

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

Tuesday, April 5, 2011 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens 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 PRESENT: Jan M. Zogmaister, Chair, Craig L. Dearden and Kerry W. Gibson.

OTHERS PRESENT: David C. Wilson, Deputy County Attorney; Douglas Larsen, of the Clerk/Auditor's Office; and Fátima Fernelius, of the Clerk/Auditor's Office, took minutes.

A. WELCOME - Chair Zogmaister

B. PLEDGE OF ALLEGIANCE - Fátima Fernelius

C. THOUGHT OF THE DAY - Commissioner Gibson

D. PRESENTATION OF A PROCLAMATION RECOGNIZING APRIL AS PARKINSON'S DISEASE AWARENESS MONTH AND APRIL 11 AS PARKINSON'S AWARENESS DAY

Chair Zogmaister read the proclamation and presented it to LaMar Sayer, who accepted it for the American Parkinson Disease Association. Mr. Sayer stated that he was diagnosed with the disease in October and had not known much about it at that time. Utah has the highest percentage of Parkinson's disease per capita in the nation. He expressed thanks to the Commission for spreading its awareness. Many suffering with the disease are not aware of the services and support programs available.

E. CONSENT ITEMS:

1. Purchase Orders in the amount of \$547,030.54
2. Warrants #272575-#272807 in the amount of \$322,758.48
3. Minutes for the meeting held on March 29, 2011

Commissioner Dearden moved to approve the consent items; Commissioner Gibson seconded, all voting aye.

H. PUBLIC COMMENTS:

Sharon Zini, of Huntsville, spoke about item F.2. She requested that before the commissioners establish an administrative control board for the Ski Lake Special Service District that they conduct a financial audit of Mountain Sewer's books for any questions that may arise in the future on financial issues associated with running that sewer company.

Larry Zini, of Huntsville, spoke about item F.2. If Mountain Sewer system users are forced into a control board to replace the County Commission, they request that the existing contract referred to in the 3/30/2011 draft that states "shall be subject to the management agreement" be reviewed for validity. He asked if it is a valid contract because according to Chris Allred, Deputy County Attorney, the second contract of 2004 was not recorded, and if the users can bring a lien against Mountain Sewer if it defaults or is negligent. He asked the commissioners to examine that before any decision is made because that may negate the whole contract and the board may not have power of enforcement. If a decision is made, they want it in writing that it is a valid management agreement and the lien portion to apply.

Frank Cumberland, of Huntsville/customer of Mountain Sewer, spoke about item F.2. He feels that it is ill grace to suggest that this special district, in its current mess, be dumped in the users laps and asked that the item be tabled pending a meeting and that something be done by the Commission to rectify the situation before turning it over to anyone.

Gary Nate, of South Ogden, spoke about item F.4. He has worked with most helicopter operations in the world and has flown with Diamond Peaks Heli-Ski Adventures, who have an excellent safety approach and he supports the heliport.

Marsha Smith, of Huntsville, spoke about item F.2. She referred to the related draft dated 3/30/2011, Section 2-2.1a that states the district delegates to the board rights and powers that include the right to sue and be sued. She is interested in serving on the board but will not work on a board where she can be sued.

Steve Clarke, of Eden, spoke to item F.4 regarding the heliport and asked that the County Commission support the Planning Commission's thoughtful approach to this issue. They considered it with a great deal of public input for about one year, an extraordinary length of time to study and collect information. The suggested methods of reducing noise levels and disturbance to residents, domestic livestock and wild game are expected to only make a minimal difference. There are alternate sites in the Ogden Valley; this may require additional use permitting because the Recreation Resort Zone Ordinance does not allow flying a helicopter in/out of a resort. Snowbasin Resort has been working with Craig Olsen, appellant, using Snowbasin's lower parking lot with significantly less disruption to the Valley. When Valley residents consider preferred sites, the gun range at the base of Avon Divide is often suggested as a location that will create less disruption to the Valley. There are about 17 CV-2 Zones in the Valley and the applicant can request a rezone for a parcel that will have much less impact on health, safety and welfare to the majority of residents than the current proposal. An application was submitted to remove heliport as a conditional use from the CV-2 Zone and Mr. Clarke supports it. A location could be considered to be zoned for small aircraft in the Valley. Mr. Clarke wishes the appellant to succeed, but this site is just a poor choice.

Dakota Hyde, of Eden, spoke to item F.4, expressing support for the conditional use permit. He is a member of the Weber County Search & Rescue team and said that for many years Mr. Olsen, appellant, has helped with emergencies such as avalanche control. Heli-skiing is a very unique opportunity and he feels the proposed location is good for a conditional use permit. Diamond Peaks flies seasonally. He feels it makes no significant disruption.

Audrey Carver, of Eden, stated that her property is 300 feet from the proposed site. As a small business owner she understands the importance of running a good business and wants this use in the Valley if it truly is a benefit to most of the Valley residents. She believes there is a better site that will benefit the appellant, the residents and small business owners who want to live in a quiet valley. The proposed site affects most of the Valley residents--no matter how they fly in and out.

Lee Schussman had spoken with many Valley residents concerning the heliport. He emphasized the noise problem. There is a report to Congress that many communities in the country are trying to deal with noise pollution. Safety is also an issue. There was a fatal helicopter crash from the same helicopter company some years ago. Landing/taking off in a helicopter in a heavily populated area is not a wise decision. They can find a better location and residents can support that business if it is run reasonably. He urged the Commission to support the Planning Commission's decision.

Jeff Hyde, of Eden, spoke about item F.4 expressing support for Diamond Peaks, which has flown in the Valley for 20 years and is a safe business. He has flown with them for 20 years and they fly directly over his home. He said there are other places to fly out of but it adds to the community.

Shana Francis, of Eden, spoke about item F4. She feels there is a bias from the Hydes who spoke earlier because of family ties. She opposes placing the heliport in downtown Eden. She worships in a church near the proposal and helicopters are very disruptive. She stands in agreement with the other issues raised in opposition to the heliport in the center of Eden.

Richard Webb, of Liberty, spoke about item F.4. He asked the County Commission to support the Planning Commission's recommendation that the item be denied. He expressed concerns with this particular site for a heliport and stated that it is not in the best interest of the Valley citizens due to its proximity to a school, a church and small businesses. He was in charge of 100 helicopters in military service. There are problems and things go wrong. They also make a lot of noise, which degrades real estate values--people are not interested in property where there is significant noise, and it has a negative impact on businesses. He is an avid skier and supports this but not in the center of Eden.

Steve Grow, of Weber County, spoke in support of the heliport (F.4.) He said that there are very expensive properties around McKay Dee Hospital and helicopters fly over them much more frequently, that Diamond Peaks has flown about 12 days this year. Regarding disturbing wildlife, he said that animals can adjust to those things, but it is people who cannot. He said that the real issue is that people want their own peace and privacy and do not want anyone to infringe on it.

Jim Smith, of Eden, spoke about item F.4. He is a small business owner in the Valley and residents are not against businesses or economic development; they are asking that the Commission carefully consider this appeal and not approve the request in item F.4 because it is not a smart decision. The Valley has a lot of open space and there are better sites to be considered. This location is in close proximity to residents, a middle school and a number of businesses where people congregate. He urged the Commission to use good judgment.

Ron Rubin, co-applicant with Diamond Peaks, said he echoed most of Mr. Grow's comments. The only zoning that allows a conditional use for a heliport is the CV-2 Zone, which is in the middle of the Valley or in small strips in other locations. He said he had support from a lot of people including about 100 signatures on a petition. He said that this had minimal impact--they have flown 13-14 days this year. He had heard a lot of untruths about this.

Bill Christensen, of Liberty, owns commercial property adjacent to the proposed heliport. Mr. Christensen stated that Mr. Rubin does not speak for him. He does not support this facility in this location. It is a safety issue, not a profit issue. When the ordinance was written, there was nothing around there and the conditions were quite different. It is more heavily populated now. Regarding mitigation--using quiet helicopters--he said there was no such thing. Even if there is mitigation, who will enforce flight days and flight plans--the county cannot even enforce the sign ordinance in the Valley. He asked that if the County Commission decided to go against most of the Valley citizens and the Planning Commission's recommendations, is there a way to allow it for one year. He stated that Craig Olsen was already operating, out of Snowbasin. The proposed location is the most obnoxious spot. People are not inclined to purchase property in such areas. He said that people eating out on the deck of his facility would not be able to enjoy their meal in the quiet they have now.

Kirk Langford, of Eden, spoke about item F.4, stating that there had been a lot of discussion about the topic. He is an advocate of heli-skiing but not in the proposed area. All the stake holders agreed that heli-skiing should take place in the resorts where the helicopters takes off from the base of the resorts and fly to the peaks to ski, and on an appropriately made helipad. They do not feel it is appropriate for helicopters to take off from the village centers or the Valley floor in makeshift helipads. He has done a lot of heli-skiing and has never seen a helicopter service operate out of a village center, in and out of a residential area and so close to hotels, restaurants, etc. Normally, this is done out of town in an isolated area in a professionally built helipad. Heli-skiing is an inherently dangerous sport and Diamond Peaks in the mid 1990's lost a helicopter by pilot error and killed the four people on board. He noted that accidents have occurred in other places. The Planning Commission was correct to determine that there is no way to mitigate the effects of a helicopter taking off/landing from residential and commercial areas. He did not agree with them flying around the wildlife habitat. He felt this request was preposterous--that an operator could ask to fly out of a populous center. He asked the County Commission to stand behind the residents and the Planning Commission and keep this proposal out of the residential valley and that the operator go to the base of ski resorts.

Rod Carter, of Eden, resides south of the heliport proposal, item F.4. He runs a small business there-- a petting farm. If this goes through it would likely put them out of business because the helicopters would have a definite impact on the animals, and they are entitled to their business opportunities. He asked who would pay the bills if an animal runs through a fence, gets injured, etc. He said that other sites should be researched and addressed negative property values.

Phil Eimers, of Eden, spoke to item F.4. He resides about 350 yards from Red Moose Lodge, the proposed heliport site, and is close enough for it to be a horrendous annoyance to his family and a significant distraction to Snowcrest Middle School students. His family moved to the Valley 17 years ago to take advantage of the quiet, rural atmosphere, devoid of the horrendous noise pollution of Salt Lake City, and they commute to work over 100 miles daily. A recent study by the FAA reports the annoyance factors of helicopters being more distracting in rural areas than the same decibel level in populated areas. He said that it was purported economic benefit to the local economy because Diamond Peaks' customers would not need to purchase ski lift tickets from any of the local resorts because they mainly ski out of bounds, yet there would be income loss to local merchants. Mr. Eimers said that the incident of helicopter crashes is significantly higher than fixed wing aircraft and there was a history of a crash with 4 fatalities by this company. As long as the petitioner has been promising to investigate alternative landing sites it seems counterintuitive that he would persist on putting at risk those who live and work in the most concentrated area of their tiny community. He asked the County Commission to uphold the majority decision of the Planning Commission and deny the request to put a private helicopter in the center of Eden and to protect the residents from unnecessary risk and horrendous annoyance.

Steven Smith, of Eden, spoke in opposition to item F.4. He did not want the heliport in that location for all the reasons already noted. He has a love for helicopters and visited the Diamond Peaks site. He witnessed at least 3-4 major violations concerning transportation and fueling for the aircraft--a 400 gallon jet fuel line across the lot unattended, and the parked truck, facing the wrong direction, was on a public road, in front of a hotel. Speaking of the extreme noise, he noted that helicopter riders use earphones not only for communication but to block out the extreme noise.

Chair Zogmaister noted that about one hour had been dedicated to public comments and expressed appreciation to those commented.

F. ACTION ITEMS

1. **CONTRACT WITH ROCKY MOUNTAIN GUN SHOW FOR A GUN AND AMMO SHOW AND SALE TO BE HELD AT THE GOLDEN SPIKE EVENT CENTER APRIL 16-17, 2011 - CONTRACT C2011-42**

Jim Harvey, GSEC, presented this standard contract.

Commissioner Gibson moved to approve Contract C2011-42 with Rocky Mountain Gun Show for a gun and ammo show and sale to be held at the Golden Spike Event Center April 16-17, 2011; Commissioner Dearden seconded, all voting aye.

2. **REQUEST FOR A RESOLUTION OF THE BOARD OF WEBER COUNTY COMMISSIONERS ESTABLISHING AN ADMINISTRATIVE CONTROL BOARD FOR THE SKI LAKE SPECIAL SERVICE DISTRICT**

Chair Zogmaister noted that many had made comments on this item. Commissioner Dearden asked David Wilson, Deputy County Attorney, to address the comment that the agreement was not recorded. Mr. Wilson explained that recording the agreement does not invalidate the agreement, but that recording the agreement is important to ensure that other parties are on notice of the lien against Mountain Sewer property. A lien document could be done separately. A lien would allow the board of the district to take over the facility if necessary to continue operations. That item was in the first contract in 1998 to ensure some recourse for the facilities.

Mr. Wilson referred to the comment about the administrative control board being sued. He noted that there are no guarantees that the board would not be sued as that may come with the governing process. He explained that there are certain questions that need to be addressed in regard to liability such as whether the board could be insured through the county or if they must procure their own insurance. It will also be important to determine what is the source of funding for such expenses.

He gave some history about this item: In 1998 DEQ felt there were too many private sewer and water facilities and were concerned that they were not being maintained appropriately. DEQ would not allow further development without a backup from a governmental entity and Mr. Catanzaro approached the County Commission, which created a district, acting as the board. The Commission had the option of appointing an administrative control board. Mr. Wilson addressed Chair Zogmaister's question regarding State requirements stating that it is appropriate for the Commission to look at the financials before taking action.

Chair Zogmaister stated that a meeting had been held where many users and those who could address issues were present. Not all issues were resolved, but efforts have been made. She noted that the system users had felt they were kept in the dark and felt mistrust; there was lack of information. The commissioners want the users to be in control their system. They believe that a quorum of five would best serve the district. This item was held to research the agreement, the lien issue, the financials, etc.

Commissioner Gibson moved to hold this item pending receiving information regarding the agreement, the lien issue, financials, etc.; Commissioner Dearden seconded, all voting aye.

2. RESOLUTION OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY APPOINTING A MEMBER TO THE NORTHERN UTAH REGIONAL LANDFILL AUTHORITY - RESOLUTION 6-2011

Gary Laird, County Solid Waste, noted that this resolution was to add Commissioner Gibson to the board.

Commissioner Dearden moved to adopt Resolution 6-2011 appointing Commissioner Kerry W. Gibson to the Northern Utah Regional Landfill Authority; Commissioner Gibson seconded.

Roll Call Vote:

Commissioner Dearden	aye
Commissioner Gibson	aye
Chair Zogmaister	aye

4. CONSIDERATION AND/OR ACTION ON AN APPEAL OF THE OGDEN VALLEY PLANNING COMMISSION DECISION DENYING A CONDITIONAL USE PERMIT (CUP 2010-04) FOR A PRIVATE HELIPORT LOCATED AT THE RED MOOSE LODGE IN EDEN, LOCATED AT 2547 NORTH VALLEY JUNCTION DRIVE

Ben Hatfield, of the County Planning Division, stated that the owners of Red Moose Lodge in conjunction with Diamond Peaks Heli-Ski Adventures are appealing the denial of their request by the Planning Commission on 2/22/2011 for a conditional use permit for a private heliport.

The proposed use would be located in a CV-2 Zone. The site plan and conditions meet the requirements of the zone. This item went before the Planning Commission three times. On 2/22/2011 the applicant returned with a number of responses, which are included in the staff report. At that meeting the Planning Commission voted to deny the request by 5-2 vote because the noise and vibrations cannot be mitigated in the center of the community and over the most populous area of Ogden Valley. Therefore the petition does not qualify under the criteria in the Zoning Ordinance, Chapter 22C-5, more specifically items #2 and #5: 2) that such use will not, under any circumstances be detrimental to the health, safety and general welfare of persons nor injurious to property in the community, but will be compatible with and complimentary to the existing surrounding uses, buildings, and structures when considering traffic generation, parking, building design and location, landscaping, and 5) that the proposed use will not lead to the deterioration of the environment or ecology of the general area, nor will produce conditions or emit pollutants of such a type or such a quantity so as to detrimentally affect, to any appreciable degree, public and private properties including the operation of existing uses, in the immediate vicinity of the community or area as a whole. The Planning Commission stated their personal reasons for findings, which are included in the staff report. The appellants feel that they provided sufficient evidence to establish that the application meets and complies with the regulations and conditions.

Chair Zogmaister asked if the Recreation Resort Ordinance allows this as a conditional use. It allows a helistop as a conditional use, for operations within the resort boundaries. The applicants fly to private property in Cache County and this site would not qualify for what they wish to achieve with their business.

Commissioner Gibson asked Mr. Hatfield to point out the remaining CV-2 Zones in the Valley. He asked if the CV-2 Zone is the only zone that allows a heliport and Mr. Hatfield stated that it is. He noted that there are different locations of CV-2 zones in the Valley and pointed them out, stating that there are some in Huntsville, Liberty, Wolf Creek and Eden. There is some commercial zoning near Powder Mountain but not any CV-2 zoning.

Commissioner Gibson attended one Planning Commission meeting on this issue. The petitioner had looked at other sites that he felt were favorable and Commissioner Gibson asked if they would fit under the current zoning. Mr. Hatfield said that the Weber State parcel is currently zoned F-40 and the property near Snowberry Inn is FV-3. The property near the gun range at the base of Avon Divide does not allow a heliport nor the properties around Wolf Creek. Chair Zogmaister noted that we had now heard today that this business has been operating from 17 to 20 years and asked where they have been operating. Mr. Hatfield stated that was a question for the appellant but that he probably has been flying from different properties but not complying with the ordinance.

Chair Zogmaister summarized the common thread heard today--for the most part people support heli-skiing and support business in the Valley, but then quickly state that this is just not the right location.

Craig Olsen, appellant, stated he has been flying over 21 years. He bought the company after the accident and has been accident-free since then. Mr. Rubin has invited him to fly from the Red Moose Lodge. He said they have met or exceeded the requests to mitigate, including flying elevations over town of 2,000 feet, which they can achieve before crossing buildings. They have flown 16 completed daily tours this year, a couple from Snow Basin for a movie shoot, all others were out of the airport at Mountain Green. The average flight time per day was 3.19 hours for heli-skiing and he has three scheduled tours the rest of the month. They have flown out of Moose Lodge 2-3 times. They did not intend to only ski from Red Moose Lodge; they also fly out of Park City. They submitted over 400 pages of documents from DWR on interactions with helicopters and animals and he said that they are aware of how to deal with animals. They would like to have the service for Mr. Rubin's hotel and the service supports the food shops there. They would not necessarily fly from there all the time. Mr. Olsen said that there are four owners that fly out of the Valley and about ten fixed wings that launch off roads and fields. He said that they have support and businesses want them there. The guests that bring families buy ski passes and rent equipment.

Chair Zogmaister stated that this item came before the Commission last year and they extended some time for them to operate based upon the condition that they find a better location, and she asked if they had taken any serious action. Mr. Olsen said that they have held meetings and are in the process of putting together a plan to partner with Weber State, are working issues with Powder Mountain, that Snowbasin would like to have them there but has issues to work out, and they have been working with the Jones family. Commissioner Gibson had heard the same things at the Planning Commission meeting, that Mr. Olsen was looking, and asked what was different. Mr. Olsen said that Weber State has its own timeframe to deal with. Chair Zogmaister said that to have a location for a business is a critical point and that would be at the top of her list.

Regarding the comment to approve this for one year, Commissioner Dearden noted that once a conditional use is approved that it runs with the land. Commissioner Gibson asked if the Commission had granted a temporary permit a year ago and Chair Zogmaister responded no, that they did not have a permit but were allowed to temporarily continue their activity and were encourage to find a more suitable location.

Commissioner Gibson appreciated everyone's participation. He has tried very hard to understand the issue and has visited the area but did not see the helicopters in action. He said that the operators should have the right to operate within the law but there are reasons for the zoning ordinances--to make sure that the uses are compatible. If a conditional use is granted, it needs to be consistent with existing uses and he has serious concerns that in this particular location that is not the case or that

adequate mitigation can occur, particularly due to the unique area and the way the noise would affect the residents. He is concerned with the compatibility to existing uses and is inclined to support the Planning Commission's recommendation. He believes there are appropriate sites and encourages the operators to find another location.

Chair Zogmaister is supportive of this business, and when they came before the Commission previously stating they did not have time to obtain a permit and asked for some time, she had been hopeful they would do so. However, she does not feel this is the appropriate location. She supports the Planning Commission's recommendation and findings and suggested that perhaps the Recreation Resort Ordinance should be reviewed to see if it can be amended to allow this use.

Commissioner Gibson moved to uphold the Planning Commission's recommendation stating that they had thoroughly researched this issue and tried to work with the petitioner but the detrimental effects could not be reasonably addressed. Commissioner Gibson noted that he did not believe that the business was complimentary to the existing surrounding uses and also noted that the petitioners have not been able to show how they can mitigate to an acceptable level the detrimental effects of the proposed use in this location. He agrees with the comments of the two commissioners and believes that this use can go in the Valley, but not in this location. He read Utah Code 10-9a-507, Conditional Uses; Commissioner Dearden seconded, stating that there are other alternatives and it may take a rezone to be successful. All voted aye.

G. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, APRIL 12, 2011, 10 A.M.

I. ADJOURN

Commissioner Dearden moved to adjourn at 12:10 p.m.; Commissioner Gibson seconded, all voting aye.

Jan M. Zogmaister, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor