

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

Tuesday, August 9, 2011 - 10:00 a.m.  
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, and Kerry W. Gibson. Craig L. Dearden was excused.

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

**A. WELCOME** - Chair Zogmaister

**B. PLEDGE OF ALLEGIANCE** - Sean Wilkinson

**C. THOUGHT OF THE DAY** - Commissioner Zogmaister

**D. CONSENT ITEMS:**

1. Purchase Orders for \$319,552.08
2. Warrants #276705- #276895 for \$865,167.34
3. Minutes for the meetings held on July 26 and August 2, 2011
4. Refund overpayment for 2010 property tax on parcel #16-144-0001

Commissioner Gibson moved to approve the consent items; Chair Zogmaister seconded, both voting aye.

**E. ACTION ITEMS:**

1. **FINAL READING OF AN ORDINANCE ENACTING A NEW ORDINANCE GOVERNING THE DUTIES, OBLIGATIONS AND OPERATIONAL PROCEDURES OF THE COUNTY PURCHASING AGENT AND AMENDING PROCEDURES, RULES AND REGULATIONS RELATING TO PROCUREMENT, SURPLUS PROPERTY DISPOSAL AND RELATED FUNCTIONS - ORDINANCE 2011-12**

This item was presented last week and there have been no changes since that time.

Commissioner Gibson moved to adopt Ordinance 2011-12, final reading of an ordinance of Weber County enacting a new ordinance governing the duties, obligations and operational procedures of the county purchasing agent and amending procedures, rules and regulations relating to procurement, surplus property disposal and related functions; Chair Zogmaister seconded.

Roll Call Vote:

Commissioner Gibson .....aye

Chair Zogmaister .....aye

2. **REQUEST FOR APPROVAL OF A TEMPORARY EXCEPTION TO CONTINUE TO ALLOW A TEMPORARY TRAILER FOR A SHORT TERM VENDOR AT 2612 N. HWY. 162**

Ben Hatfield, of the County planning Division, stated that the temporary vendor permit for "Pat's Place" in Eden expired in July 2011, of which the county informed the applicant. Subsequently, the applicant has learned of the requirements to become a permanent business owner at that location.

Chair Zogmaister quoted from the Zoning Ordinance, Chapter 31, "Such temporary exception may be granted upon the County Commission determining that such a temporary exception is justified because of some extraordinary or emergency situation or act of God situation, and that the health, safety, convenience, order and welfare of the inhabitants of Weber County will not be substantially affected." She asked if the request met this criteria and Mr. Hatfield responded that staff does not believe it does.

Pat Brennan, applicant and owner of Pat's Place, stated that he obtained the 120-day temporary permit to test the market without putting a lot of money into it. At that time, he started the site plan process for a permanent strip mall. Bank of American West held the note on the property but it went out of business and the FDIC took it over. In January they called the owners of the property (Mr. Brennan is the lessee of the property) stating that they got the note back and it sold through a Chicago bank, which would be contacting them. He applied for the 120-day temporary permit under the assumption he would have the note back and would be able to move forward. They did not get the note back until July 2011. He is now trying to get a site plan, the appropriate approvals, etc., for a permanent structure and needs the extension to continue to operate and stay solvent until the plan receives approval. He said it was out of his control to force the property owners to proceed faster than they did--they had to wait until they had the note back. Many locals eat at his establishment and he does not want to lose the clientele and to lay off three Eden residents if the exception is not granted.

Chair Zogmaister expressed concern with the pattern that Mr. Brennan has followed by not proceeding according to the county ordinances for opening a business and said that he was again asking the Commission to circumvent the process to allow him more time. Greg Anderson, who came with the petitioner, said that the circumstances relating to the property were extraordinary. Mr. Brennan stated that he is the lessee of the property and has no control over the property owners who had told him they would have the note back and that he could continue. He would otherwise have had the site plan in the process by now.

Chair Zogmaister asked if there was anything in the 120-day period preventing him from moving forward and having the necessary steps in place and Mr. Brennan responded that the property owners were not certain initially that they would even own the property. She asked if the applicant had submitted anything in that 120-day period and Mr. Hatfield replied he had not.

Commissioner Gibson asked how quickly this item could move forward and Mr. Hatfield explained that the applicant would have to go through the site development process, the additional improvements would have to be bonded for, the plan approved by the Planning Commission, and the foundation built for the building, which includes dealing with some building code issues. Chair Zogmaister noted that there was the possibility the applicant would be back before the Commission for another extension and Mr. Brennan agreed.

Mr. Hatfield addressed the commissioners' questions, expounding on the temporary exception regulations and stating that a temporary vendor permit is allowed a 120-day period, which calls for following the conditional use process. He said that it did not appear further extensions are allowed after the second 90-day extension. Chair Zogmaister expressed concern with setting a precedent for businesses that do not wish to go through the ordinance process, that obtain a temporary vendor permit, then obtain the 120-day exception and drag out the process. She stated that temporary exceptions are to be granted only under extraordinary circumstances.

Commissioner Gibson noted that the applicant is asking for a 90-day extension and asked if the county could grant a lesser amount of time and Mr. Hatfield said that the ordinance states “not to exceed three months.”

Commissioner Gibson moved to grant a 30-day temporary exception to continue to allow a temporary trailer for a short-term vendor at 2612 N. Hwy. 162; Chair Zogmaister seconded. Commissioner Gibson voted aye; Chair Zogmaister voted nay.

Chair Zogmaister highly encourages this business in the Ogden Valley and recommends the applicant to go through the ordinances and procedures in place.

### **3. REQUEST TO WAIVE BUILDING PERMIT, PLANNING AND IMPACT FEES ON THE WEBER SCHOOL DISTRICT PAVILION LOCATED AT THE ENVIRONMENTAL CENTER ON SHAW DRIVE**

Craig Browne, of County Building Inspection, stated that the Weber School District will build an 1,800 square foot pavilion at the Environmental Center and sent a written request that fees be waived. He said that Curtis Christensen, County Engineer, did not feel the impact fees should be waived and Mr. Browne had calculated fees only for the area that will be impacted, reducing the fees to \$1,993.10. The storm water fees for the entire area would have been \$881,562.

Mr. Browne said that the only entity the county has waived impact fees was the Weber County salt storage shed in Ogden Valley because there was no impact. When the School District built a new school in Eden, the county reduced fees but no building permit was issued, therefore no fees were charged. Commissioner Gibson asked that since the county owns this property and the School District owns the buildings, who is responsible for the impact fees. Mr. Browne said that it is the property owner’s responsibility. Mr. Christensen clarified that impact fees are assessed because of impacts which are created by the owner or the user, which can be a renter/lessee, thus generally whoever constructs the building pays the impact fees. From training Mr. Christensen received, unless it can be shown there is no impact, the fee needs to be assessed, regardless of whether it is a school, church, etc. Mr. Christensen is not aware of any time that these fees have been waived, with the exception of the salt shed because it was shown there was no impact.

There are about 159 acres at this site and fees were calculated for the half acre site, and includes the parking area. Chair Zogmaister asked if the District would have to pay impact fees if it built in other areas and Mr. Christensen said that would need to be reviewed. She felt that the issue should be reviewed for impact with each proposed building. David Wilson, Deputy County Attorney, asked if the county has an underlying lease with the District for this property that defines the terms of their use and Jim Gentry, of the County Planning Division, said that the agreement was approved in 1977. The District built a shed on the property to store snowcats, etc., 1-2 years ago and he asked Drew Wilson, representing the District, if the District had paid impact fees. Drew Wilson responded that they did not, that they requested the county to waive them. County legal counsel read from the lease that “buildings, structures and other improvements constructed by lessee for the purpose herein described shall be approved by the Weber County Commission and the cost of such building structures or improvements shall be at the expense of lessee.” He said that the District is responsible for all the costs associated with the project.

Mr. Christensen explained that there are two parts to the impact fee: 1) storm water, which is based on the area, and 2) roads, which is based on the size of the building. The half acre could include the storage area facility but does not include the actual size of the building. Mr. Christensen addressed Commissioner Gibson’s question stating that building permit fees and land use fees have been waived on occasion but not impact fees, they are governed by State law which states that they will be assessed.

County legal counsel stated that the Commission has the discretion of waiving the fees but asked that they give careful consideration because other entities may come requesting the same thing. Commissioner Gibson said that it is important for the county to be consistent.

Commissioner Gibson moved to hold this item (to waive building permit, planning and impact fees on the Weber School District Pavilion at the Environmental Center) until next week with the direction that county staff research what waivers have been granted in the past and what precedent has been set; Chair Zogmaister seconded, both voting aye.

**4. ACTION ON AN ADDITIONAL ACCESS EASEMENT PREPARED BY THE COUNTY SURVEYOR'S OFFICE IN CONNECTION WITH THE EWP-3 PROJECT AREA CONTRACT PART ONE IN WESTERN WEBER COUNTY - CONTRACT C2011-168**

Mike Tuttle, of County Engineering, presented this amendment to the Assurances Relating to Real Property Acquisition form relating to the EWP-3 projects funded through the NRCS. He stated that originally the required form was signed for the easements but they did not have cultural clearances for the access roads into the canal crossing at that time and this is the amendment to fulfill NRCS's requirement.

Commissioner Gibson moved to approve Contract C2011-168, Assurances Relating to Real Property Acquisition for additional access easement in connection with the EWP-3 Project Area Part 1 in western Weber County; Chair Zogmaister seconded, both voting aye.

**5. INTERLOCAL AGREEMENT WITH UTAH CITY TO PROVIDE SUBDIVISION REVIEW SERVICES FOR THE CITY - CONTRACT C2011-169**

Ernest Rowley, County Recorder/Surveyor, presented this contract stating that the review fee will be paid by developers, in accordance with the county's fee ordinance.

Commissioner Gibson moved to approve Contract C2011-169, Interlocal Agreement with Utah City to provide subdivision review services for the City; Commissioner Chair Zogmaister seconded, both voting aye.

**6. FIRST READING, TITLE 6-12, ORDINANCE OF THE COUNTY COMMISSION UPDATING THE TECHNICAL REQUIREMENTS FOR SURVEYS**

Ernest Rowley, County Recorder/Surveyor, stated that the county has not amended this ordinance in some time. He referred to definitions for maps, regular surveys, substitute monuments, etc., stating that State law does not address some of those items and he would like to have those clarified in the ordinance. Chair Zogmaister asked if the ordinance goes beyond State law and Mr. Rowley said that in some circumstances it can be viewed as being more strict, however, he feels that it clarifies the ambiguous language in State code. Chair Zogmaister noted that last night someone who works in the real estate industry (and who probably was not aware of this item) called her to express concern with the requirement by Weber County that only a qualified surveyor can conduct surveys. Mr. Rowley said that State code definition of surveying and the county's code is very clear that a qualified surveyor must perform all surveys. He noted that this is a State regulated profession.

Commissioner Gibson moved to approve the first reading of Title 6-12, Ordinance of the County Commission updating the technical requirements for surveys; Chair Zogmaister seconded, both voting aye.

**7. APPROVAL OF AN 1800 SQUARE FOOT PAVILION FOR THE ENVIRONMENTAL CENTER AT 5700 NORTH 3000 EAST LIBERTY**

See item E.3. above. Jim Gentry, of the County Planning Division, stated that this item was administratively approved by the County Planning Division. The agreement requires that any building of structures on the property need to be approved by the County Commission.

Commissioner Gibson moved to approve the 1800 square foot pavilion for the Environmental Center at 5700 North 3000 East Liberty; Chair Zogmaister seconded, both voting aye.

**F. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, AUGUST 16, 2011, 10 A.M.**

**G. PUBLIC COMMENTS:** None

**H. ADJOURN**

Commissioner Gibson moved to adjourn; Chair Zogmaister seconded, both voting aye.

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Jan M. Zogmaister, Chair  
Weber County Commission

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Ricky D. Hatch, CPA  
Weber County Clerk/Auditor