

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

Tuesday, September 1, 2015 - 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: Kerry W. Gibson, Chair, Matthew G Bell and James Ebert.

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

A. WELCOME – Chair Gibson

B. INVOCATION – Ricky Hatch

C. PLEDGE OF ALLEGIANCE – Courtlan Erickson

D. THOUGHT OF THE DAY – Chair Gibson

E. PRESENTATION OF THE SEAL OF SERVICE AWARD TO COUNTY ASSESSOR'S OFFICE EMPLOYEE TRICIA THOMPSON

Leann Kilts, County Recorder/Surveyor, stated that Ms. Thompson does a fantastic job as the Record Manager and read the submitted nomination. Ms. Thompson really enjoys working in that office and with the wonderful staff. She was presented with a plaque, a Seal of Service pin and \$100 for her excellent customer service.

F. CONSENT ITEMS:

1. Purchase orders for \$64,370.52
2. Warrants #324392-#324715 for \$2,963,336.65
3. Minutes for the meeting held on August 25, 2015
4. ACH payment to US Bank for \$110,114.92 for purchasing card transactions through 8/17/2015
5. Amendment to Contract C2014-198 with Horrocks Engineers, Inc. – Contract C2015-335.1

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

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

G. ACTION ITEMS:

1. **FIRST READING OF A PROPOSED CHANGE TO THE FEE ORDINANCE TO ALLOW THE CLERK/AUDITOR'S OFFICE TO CHARGE A FEE TO RECEIVE PAYMENT FROM PASSPORT APPLICANTS, THEN CREATE CHECKS TO BE SENT WITH PASSPORT APPLICATIONS**

Lynn Taylor, of the County Clerk/Auditor's Office, stated that the Clerk/Auditor's Office processes over 2,000 passport applications yearly. The U.S. Department of State requires applicants to submit a check or money order with the applications. Many applicants do not come with the check or money order and on average 5-10 people are turned away per day. In trying to assist the public, the Clerk/Auditor's Office spoke with the County Treasurer and the comptroller and determined to provide an optional service in a way that would not compete with the private sector and would account for the county's costs.

The Clerk/Auditor's Office will process credit cards or cash and then create a check to include with the application to the U.S. Department of State. The cost will be \$5/application. Commissioner Ebert expressed concern with the fee for large families and Mr. Taylor stated that the majority of that charge is for credit card fees. He reiterated that applicants have the option to go to a bank or to provide a personal check, and they also have the option to submit passport applications through the Post Office. Mr. Taylor stated that it is rare to find an institution that takes credit cards in exchange for a check because of fraud concerns. In charging less than \$5/application the county would be subsidizing the cost of the passport applications, particularly if paid by card. Ricky Hatch, Clerk/Auditor, wants to keep costs down for the public and noted that the best way to avoid the fee is for applicants to bring their own check or money order. The majority of the fee is just to cover credit card processing fees; the remainder is for cost of issuance of the check and fraud.

Commissioner Bell moved to approve the first reading of a proposed change to the fee ordinance to allow the Clerk/Auditor's Office to charge \$5.00/application to receive payment from passport applicants and then create checks to be sent with the applications as discussed; Commissioner Ebert seconded.

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

2. **WAIVE \$660.82 BUILDING PERMIT FEE FOR WEBER MEMORIAL PARK WATER PUMP HOUSE**

Jared Andersen, County Engineer, stated that it is typical to waive the fee where the county is the owner. Commissioner Ebert moved to waive the \$660.82 building permit fee for the Weber Memorial Park water pump house; Commissioner Bell seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

3. **REQUEST FOR CONTRACT WITH HONNEN EQUIPMENT CO. FOR 1-YEAR LEASE OF JOHN DEERE BACKHOE**

This item was held.

4. **CONTRACT WITH THE DIVISION OF DRINKING WATER FOR A PLANNING GRANT TO HELP FUND THE ONGOING OGDEN VALLEY HYDROGEOLOGY STUDY – CONTRACT C2015-335**

Charles Ewert, of County Planning, found this grant for \$20,000/year to help pay for the study. Commissioner Ebert moved to approve Contract C2015-335 with the Division of Drinking Water for a planning grant to help fund the ongoing Ogden Valley hydrogeology study; Commissioner Bell seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

5. **AGREEMENT WITH WARDELL BROTHERS CONSTRUCTION TO CONSTRUCT THE VALLEY LAKE ESTATES STORM DRAIN PROJECT – CONTRACT C2015-336**

Jared Andersen, County Engineer, briefly presented this contract. (See related item on 8/25/2015). Commissioner Bell moved to approve Contract C2015-336 with Wardell Brothers Construction to construct the Valley Lake Estates storm drain project; Commissioner Ebert seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

6. **RIGHT-OF-WAY CONTRACT FOR 12TH STREET FOR SHAWN & HOLLY ARRINGTON, PARCEL 93 – CONTRACT C2015-337**

Jared Andersen, County Engineer, briefly presented this contract. Commissioner Bell moved to approve Contract C2015-337, right-of-way contract with Shawn & Holly Arrington, Parcel 93, for the for 12th Street widening project; Commissioner Ebert seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

7. **RIGHT-OF-WAY CONTRACTS FOR 3500 WEST FOR THE FOLLOWING:**

Charles/Verla McFarland, Parcel 34 – Contract C2015-338; Jared Prince, Parcel 52 – Contract C2015-339

Jared Andersen, County Engineer, briefly presented these contracts. Commissioner Bell moved to approve right-of-way contracts C2015-338 and 339 for the 3500 W. expansion project as listed above; Commissioner Ebert seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

8. **RESOLUTION APPROVING PROCEEDINGS IN EMINENT DOMAIN AS NECESSARY – RESOLUTION 36-2015**

Robert Keller, of Williams & Hunt, stated that he was assisting county legal and engineering staff regarding obtaining the necessary right-of-way for the 12th Street expansion project for properties that the county has not been able to acquire by negotiation with property owners. This resolution directs staff to continue to negotiate and to acquire the properties by negotiation, if at all possible. However, at this point, the county is faced with bidding and construction deadlines. State law requires each property owner affected by this resolution to be given an opportunity to be heard by the Commission and notice of this meeting was given to those affected within the first project segment.

Jared Andersen, County Engineer, said that currently for the entire road portion of this project (from 4700 W. to 10000 W.) approximately 78% of about 135 property owners have settled and have right-of-way contracts. There are 11 property owners in segment 1 of the project that have not settled.

Commissioner Ebert noted that this item was driven by time constraints and asked Mr. Keller to expound on it. Mr. Keller stated that the right-of-way or, the right to occupy the right-of-way, is necessary before the project can even go out to bid. The county needs the right to at least occupy the properties by October. Commissioner Ebert also emphasized that moving forward with the resolution still allows open dialogue for acquisition negotiations and Courtlan Erickson, Deputy County Attorney, concurred. Chair Gibson said that some property owners had expressed to him that they felt their concerns had not been heard and that negotiations had not been in earnest thus far. He believes that one point of confusion is that some property owners hired the same legal counsel and the county received a letter asking the county to cease communicating with those property owners on this issue. Mr. Andersen stated that county staff is committed to continue negotiations. He said that the property owners can indeed contact the county on the issue, they had been given a phone number, and he encouraged them to do so. Staff has made efforts to contact all the affected property owners and Chair Gibson stated that every effort will be made to negotiate. Mr. Keller noted that some property owners contacted the State Property Ombudsman, which is a good resource for them.

Chair Gibson invited the 11 property owners to speak whose portions of property are currently necessary to the project and who have not settled. Following is a summary:

Laura McFarland stated that she and her husband are not necessarily against the project but their questions have not been answered, including how they will come onto their driveway and that impact because an apartment there always gets flooded off of the road when it rains, and with this project the road will be even closer. She had been waiting for two weeks for the engineer to provide information.

Kelly Larkin, Larkin Land Company Manager, stated that he had been lost throughout this whole process. He has contacted Jim Wright, of the Property Ombudsman Office, and hopes the issue can be resolved. Mr. Larkin does not believe that a multi-lane road is the answer for that area, which has slow moving vehicles (i.e., tractors), and said that any vehicle turning left is asking for a disaster.

Cody Ostler said that he also does not know much about this process and, due to lack of knowledge, has not known how to proceed. He said that some of this information should have been given before today.

Kevin Bailey stated that a problem with negotiations has been the question of what the official boundaries of the right-of-ways property lines actually are because of the surveying problems they have had in the area. The residents want fair compensation and access to official drawings so they can see details, including road height and slopes because most of them have horse/camp trailers, and they need to know if they will be able to get off the road safely and without tearing up the bottom of their trailers. He said that water drainage will be an issue for his property. A frontage road is proposed in front of his house, which would make it safer—there have been many accidents in front of his house. It is proposed as a private road but he stated it should be maintained by the county, that the maintenance costs, snow removal, etc., would be too expensive for him as a homeowner.

Linda Larkin stated that a big problem was that information kept changing every time she spoke with someone and she didn't feel county staff knew what was going on. Initially, there were bike and center lanes, then when she met with the county she heard that was not correct. At the open house, the center lane was back on. One important issue is the bridge and she asked if it will be fixed. If not, she feels that nothing else should be done. If what was on the map shown at the open house is what is going to occur, then the county owns sufficient ground and does not need to purchase more. Her first offer was very incorrect and she felt that not much effort had been made about it, and she obtained an attorney. An appraiser came out, which is what she had asked for initially, and the second offer almost doubled, and the acreage and other items were correct. The second notice gave her 8 days notice of this meeting and she felt it was not enough time. She is not for the project but is willing to negotiate.

Brett Larkin stated that there are many issues, including that in front of his house the plan is to add 4 feet of asphalt to the road but the property to be purchased is not going to be used. He finds it difficult to give up his property when it is not actually needed. He finds that the county is not working with him, but that he has to do whatever the county wants. It has not been an easy process. Regarding his bid, the information has not been correct. The county is paying \$1.50/sq. ft. and he wants the price to be fair to him. He did not put his property up for sale. Chair Gibson said that the price is dictated by State statute.

Mark McFarland, of Shimmering Glass, stated that he has only been contacted by Wendy Hansen on this project, and he assumed she was hired by the county to do so. She and others have not been able to answer his question specifically as to what will be done in front of his property. He had asked that flags be put where the property lines are and how it will affect his property and learned that, according to the county, the county already owns 13-14 feet of frontage that he thought his family has owned since his grandfather. The county said that it was not going to pay him for that. He has contacted the Ombudsman to get a second appraisal. He has also received different answers and many questions are still unanswered. He believes his property value will diminish with this project—realtors estimate from 10-40%—and attorneys and others also believe this. It brings the heavy traffic of 12th Street closer to his house. He asked that all impacted property owners have their questions answered.

Scott Conley said that he has not spoken with the county since June 7, that the commissioners should have spoken with the property owners about this project and that this issue has been a comedy of errors. The website and phone number were not activated for six months. The Conley's property line is off about 35 feet and previous county surveyors have known about it, but the unlicensed surveyor hired by the county did not. Mr. Conley expressed concerns with their underground power, sump pump line, approaches, the property line, etc., and the appraiser had said they would take those issues into consideration but these were not in the project plan and that Mr. Conley would have to speak with the person doing the construction. County staff also told Mr. Conley that, and twice had told him that he was not losing anything out of his property. CRS Engineering said that was wrong, the Conleys would lose about half of their brick wall and the kidney-shaped ornamental area in the front yard. The Conleys still don't know how their property will be affected. They are concerned about proximity damages to their home. In the second appraisal he was told mistakes had been made and the offer increased. He contacted an attorney. Mr. Conley said that the appraiser he hired is waiting for the engineer plan, but one does not exist and there are many emails between various people, including County Engineering staff, about the need to get it done. He repeatedly asked why this project is being done when 12th Street (east) is not even on UDOT's plan until after 2040. He was told it is for business growth in the west end of 12th Street, that it is due to the tractors, and for safety but the project will not slow the drivers down and he cannot get the Sheriff to patrol the area—the Sheriff had told him it is not safe for his officers to stop people there. It is very dangerous for those who live in that area. He said that 28 citations were written in a 12-month period. The project is not a good expenditure. He supports safety but the project does not need to go to this extent. He said that the bridges were not part of this because the Army Corp. of Engineers would have to be involved. They require an environmental impact statement on the project but there is not one. He asked that there be a meeting with the residents.

Dennis Costesso, representing Mary Costesso for property on the corner of 12th Street and 4700 W., stated that he has not accepted the county's offer because he does not know why this project is being done. Initially, residents were told it was for corridor preservation then it changed to safety issues. He totally supports road improvements that make a safety difference but does not feel this is the best place to spend taxpayer dollars—it does not offer the greatest return in reducing accidents and saving lives. He said that the information comparing the area to other county roads should be available. He asked Holin Wilkbanks, Weber County Public Affairs Director, several months ago for this information and she stated she did not know if comparative data existed. He is flabbergasted that this has not been done. He said it became evident that safety is not the reason for the project or engineers would have looked at the data. Mr. Costesso said that he spoke with a reputable real estate agent about why the 12th Street project was being done and the response was that it is for future development of commercial/industrial property west of 12th Street, and that key individuals in the decision making process for 12th Street stood to gain tremendous monetary amounts for this project. He will support this project if the county can show data analysis that 12th Street is the best place to spend taxpayer money to improve the safety of the community.

Chair Gibson wanted to address questions that had been brought up, including the following:

Mr. Andersen said that CRS has close to a 90% completed set of plans for segment 1, and he will contact the residents. His office has access to a set of updated drawings (at 60%) that is available electronically for segment 1. Commissioner Bell asked if the drawings are public and Mr. Andersen said that they are but not until they are reviewed for accuracy at milestones rather than daily offerings. Commissioner Bell said that concerns could be addressed if the public had access to that information.

Mr. Andersen said that until negotiations are done with each property owner their specifics cannot be on the plan; each property has its own characteristics that need to be addressed differently.

Mr. Andersen stated that funds for 12th Street were awarded on about 9/2013, a survey and a right-of-way alignment were presented (striving for minimum impacts to the homes on both sides of the road) at the original open house on 9/2014, and there was a meeting at Kanessville Elementary School (Spring 2/2015). The county hired a transportation traffic engineer to do the study for this road and initially it was to improve safety. The next step from a 2-lane road is either shoulders on both sides or a protected left hand turn lane in the middle. He agrees that there is extreme concern with the left turn lane and that trucks will continue to pass on the left. This is a very long stretch of road and the first segment goes to the river, the second is the bridge (but is being separated out), the third segment goes from the bridge to about 8300 W. where the majority of residents reside and the fourth goes to about the drive to GSL and Western Zirconium. He said that all bridges/entities are evaluated by UDOT and their evaluation of this bridge is that it is in average/good condition and does not need replacing. He said that to remove the bridge, relocate it and widen it would cost as much as it is costing to do the majority of this widening project. He does not necessarily agree with UDOT's bridge alignment, and it is not being included in this construction project. Chair Gibson agreed that the bridge is a problem and asked if there is still a safety benefit for the county to take on the efforts for the other segments without fixing the bridge at this time. Mr. Andersen said that this has been discussed internally and also with the Ostlers and Baileys. The traffic that is coming eastbound off of the "S" curve is what causes a lot of accidents due to the approach, the angle, etc., coming off of the bridge. Mr. Andersen said that some action will be taken and they are looking at alternatives, including a safety barrier that connects to the bridge barrier and follows the road down where it will re-direct the vehicles if they run off the road.

Regarding the need for additional right-of-way, Mr. Andersen said that in order to start the process, the county had to evaluate what would be placed on it, the approximate location of the utilities, and easements for the slopes of the new road.

Mr. Andersen said that attention is being paid to the drainage issues. Mr. Hirst, with CRS, has been going door to door to discuss with each of the residents how they irrigate, what they need to continue their processes, etc.

Commissioner Ebert said that when he hears different reasons (i.e., safety issues, corridor preservation, economic development) for this expensive road project to move forward he views it as a positive for those very reasons, rather than if be for a sole reason. As he has spoken with residents, engineers, and traffic safety representatives and considered economic development and overall transportation on east-west corridors, it appears that the project has been vetted. His concerns are that residents are appropriately compensated, that communication meets the residents' needs, etc. He will be meeting with staff.

Mr. Andersen will contact the property owners as often as possible to meet and discuss their issues in the coming month. The sooner this project goes out to bid the better the prices will be, and delaying can cost tens, if not hundreds of thousands of dollars more. He would like to get this out to bid in October/November and not wait until after winter. Mr. Keller recommended adopting the resolution today with strong direction to continue negotiating with those who are willing to do so. He noted that after filing eminent domain proceedings property owners have 20 days to respond, and then there is an undetermined period to get on the court calendar to get an order of occupancy, which could go into the winter. The commissioners want to work with the property owners in good faith rather than proceed with eminent domain proceedings and also that everything possible is done to treat them fairly.

Commissioner Ebert moved to adopt Resolution 36-2015 approving proceedings in eminent domain as necessary for the 12th Street widening project; Commissioner Bell seconded.

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

G. PUBLIC HEARINGS:

1.

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

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

2. **PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE COUNTY ZONING MAP, WOLF CREEK AREA, BY REZONING 9.11 ACRES OF FOREST RESIDENTIAL FR-1 TO OPEN SPACE O-1; REZONE APPROXIMATELY 15.97 ACRES OF OPEN SPACE O-1, AND COMMERCIAL VALLEY CV-2 TO A COMMERCIAL VALLEY RESORT RECREATION CVR-1 ZONE; AND REZONE 30.65 ACRES OF FOREST RESIDENTIAL FR-3 TO OPEN SPACE O-1**

Jim Gentry, of County Planning, showed an area map and concept plan and presented Wolf Creek's rezoning proposal for commercial development. Wolf Creek is requesting to rezone the CV-2 and 9 acres of open space to enlarge the existing CVR-1 Zone, to rezone the FR-1 (9.11 acres) to Open Space O-1, and 30 acres of FR-3 to the Open Space O-1 Zone. Wolf Creek plans to include office and retail space, a community pool, parking, and possibly a condo-hotel. He said that John Lewis, of Wolf Creek Resort, held many meetings with the HOAs in Wolf Creek and had also met with the GEM Committee and other area entities. The Planning Commission heard this item and unanimously recommended approval of the rezoning. The Zoning Development Agreement and the ordinance were reviewed by the County Attorney's Office. John Lewis, of Wolf Creek Resort said that county staff and the Planning Commission were great to work with.

Chair Gibson invited public comments and the following is a summary:

Jan Fullmer, of Eden, said that on 9/17/2014 a community meeting was held where 14 different communities were represented, along with Wolf Creek developers. Wolf Creek was in a state of uncertainty due to bankruptcy. There was much input from the communities. On behalf of the communities, she thanked Mr. Lewis for his current and future plans, which are consistent with the communities' wishes. There has never been a completed master development plan for Wolf Creek filed with the county (only a vision). She requested that the plan be filed with the county for this resort.

Eric Householder, with the Householder Group/speaking for Wolf Creek, said that they are getting close to completing the overall plan and will submit it to the county soon. He asked that the agreement be amended to state that construction will begin on the project within 5 years of the date on which final approval of the rezoning petition is granted. Sean Wilkinson, of County Planning, stated that the 2-year requirement is fairly standard but could be amended.

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

4. **ACTION ON PUBLIC HEARINGS:**

G.2.-REZONE WOLF CREEK AREA – ORDINANCE 2015-15, CONTRACT C2015-340

Commissioner Bell moved to adopt Ordinance 2015-15 amending the Weber County Zoning Map, Wolf Creek area by rezoning 9.11 acres of Forest Residential FR-1 to Open Space O-1; rezone approximately 15.97 acres of Open Space O-1, and Commercial Valley CV-2 to a Commercial Valley Resort Recreation CVR-1 Zone; and rezone 30.65 acres of Forest Residential FR-3 to Open Space O-1 and amending the Zoning Development Agreement, Section 1.2 allowing construction to begin within five years, and approve Zoning Development Agreement, C2015-340; Commissioner Ebert seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

H. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, SEPTEMBER 8, 2015, 10 A.M.

- J. PUBLIC COMMENTS:** Josie Washakie said that she was a princess of the Shoshone Tribe, that her great great-grandfather was Chief Washakie and was a founder of Utah, and that she is the last of his full-blooded descendents.

K. ADJOURN

Commissioner Ebert moved to adjourn at 10:46 a.m.; Commissioner Bell seconded.
Commissioner Bell – aye; Commissioner Ebert – aye; Chair Gibson – aye

Attest:

Kerry W. Gibson, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor