bell, of Taylor, asked about the process to incorporate all of the western Weber County stating that there is a group interested in incorporating. Mr. Crockett will speak with Mr. Bell regarding incorporation. Mr. Bell thanked the Planning Commission and the Planning Division for their efforts to revise the Cluster Subdivision. They have reached out to him several times and good progress has been made on that code. He will attend tonight's Planning Commission meeting. He asked that the bonus density be reduced to a maximum of 30%, currently it is 50% and this only benefits large developments. This would help to maintain more agricultural parcels. Most of the time smaller developments receive less than 5% bonus density and without any agricultural preservation. Commissioner Gibson feels that there should be opportunities to drive positive behavior regarding bonus densities and would like Planning staff to consider lowering figures to be more representative of the lower and upper valleys wishes. Planning staff is currently having these discussions. Commissioner Ebert noted that the western Weber County could create a special district to provide some of the services and he encouraged public involvement.

Lori Brinkerhoff, of Hooper City council, stated that there was great discussion today on the Cluster Subdivision Ordinance, the clarification of bonus density, preservation of open space, etc., that will go forward. She appreciates the manner the county commissioners professionally addressed the issues, which need to be addressed so that they are clear, and that guidance needs to come from Weber County and not outside sources.

Commissioner Harvey commended Mr. Bell for his work and the civility by which he accomplished the work. The county will continue to work to improve.

ADJOURN

Commissioner Gibson moved to adjourn at 11:47 a.m.; Commissioner Ebert seconded.

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

Attest:

James H. "Jim" Harvey, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor