

**MINUTES OF THE
WASATCH COUNTY PLANNING COMMISSION
DECEMBER 14, 2023**

PRESENT: Chair Chuck Zuercher, Commissioner Scott Brubaker (*via Zoom*), Commissioner Kimberly Cook, Commissioner Wendell Rigby, Commissioner Doug Grandquis.
EXCUSED: Commissioner Mark Hendricks, Commissioner Doug Hronek.
STAFF: Doug Smith, Wasatch County Planner; Austin Corry, Assistant Wasatch County Planner; Nathan Rosvall, Assistant Wasatch County Planner; Anders Bake, Assistant Wasatch County Planner; Jon Woodard, Deputy Wasatch County Attorney
PRAYER: Commissioner Wendell Rigby
PLEDGE OF ALLEGIANCE: Led by Commissioner Kimberly Cook and repeated by everyone.

Chair Chuck Zuercher called the meeting to order at 6:00 p.m. on Thursday, December 14, 2023. Chair Chuck Zuercher indicated that Commissioner Hronek and Commissioner Mark Hendricks are excused. Chair Chuck Zuercher indicated that the Wasatch County Planning Commission is meeting in the Wasatch County Council Chambers located in the Wasatch County Administration Building located at 25 North Main, Heber City, Utah 84032. Chair Chuck Zuercher thanked the Planning Staff for the good job they do because it really helps the Planning Commission. Chair Chuck Zuercher then called the first agenda item.

APPROVAL OF THE MINUTES FOR NOVEMBER 9, 2023

Motion

Commissioner Doug Grandquis made a motion that we accept the minutes of the meeting of November 9, 2023 as written.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Kimberly Cook, Wendell Rigby, Doug Grandquis, Scott Brubaker

NAY: None.

Chair Chuck Zuercher then read the following:

“As indicated on the screen, a required public hearing will be held for certain agenda items prior to Planning Commission action. After each such item has been presented, time to comment will be provided for all those who wish to speak. Public hearings and citizen comments are a legitimate source of information for the County to consider in making legislative decisions.

For items that do not require a public hearing, public comment may still be taken following presentation of the item, however, please keep in mind the following if public comment is accepted during these items: When making land use decisions, the Planning Commission can only rely on substantial evidence on the record, which is that amount and quality of evidence relevant to proving or disproving a specific requirement of the applicable law.

During any public comment period, each speaker will generally be limited to three minutes. Additional time may be given to individuals specifically invited to speak by the Planning Commission.”

CONSENT AGENDA

Doug Smith, the Wasatch County Planner, addressed the Wasatch County Planning Commission and indicated that Item No. 1 on the Consent Agenda was erroneously placed on the agenda and does not need any action by the Planning Commission because approvals for extensions of applications can be made by the staff.

ITEM 2 BLUE SAGE RANCH, LLC REQUESTS A MINOR PLAT AMENDMENT TO BLUE SAGE RANCH SUBDIVISION IN ORDER TO CONVERT OPEN SPACE PARCELS TO COMMON AREA AND TO REVISE THE ALIGNMENT OF A PUBLIC TRAIL EASEMENT THROUGH THE SUBDIVISION LOCATED AT APPROXIMATELY 5300 E 1200 S IN THE RESIDENTIAL AGRICULTURE 5 (RA-5) AND MOUNTAIN (M) ZONES. (DEV-8700; AUSTIN CORRY)

Chair Chuck Zuercher then opened the matter up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Wendell Rigby made a motion that we approve Blue Sage Ranch request for a minor subdivision plat amendment with all the findings and conditions.

Commissioner Doug Grandquis seconded the matter.

The matter carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Kimberly Cook, Doug Grandquis, Scott Brubaker.

NAY: None.

ITEM 3 ROBERT JOHN & ALICE C HICKEN TRUST REQUEST THE CREATION OF AN AGRICULTURAL PROTECTION AREA CONSISTING OF 23.41 ACRES OF CATTLE AND LIVESTOCK GRAZING LOCATED AT APPROXIMATELY 750 W 1200 N ON PARCEL 00-0007-9629 IN THE AGRICULTURE 20 (A-20) ZONE. **IF FORWARDED, THE RECOMMENDATIONS BY THE PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON DECEMBER 20, 2023.* (PLN-AGPRO-8697; NATHAN ROSVALL)

Staff

Nathan Rosvall, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and indicated that the John Robert and Alice C. Hicken Trust requests a creation of an Agricultural Protection Area consisting of 23.41 acres of livestock grazing and meadow hay production located near 600 West and 1200 North in the A-20 zone. The property is being used for livestock grazing and meadow hay production. There are no proposed limitations on this agricultural production. Also it has Rock Creek running through it. It is located in the central planning area. Properties to the east and to the west and also to the north have also received agricultural protection.

Nathan Rosvall then went through the proposed findings:

1. The request is to create an Agriculture Protection Area to maintain the agricultural use and the rural environment.
2. The subject property is located near 600 West 1200 North in the Agricultural (A-20) zone of Wasatch County (North Fields).
3. Total acreage of the Agricultural Protection Area is 23.41 acres.
4. The current use of the property proposed for protection status is greater than fifty percent of the land is devoted to agriculture, including livestock grazing, and in the summer months, growing meadow hay for production.
5. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
6. Rock Creek runs through the property.
7. Commonly found soils in the North Fields are: Fluventic Haploborol, this soil is common for tall grasses; Kovich, this soil occurs on broad valley floors and is a slow permeable soil; Logan, this soil is common for meadow hay and pasture.

8. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area, and the proposal is consistent with the evaluation criteria of the code and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
9. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
10. No objections have been received in response to the notices sent or signs posted on the property.
11. If the Agricultural Protection Area is approved, the approval will be in effect until its 20th calendar review year.

Nathan Rosvall then indicated that as a modification of the proposal and recommendation to the County Council staff recommends that the applicant be required to maintain historic irrigation channels and that the irrigation company would have the right to maintain and clean the canal to ensure downstream flows.

Applicant

Robert Hicken replied that he just wants to thank you for the time and effort in considering this.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Doug Grandquis made a motion that we recommend to the County Council approval of the agricultural protection area of 23.41 acres by John Robert Hicken and Alice C. Hicken consistent with staff analysis and modification and the findings.

Commissioner Wendell Rigby seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Kimberly Cook, Doug Grandquis, Scott Brubaker.

NAY: None.

ITEM 4 ROCKY MOUNTAIN POWER REQUESTS A CONDITIONAL USE PERMIT TO REBUILD 5.74 MILES OF EXISTING 46KV TRANSMISSION LINE AND INSTALL A WILDFIRE STANDARD TRANSMISSION LINE INCLUDING NEW POLES WITH HEIGHTS UP TO 110 FEET. THE NEW POLES WILL FOLLOW THE EXISTING TRANSMISSION LINE ALIGNMENT BEGINNING AT THE MIDWAY SUBSTATION, RUNNING TOWARDS WASATCH MOUNTAIN STATE PARK, CROSSING SWISS ALPINE ROAD, LOWER LIME CANYON, AND THE GOLF COURSES, CONTINUING UP PINE CANYON TO THE COUNTY LINE AT GUARDSMAN PASS ROAD JUST EAST OF BRIGHTON ESTATES. (DEV-8114; ANDERS BAKE)

Staff

Anders Bake, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and presented a Power Point presentation and then indicated that this application is a conditional use permit request from Rocky Mountain Power. The application is to replace wood poles with metal poles on an existing transmission line that is located along the west side of Midway and going through Wasatch Mountain State Park and up into Park City. The reason for this request is for fire safety reasons. The replacement of the wood poles with metal poles will be less prone to wild fire and the replacement also includes a height increase which will be important for fire reasons because as the applicant indicated that it will create separation between lines and then also creates separation from the ground and from the vegetation on the ground. Also the angle that the new lines will be better for lightening protection for fire safety reasons.

Anders Bake indicated that there are 57 existing wood poles and those wood poles will be replaced in the exact same location so the line will not move and the pole locations will not move. The average height will increase so the current lines range from height from 50 feet to 80 feet and the new lines will range from 60 feet to 110 feet. The average height of the existing poles is 64 feet and

the new average height will be 79 feet so average increase of 15 feet. The project passes through areas of Midway, unincorporated Wasatch County and goes into Summit County. The areas in Wasatch County are in our RA-1, P-160 and M zone and all those zones require a conditional use permit for this type of project to be reviewed and approved by the Planning Commission. One of the concerns with this project would be the construction process and just making sure that the environment is impacted during that construction process. The wire will not be replaced so that will be a specular wire that will stay with the update. The new poles are designed to blend into the environment. Anders then presented a map showing the location of the poles. Midway City has provided approval for the line location that goes through their area.

Anders Bake then went through the project summary:

- The proposal will replace approximately 57 existing wood poles with steel and fiberglass poles.
- The existing poles have an average height of 64 feet. The proposed steel poles are an average of 79 feet in height.
- The existing transmission line has a voltage of 46kV. This project will not result in increased voltage capacity and the line will continue to operate at 46kV.
- This project will pass through areas in the RA-1, P-160, and M zones in unincorporated Wasatch County.
- A Conditional Use Permit is required in the RA-1, P-160, and M zones for the replacement of existing electric transmission lines. The Conditional Use Permit requires Planning Commission approval.
- The Department of Natural Resources has approved the portions of the project going through Wasatch Mountain State Park.
- The construction process will result in some vegetation removal which will be reseeded according to the proposed reclamation plan. No new roads will be constructed to place the poles.
- The existing specular wire will continue to be used for this transmission line.
- The new steel poles will be self-weathering with a rusted color. The fiberglass switch poles will have a maroon color.

Anders Bake then went through the proposed findings:

1. The proposal replaces approximately 57 existing wood poles with fiberglass and metal poles as well as raises the height of the poles with the intent to provide better line safety.
2. Heights are raised from an existing height of 50-80 feet to 60-110 feet with the intent to provide better separation between lines and vegetation.
3. The transmission line will continue to operate with a voltage of 46 kV.
4. Much of the new line runs through areas prone to wildfire.
5. Much of the line runs through Wasatch Mountain State Park which the County has no jurisdiction over. The State Park has provided an approval letter for the proposed line replacement.
6. The line has been designed to fit in with the surroundings as much as possible by using earth tones colors and non-specular wire.
7. The new easements are needed for the installation of the line.
8. Access from existing roads will be used and no excavation will be done.
9. The staff analysis indicates the proposal complies with Section 16.23.07 of the current Wasatch County code related to Conditional Uses.
10. Notice has been sent to neighboring property owners within 500 feet of the property on 4 December, 2023. The planning department has received two phone calls from residences expressing their concern with the proposed pole sizes.
11. There are no known zoning violations on the property at this time.
12. The location of the transmission line will not be altered with this project. The applicant has demonstrated that they have access rights to make the proposed changes.
13. The applicant has attached a Reclamation Plan with their proposal to mitigate the potential impacts of construction on the natural landscape.
14. The proposal furthers the health, safety and welfare of the residents of the County by updating an outdated power line to current best industry standards.
15. The Development Review Committee has reviewed the project and accepted the item for the Planning Commission to render a decision.

Anders Bake then went through the proposed conditions.

1. The applicant shall follow all mitigation procedures explained in the attached Reclamation Plan.

2. All issues raised by the DRC, as noted in the DRC report dated 30 November, 2023 shall be resolved to the satisfaction of the applicable review department prior to building permit approval.

Anders Bake indicated that after we put together the staff report we realized that the applicant is not proposing to replace the existing wire and so the existing wire is a specular wire and so recommend changing those conditions to just include one and three shown on the staff report

Anders Bake then went through the DRC Report.

PLANNING comments:

- Condition of approval – Please show ownership of all parcels that are being effected by the project in unincorporated Wasatch County. Show the subdivision boundaries for Brighton Estates and label as Brighton Estates.

MAG REGIONAL TRAIL PLANNER comments:

- Conditional of approval. Any damage to back country trails system will need to be repaired.

Commission Comments

Commissioner Wendell Rigby asked that with the new construction and the wire not being changed out, does the new construction allow for additional power lines to be hung, additional capacity.

Applicant

Travis Jones, from Rocky Mountain Power, addressed the Wasatch County Planning Commission and indicated that this design is for a single circuit. If we are to add an additional line we would have to come back in and re-evaluate that but at this point it only carries the one line on the pole. If we did that we would have to come before the Planning Commission and get a conditional use permit for the different voltage being served on there as well. This is being done for wild fire mitigation work.

Jon Woodard, Deputy Wasatch County Attorney, asked if you would be opposed if we made that a condition that if the wires were replaced in the future that they would be non-specular. Travis Jones indicated that is reasonable and I think that was our intent within the County consistent with our approach to stick with the standards but if that line is changed out we will go with the non-specular and it is just that they are transferring that over. Jon Woodard also indicated that he is really grateful that Rocky Mountain Power is upgrading their lines so that we don't have the fires that we are seeing on the West Coast all the time. This is so proactive.

Public Comment

Chair Chuck Zuercher then opened the public hearing for public comment.

Brant Mock, resident just outside of Midway Swiss Mountain Estates or Swiss Alpine and wanted to know if Rocky Mountain Power could comment on poles fourteen through seventeen and what the existing height is and what the proposed height is for those poles and it is not mentioned here in Exhibit E. Travis Jones indicated that he could get that information for Mr. Mock because it just doesn't have it right before him. Brant Mock gave his e-mail address. Travis Jones replied that he will e-mail that to you.

Anders Bake replied that there were a couple that expressed concern about the height increase and they had indicated that they would be here but evidently didn't make it here this evening.

Chair Chuck Zuercher then closed the public comment period.

Motion

Commissioner Scott Brubaker made a motion that we approve the conditional use permit, Item No. 4, the 46kV transmission line of Rocky Mountain Power, in light of the findings and subject to the conditions presented in the staff report. Also we are not requiring Condition No. 2 on the non-specular wire as written in the Staff Report.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Kimberly Cook, Doug Grandquis, Scott Brubaker.

NAY: None.

ITEM 5 STONY OAKS HOLDINGS, LLC REQUESTS FINAL SUBDIVISION APPROVAL FOR STONY OAKS, A PROPOSED RESIDENTIAL SUBDIVISION CONSISTING OF 11 RESIDENTIAL LOTS ON 15.094 ACRES LOCATED AT 1353 S MILLS LANE IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-7767; AUSTIN CORRY)

Staff

Austin Corry, Assistant Wasatch County Planner, presented a Power Point presentation and indicated that this proposal received preliminary approval in 2022 and has been working through the DRC process for final subdivision. Since that time very little has changed in the development proposal since preliminary application other than modification to comply with conditions to the preliminary approval. Some of the interior lot lines shifted because they didn't have enough frontage on Lot No. 1, but that was something that was discussed at the preliminary stage and have shifted over but the general outlay, the road layout, it is all the same as what you have seen.

Austin Corry then went through the DRC Report.

JORDANELLE SSD comments:

- Coordinate plan review and update with District Engineer for plan approval.

PLANNING comments:

- In the future, please do not upload "revisions" to documents that aren't changing. It appears that a number of the submittal documents uploaded a new version, but comparing the documents shows no change had occurred. The review process can be more focused and efficient if you only upload revisions to documents that are actually changing.
- Some adjustments were made to the development approval memo to comport with the fencing indicated on the grading plan submittal. It is anticipated the redline changes are acceptable to the applicant since they align the memo with the actual submittal plans.
- Append to Note #9... "flood insurance is recommended, though not required."
- The front setback on Lot 5 needs to reflect the turn-around easement as well. Add a note to the plat that driveway access to Lot 5 is prohibited through the turn-around easement.

RECORDER comments:

- Looks good.

Austin Corry then went through the proposed findings:

1. The subject property is approximately 15 acres located at the southeast of the intersection of 1200 South and Mills Lane.
2. The subject property is in the RA-1 zone.
3. The RA-1 zone allows density of 5 acres per unit if not connected to public sewer and water and 1.3 acres per unit if connected to public sewer and water. The proposal is at 1.4 acres per unit.
4. There are no open space or common area parcels included in the proposal.
5. The applicant proffered a ten percent affordable housing obligation by fee-in-lieu during the preliminary approval which was accepted by the County Council. The fee will be \$30,800 due to the Wasatch County Housing Authority prior to plat recording.
6. WCC 16.21.14 requires that large scale developments provide fencing of suitable quality to keep farm animals out of residential properties.
7. The applicant has provided details for a 5 foot fence consisting of two strands of barb wire and 4 feet of field net mounted to wood posts along the south and east property lines.
8. The Development Review Committee has reviewed the project for technical requirements of applicable codes and forwarded the item for consideration with comments noted in a DRC report.

9. WCC 16.01.16 outlines the expirations of applications or approvals as applicable.

Austin Corry then went through the proposed conditions:

1. The applicant is required to fulfill all commitments made by the applicant through the application materials including, but not limited to, affordable housing, infrastructure, maintenance obligations, etc.
2. The record of the approval and associated plan documents shall be memorialized by the recording of a Development Approval Memorandum prior to plat recording.
3. Note 9 on the plat shall include “flood insurance is recommended, though not required.”
4. The front setback on Lot 5 needs to reflect the turn-around easement and a note on the plat that driveway access to Lot 5 is prohibited in the easement.
5. The applicant shall work with the County to ensure notes regarding on-going maintenance of the storm water facilities is adequately addressed prior to delivering the mylar for signatures by the County. The note will need to address the party responsible and methods of enforcement in compliance with County standards.

Applicant

Chad Christensen, the applicant, just wanted to thank you for being patient with us as we have gone through almost three years of working on this. Thanks to the staff for helping us through each of the details.

Commission Comments

Commissioner Kimberly Cook wanted further explanation on the fence. Austin Corry replied that there is a strand of barb wire and then there is a four foot field wire mesh and another barb wire. So there is two strands of barb wire but a net fence in-between.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Doug Grandquis made a motion that we give approval of the final subdivision for Stony Oaks Holdings, LLC, consistent with and in light of the findings and subject to the conditions.

Commissioner Wendell Rigby seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Kimberly Cook, Doug Grandquis, Scott Brubaker.

NAY: None.

ITEM 6 CONSIDERATION OF A PROPOSED AMENDMENT TO WASATCH COUNTY CODE CHAPTER 16.33, GENERAL PARKING STANDARDS, AS IT RELATES TO SHARED PARKING STUDIES AND ON-GOING MONITORING OF PROJECTS WHEN PARKING REDUCTIONS ARE GRANTED. **IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON DECEMBER 20, 2023. (AUSTIN CORRY)*

Staff

Austin Corry, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the County Council has seen recent discussions related to shared parking studies which are allowed to be presented for consideration in lieu of standard compliance with the parking counts matrix listed in WCC 16.33 of the code. It was requested that staff look into adding requirements to have transportation consultants or other professionals required to be involved with the applicant in the process to provide better guidance. The item was discussed during the November

Planning Commission meeting. Staff has taken the input received during that meeting into consideration for what is presented here now for formal consideration. This is to address when an applicant is requesting a parking reduction which is allowed currently in the code, helping to provide some better clarity to the procedure that they would go through and what types of limitations we might add to that. A parking study that an applicant has to provide needs to be done by a transportation planner, architect or engineer and somebody with a license that is related to that request. They can use two different strategies, the shared parking strategies is identifying dissimilar uses or different operating times for uses so they wouldn't need the parking spaced to be able to be at capacity at both times. The other is through a transportation demand management strategy. Also they would have to actually provide data to demonstrate that the uses are operating separately. Also puts a reduction on how the reduction happens. It is somewhat opened ended saying that you can come and ask us for a reduction on a shared parking concept but it doesn't really give guidance on what that reduction might be. This would allow the County to grant up to fifty percent of the lowest demand use being removed. If you have high demand use and a low demand use and they are shareable you can take that low demand use and cut it in half and that is your number.

Austin Corry replied that if you utilize the TDM strategy and you could do both in the request and there is basically two different things that it provides. The full code has been put in the staff report. We have an actual land use table so if you go to the Mountain Zone per se you can go in there and there is a land use under the permitted uses and the conditional uses. If you go to our actual table that just says that these are all the options available to you we are talking thousands of numbers that are in there. We don't get many requests for ink printing presses or things like that any more but we have got them in a list. That is one clarifying factor that we put in there. The code already spoke to it but we made it blatantly clear in there that if the use is not specifically in that table that the planning director could pick a use that is most similar to it and apply it and if the planning staff doesn't feel comfortable doing that or we don't feel like there is one that really speaks to it then we require a parking analysis to determine the code requirement.

Austin Corry presented key issues to consider.

- Applicants should be required to include data driven studies when making requests.
- The County can provide guidance on successful approaches.
- Projects that have been granted parking reductions should be monitored for compliance and also to help inform future decision makers of the success or issues related to the regulations.

Austin Corry then went through the amendment summary.

Amendment Summary:

- Clarifies the process for requesting a parking reduction
- Study must be prepared by a transportation planner, architect, or engineer
- Can use shared parking, TDM, or both
- Shared parking must demonstrate dissimilarity using data driven time of day approach
- Establishes some limits to what the shared parking can reduce (50% of lowest demand use)
- TDM strategy lists potential ways
 - Landscape "potential" parking areas
 - Alternative transportation options

Austin Corry then went through some proposed findings:

1. The proposed amendment is in the interest of the public, and is consistent with the goals and policies of the Wasatch County General Plan as follows:
 - a. Goal 9 seeks to encourage multi-modal transportation options to meet the travel requirements of existing and future residents and visitors.
 - b. The General Plan supports the need to provide flexibility in the approval process for projects that seek creative and successful measures that reduce parking demands.
2. The parking standards in the code have a direct impact on the ability to encourage the transportation options desired under the General Plan.
3. The proposed amendment is consistent with the purpose and objectives outlined in Section 16.33.
4. It is a positive benefit if automobile parking lots are reduced in size to support higher landscape standards or other more efficient or productive land uses.

5. The proposed change clarifies the need to objectively analyze professional data when considering reductions to parking standards.
6. The Wasatch County Council, as the legislative body, has broad discretion for amendments to the Wasatch County Code.

Public Comment

Chair Chuck Zuercher then opened the public hearing for public comment and there was none so the public comment period was closed:

Motion

Commissioner Wendell Rigby made a motion to forward a positive recommendation for approval of the amendment to Wasatch County Code Chapter 16.33 to the County Council consistent with and in light of the findings presented in the Staff Report.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Doug Grandquis, Kimberly Cook, Scott Brubaker

NAY: None

ITEM 7 CONSIDERATION OF A PROPOSED AMENDMENT TO WASATCH COUNTY CODE TITLES 2, 14, AND 16 IN ORDER TO ADDRESS THE APPLICABLE LAND USE AUTHORITY, APPEAL AUTHORITY, AND OTHER SUBDIVISION PROCESS ITEMS IN RESPONSE TO THE UTAH STATE LEGISLATURES SENATE BILL 174 AND OTHER BILLS FROM THE 2023 LEGISLATIVE SESSION. **IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON DECEMBER 20, 2023. (AUSTIN CORRY)*

Staff

Austin Corry, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that earlier this year the State Legislature passed Senate Bill 174 which modified a number of provisions for how land use applications can be processed by local jurisdictions starting February 1, 2024. The provisions passed have caused a number of jurisdictions across the state to make wide sweeping changes to their land use ordinances and processes as a result. For Wasatch County, however, there are only a few aspects of our current process that would not comply with the requirements. The highest impact element is that the legislature is precluding the Council from acting as a land use authority for preliminary subdivisions for certain single-family residential products and is precluding the Planning Commission from acting on final subdivisions.

Austin Corry also indicated that while the adjustment to the process could be made quickly to comply with SB174's written intent, the County staff has spent time analyzing what appears to be the intent of the state legislature and has attempted to also identify ways that the County can improve efficiency for many of the current processes. At the same time, staff has also heavily weighed the benefits of the public process and necessity for transparency. The proposed amendment is the result of many hours of staff research and discussion weighing the varying interests, legal ramifications, and opportunities for improvement.

Austin Corry also indicated that while the totality of the amendment can only be understood through the complete ordinance, it is understandable that a nearly 50 page document can be difficult to digest easily. The below summary provides at least a high level understanding of the various changes being made and in some instances, a brief explanation of the intent behind the proposed change.

Austin Corry indicated that the legislature want things to move faster through a land use process. The things that SB174 did are first, it modified some moderate income housing reporting requirements that became effective immediately. The County already complies with those requirements. It also modified requirements for a county regarding internal accessory dwelling units. The main change that it made is that it precludes a jurisdiction from requiring there to be an internal connection between the ADU and

the main dwelling. And a large part of that is focused on allowing people to build what it appears to as you read the changes in the text is it is allowing people to build their ADU's above a garage but that ADU might get their access through a stairwell in the garage or something like that rather than trying to find habitable floor space to get back and forth to the other main area. That is a change that we need to make in order to comply with state code. The larger thing that SB174 does is modifying the process for subdivisions of single-family dwellings, two-family dwellings, or town home applications. That specific provision, like I said, is the largest change that this SB174 does. It gave our specific County until February 1, 2024 to comply with this code.

Austin Corry noted some of the other things are that they have instituted time lines for how quickly applications need to be reviewed. Internally through our county procedures we are well in compliance with the time lines that they gave. They gave a requirement of fifteen business days on preliminary subdivisions, twenty business days on final subdivisions. Typically our DRC process we are doing things in fourteen calendar days. Like I say we are well within the requirements there. It does limit preliminary subdivision stage that you cannot have more than one public meeting. This proposal, although I think we could comply without changing our code, but we are adding some language in there or suggesting to add some language in there that helps codify that we are complying with that. If you recall the discussions we had with one of the proposed code amendments that you received earlier this year this was one of the main sticking points was that proposal had some provisions in it that pretty much looked like another public meeting that would conflict with this provision. That is where a lot of our concerns were being raised during that time period.

Austin Corry replied that the last thing that it does in terms of the review process is that it caps the number of review cycles to four. So we are talking about our DRC process now. An applicant submits their documents, the county reviews it and gets some comments back and sends it to them saying here are corrections that you need to make in order to comply with code. The state law for these types of applications says that we cannot have any more than four. So under a strict reading I would usually suggest that for applicants that struggle to meet the code requirements what it is going to result in is a lot of denials happening because we will reach the four review cycles. They haven't been fixing things that the DRC has been asking them to and we will say that we can't do any more than four so you are denied. Which I don't really like the intent but it very much is what the language says. We believe that we have come up with at least an idea to provide some better flexibility. We have codified or we are proposing to codify that four review cycles but also noting that an applicant and the county can agree to let it keep going to more review cycles if they would like. Somebody who innocently doesn't know and honestly trying to work through it and it is not that they are openly ignoring the review comments they are just not understanding them or something. We can keep working through those with them and get them to an approval.

Doug Smith, the Wasatch County Planner, replied that what it might create is some engineer/developers that get to that fourth review cycle and we have recommended denial because they are not in compliance they will demand to come to the Planning Commission and obviously we will have a DRC report that says denial but it could be that we are debating what some of these developers think about that.

Austin Corry replied that you start seeing applications in front of you that aren't ready. The state code is giving them the right to come in front of you after that fourth cycle. Once a land use decision is actually rendered then they would follow the same normal appeal process.

Commissioner Wendell Rigby replied that they can say that we have the four cycles of review and can they press that as a requirement that we have to approve what they submitted or is there something that they still have to meet the county requirements and I have seen that happen before. Austin Corry replied that what you are saying there is a very high likelihood that if an item shows up to you because the applicant is saying that I have my four review cycles and I need to be on an agenda and they will take that position that you are saying. I don't read the state law to say that they are exempted from requirements of the code just because they made it through four review cycles. If they are in front of you demanding a decision then that takes away the option of continuing it unless in the meeting they go ahead and request that they continue you at that time and it will start resulting in likely more denials. Wendell Rigby replied that what is holding them back is either the developer or the developer's engineer who doesn't want to admit to his client that he hasn't gotten it done and they blame the County or the City for the delays or the fact he didn't review right the first time, the second time, the third time and you are adding things to the review each time. The laws that we are seeing are written by the legislature which is sixty to seventy percent of the legislators were developers. They have lobbyists to lobby to put these kind of laws into effect because it speeds up the process but it also I think it ends up hurting the public, the people who they are building these homes and projects for and these end up damaging the residents and developers just go their way after it is all built.

Austin Corry indicated that a lot of these state codes they tend to come through because of bad players. These are the same conversations that I have in my own office just in the DRC process and they will come in and say that they don't like that code and

I don't have the authority to saying that I am not going to enforce it. I just tell you what it is and that you comply with it. Commissioner Doug Grandquis replied that it takes a lot of our discretion away from us and no question about that.

Austin Corry replied that we have to have a published list of what the requirements are for a subdivision. It is codified in our code so that is not an issue. It adopts language similar to what it reads in the State Code right now under conditional use permits that says that if they meet your code you have to approve them. We comply with that. You see us bring projects to you all the time if they are meeting the code it is our recommendation for you is approval. They are re-enforcing that under the state level. It requires modifications to the appeal authority options for subdivision reviews. In essence when it is these single-family residential subdivisions it creates two descriptions for the types of plans that you are receiving with these subdivision applications. It refers to subdivision ordinance review and subdivision improvement plans. It says that if it is a subdivision improvement plans, it suggests that it is the civil engineering documents that are tied to, your water line, sewer line things like that. If it falls under that category than the applicant has a right to appeal even if the DRC is saying that you need to fix your sewer line to do this and they can appeal that to a panel of experts that would be an engineer selected by the applicant and engineer selected by the county and then a third engineer who the two parties agree on. That would make up three body panel where they can go in and argue about what the requirements are for their subdivision improvement plans. Here in the county and at least right now I am not concerned about it because we don't have a standard that meets the definition of what the state is restricting saying these things .Austin Corry replied that as we read through that state code it does suggest that is an option and that we don't have to use that panel of experts. Personally I feel like it would be a lot cleaner and a lot easier if there is a high likelihood if they are upset about one thing they are upset with more than one thing. This could really lengthen the time. Our proposed language we are suggesting that the county is encouraging them or the applicant to utilize our normal appeal authority to go through that process for appeals. When you have the one single review body you can talk about all the issues at once.

Austin Corry replied that obviously required us to address appeal authorities and as part of that we have also looked at our Board of Adjustment. This has been allowed under state code for a number of years. Your appeal authority does not have to be a Board of Adjustment. Since we have been looking at our Board of Adjustment and that board being a board with multiple people when we get appeals we have time lines that we have to meet in order to render decisions on those appeals and with multiple individuals that scheduling and getting hearings set up and things like that becomes difficult. We are recommending that we move to instead of an appeals hearing officer which would be a singular person that would hear the appeals. The person would be familiar with land use and laws and things like that but it would just be a single person and we could facilitate hearing appeals in a quicker manner.

Austin Corry replied that the biggest item in SB174 really forces Wasatch County to do and that is to the land use authority provisions. Preliminary subdivisions and final subdivisions for single family residential projects or two family and town home developments. Preliminary subdivision and final subdivision those are administrative decisions and we have had pretty lengthy discussions between the legislative approvals and administrative approvals. Legislative tends to come with high discretion. That is like zoning code amendments, general plan amendments and things where you are affecting the laws. Then the administrative approval route is do they meet the laws that are in place. Then you are operating as a land use authority that is what you are doing is an administrative approval. In Wasatch County I feel that we have been really good about it. We have to react with what the State Code is having us do.

Austin Corry presented flowcharts of development types review process to the Planning Commission and explained what they signify. Master Plans are not subject to the SB174 changes. The process is that the application gets submitted and the DRC reviews it and if they are giving comments there is this kind of back and forth and then the applicant resubmits. Once they get to where the DRC has established that they are compliant with code and they are ready for a decision we automatically advertise those things for the public hearings that they need to go through and at that time we write the staff report and it comes to you as a Planning Commission as the recommending body and then the Council is where a decisions rendered. The Council is our legislative body.

Austin Corry replied that moving on through our current process for those same overlay zones if they went through a master plan and their next step would be preliminary. Preliminary plans are the starting point if you are talking about a standard large scale development anything more than five lots would go through this process. This is the exact same process as that master plan. The land use authority at this stage this is an administrative decision but right now our land use authority is the County Council. SB174 explicitly says you can't use your legislative body as a land use authority for a preliminary subdivisions. We need to adapt for that. This proposal takes the legislative body out of that just for those applications that are more restrictive from doing that. JSPA, JBOZ, areas in the geologic hazard overlay zone, those are still going to follow the current process that we have. This is only for single-family residential subdivisions. You would now be the land use authority, you as the Planning Commission would now be the land authority for preliminary subdivisions. You are no longer recommending you would be the authority. You can only

have one public hearing on it as well. Commissioner Wendell Rigby replied that it limits the public involvement but the legislature is putting laws into effect that limit in this case the ability of the public to come and comment on it.

Austin Corry replied that this removes some of the transparency and the public process. Our Representative Kohler raised the same concerns when this was on the house floor. Also there is a difference between a public meeting and a public hearing and could result in instances where an item ends back in front of you but you can't take public comment. Jon Woodard replied that he doesn't see anything in the code that says that you have got people here to talk and you can't allow them to talk. Doug Smith replied that will be interesting to see if you do allow the public comment that I suspect there is some developers that would say that you can't do that.

Austin Corry replied that the change that is being made with preliminary basically just pulling the Council out of it because SB174 says that you can't use the Council. And it does put more responsibility on the Planning Commission. One of my concerns is I think there is benefits in having the individuals who create the laws see what those law are actually resulting in to help inform them whether the laws are really working or not. By removing the lawmakers the legislative body out of even seeing those applications they are removed far enough and you may not have results of good laws then.

Commissioner Doug Grandquis said not only that but then later on you say that the Planning Commission is removed as a land use authority for final subdivisions and replace them. In a sense when you approve the preliminary that is it, we are through. Austin Corry replied that we have a provision in our code and state law allows it to happen, that if there are substantial changes to that project we are going to get to the stage it is now final and now we are saying that doesn't meet your preliminary and you have to go back to preliminary and back to the Planning Commission and start a whole new application process to make a change that way. That is going to be one of the unintended consequences that will get people pretty fired up.

Commissioner Wendell Rigby replied that it is more general and then you get to final and it has got all the infrastructure and all the detail in it. Austin Corry replied that we do require engineering plans in the preliminary stage. The DRC at least the way we operate right now is we tend to be more forgiving on what we will allow to move forward. That will likely have to change now and DRC reviews are going to be more critical at preliminary than the developers will like.

Commissioner Doug Grandquis replied that we won't be able to address any feedback then because of this decision being moved on beyond our control. We won't know if what we decide here is put into the final plan. Doug Smith replied that I think the assumption is there and if there is a significant change it will come back to you but what you are approving should be substantial similar to what the final is. It opens up more disagreements because you will have a developer/engineer arguing that it is not a substantial change and we are arguing it is a substantial change.

Chair Chuck Zuercher said do we have to approve the code now. Jon Woodard replied it has to be done by February 1, 2024 or we will get a black eye with the legislature and will be in violation of state law. Austin Corry replied that there is flexibility and if you have other ideas I am all ears so the restrictions in the State Code is that you can't use certain bodies to do certain things. It doesn't necessarily specify how you go about doing that. They want people to just start using staff to make approvals and there are no public meetings, no planning commission, there is no council and suggests that but it doesn't strictly require that. Preliminary plan says that you can't use your Council and we think our Planning Commission operates just dandy. We like you guys. We felt that it is okay for us to use that. We think that we have come with a solution for final to help reintroduce some of the benefits that come from our current process.

Austin Corry indicated that the new preliminary process for single family residential matches our current process for final subdivisions. Unfortunately State Code SB174 says that you can't use your planning commission for the final subdivisions. What we are proposing is that there be the creation of a new committee. This committee would be called the Administrative Land Use Committee. It would consist of the Council Chair, the Planning Commission Chair, and the JSPA Planning Committee Chair or their designee. So the idea there is if somebody can't be there as a chair you can ask somebody else to attend and really think the designee is more appropriate for especially at the Council level because they are broken up to represent certain areas and it is likely that they will ask the person representing that area to operate at that time and that can change who the designee is from meeting to meeting. I think there is an opportunity to improve beyond just having these new committee created and we always have these meetings. There is a real valid concern with the concept if we create another committee that is one more public meeting and this is staff time to be at every public meeting and if we are attending so many meetings that we can't actually do our DRC reviews. Additional meetings place a burden on staff time that make it difficult to get to those other things. So there was the concern that if we take every item yet another meeting because it can't be the Planning Commission meeting that it takes it a way from that. We also think that we can meet an intent although it wasn't required in state code but it was clear that the intent was trying to expedite some of these approvals. The idea here would be that those items that you typically see on your consent agenda

and if it is a consent type item and they have worked through the DRC and the DRC is recommending approval the staff report would be written and it would be sent to the Land Use Committee Chair. The chair of that meeting will always be the Council member but it is sent just to the chair. The applicant will have seven days to look at the staff report and see the findings and see the conditions and if they raise no concerns the chair can just approve it administratively with no hearing. Just consent to the approval and it is done.

Austin Corry replied that if there is a concern there or in the case of unresolved comments after four review cycles and they are saying I want a decision and I demand a decision or a rip cord provision from state code and things where they are not meeting those requirements or if it is an item of high public interest that really just shouldn't be done as a consent item and then in those cases the meeting would be established and would be a meeting like we operate with the JSPA where the meetings are just called as needed and not a regularly scheduled meeting and just call them as needed and that is when the three members would assemble together and we operate like we do a normal public meeting. We would allow a lot of these consent things to just go through and signed off and be done.

Austin Corry indicated that I have got four things here that are the most prominent benefits from this idea and 1. It does retain some level of some involvement in the land use process and what I mean by that is because you have got the Council Chair that is sitting on that committee you as a Planning Commission Chair are sitting on that committee you are at least seeing those things that come through. We did present this idea to the Council to make sure that they were comfortable in concept with it before we drafted up the language that we did and there was talk in there that they would likely even use that member that is attending those meetings to then report in their board reports to the rest of the Council what is getting done in those committee meetings so the Council is being made aware in the best way they can. The same with the JSPA. It does reduce the number of extra meetings that need to be held while still protecting that ability to be involved. It provides an expedited route from the current process for consent items so even from today's process you will notice in there is that one of the suggestions and the only requirement from SB174 is moving the single-family residential projects through this new process. Minor subdivisions like Timber Lakes Lot combinations things that show up on your consent agenda quite regularly we site why don't we move those that same way. One of the benefits is that we can start lighting up your agendas. It still helps to preserve a good record of that decision. I think that a staff report being written helps more clearly identify what and how something gets approved as opposed to the DRC reports which might have some applicable comments but explaining how something is meeting a code requirement or how something is anticipated to be adjusted, conditions or approval type of a thing and the staff report helps pull all those together and make it more clear what the expectation is should a dispute arise later on. And it provides a clear record of the decision rendered. These are some of the benefits I see coming from this new Land Use Committee idea. Admittedly our current process is better but we can't use in anymore.

Austin Corry then went through the summary of the proposed amendment:

AMENDMENT SUMMARY

- Panel of Engineering experts listed as appeal option for civil improvement plans on subdivisions.
- Changes appeal authority from a Board of Adjustment to an Appeals Hearing Officer.
- Adjusts duties and responsibilities of the Council, Planning Commission, and other land use authorities to comply with SB174.
- Creates an Administrative Land Use Committee to expedite certain approvals in the county.
- Adjusts fee schedule.
- Cleanup and moving of sections to organize the code for efficient and easier understanding.
- Adjusts IADUs requirements to comply with SB174.
- Other small cleanup items to reinforce existing county policies.

Austin Corry then went through some proposed findings:

1. The Utah State Legislature enacted Senate Bill 174 earlier this year (2023).
2. SB174 requires the County to, by February 1, 2024, modify local land use regulations to, among other things, eliminate any provisions that require certain single-family residential developments from being subject to review by the legislative body acting as a land use authority.
3. The county has previously shown an interest in protecting public transparency and interests.
4. The county has weighed the public benefit for other land use authority provisions and appeal authorities in consideration of transparency, fiscal responsibility, and efficiency.

5. The Wasatch County Council, as the legislative body, has broad discretion for amendments to the Wasatch County Code.

Commission Discussion

Commissioner Wendell Rigby indicated that isn't this something that if we pushed it off until January to decide that doesn't give you much time to put this committee together and be in compliance with the legislature. Austin Corry replied that some of the reason why I pushed real hard to get it on this agenda was if we do need to make adjustments we do still have another meeting. If this was January right now I would be saying that we have got a problem because we have got to adopt this by February 1, 2024. I think we have got some time here and if there were some things that you saw in there that you had concerns with and wanted us to move into. That said, if you read the draft ordinance that is in there it does state that it would not go into effect until February 1, 2024 even if it were passed now in December we would wait until February 1, 2024 before it went into effect. The Land Use Committee is not that difficult because it is already spelled out who the members are that just is what it is. What we are looking for some more time on is that move from the Board of Adjustment to the appeals hearing officer. We would likely have to go for an RFP or RFQ we need to find somebody who would actually fill that hearing officer role and that is something that we would need some time on.

Doug Smith replied that if it was continued it would go to the Council in the third meeting in January and still be okay unless the Council wanted to continue it. Even then if someone submitted a project after February 1, 2024 they would be vested under this process SB174 and anything prior to that would be under our current process I am assuming. Austin Corry replied so if we didn't make the change and our code ends up in violation of the SB174 then we would not be allowed to enforce our code. We would have to just come up with some sort of a process for them to follow through. It is helpful if it is codified. Is there anything in particular that you are seeing there or just wanting some time to review it?

Commissioner Kimberly Cook replied that it is a lot of information to digest. Doug Smith replied that the Council is aware of this and there has been discussion with them. Commissioner Kimberly Cook replied that if we took another month that wouldn't change things or is there a problem. Austin Corry replied that we have time to implement it still if you felt like you needed another month.

Chair Chuck Zuercher replied that we would like to hear Commissioner Mark Hendricks in what he has to say about this going forward. We could take more time to go through it more thoroughly. Doug Smith replied that there are five commissioners here and this is a big issue to decide.

Commissioner Scott Brubaker replied I have got one person over here saying that a month isn't going to change much and this other person over here saying maybe you should slow down and see what else you could figure out here. It is hard to know that we will come up with anything better. I think that these guys have been looking at this for a long time. I guess I would ask Doug and Austin, do you think we are there? I mean do you think we are as good as we are going to get? Or do you think there is something else that we could do and I mean you probably have already thought through that. Any comments on that? Austin Corry replied that I never liked to give an answer to, are we as good as we are ever going to get. I think there is always room for improvement. I will say there has been a significant amount of work going into this to where I feel like we are about as improved as we could do to be in compliance.

Jon Woodard replied that my work on this and I pushed as hard as I felt like I could without feeling like we are going directly against what the legislature wants to try and maintain the ability of our elected representatives role in the planning process and for the public to have a role in the planning process. It takes away substantially from both of those things but I feel like we have done as much as I could see to do and preserve those and comply with SB174.

Commissioner Kimberly Cook replied that I would like to hear what Commissioner Mark Hendricks has to say. Chuck Zuercher replied that we could put it off for a month to give time for Commissioner Mark Hendricks to look into this. Austin Corry that is fine with me.

Chair Chuck Zuercher replied that he would like to hear what Commissioner Mark Hendricks would say. We can only do a few things and still be in compliance with what they want period. Austin Corry replied that there are options and some of them aren't good ones and there are consequences. Austin Corry replied that the moderate housing changes that I talked about that is what the state wrote in if you don't comply and then we are pulling your state transportation funds.

Commissioner Kimberly Cook asked if other counties just comply and do what they need to do. Commissioner Scott Brubaker replied that I bet there are other counties with their staff going crazy right now or they aren't going crazy and they will get a black

eye for that. Doug Smith replied that you have to just comply regardless. Commissioner Scott Brubaker, that is true. Doug Smith indicated that you can't process it the old way you have to just write a new code.

Chair Chuck Zuercher replied that as much as I would like to hear Commissioner Mark Hendricks and he could bring us some great ideas but the bottom line is we are probably pretty close the way it has to be. Austin Corry replied that as it is composed it would comply with State Code.

Commissioner Doug Grandquis indicated that philosophically, politically, ethically or whatever I am deeply opposed to this and I was going to vote no to this but after listening to staff and taking their input I don't think we really have a chance. I think that we have got to move forward. There is just that time line and we can't tell if there is going to be an adequate number of people here for the next meeting and then what will we do. We are really up against the wall here so it is against my judgement and I have talked this over with my wife because like I said I have voted against a number of issues and I am going to go ahead and make a motion after public comment.

Public Comment

Chair Chuck Zuercher then opened the public hearing up for public comment and there was none so the public comment was closed.

Motion

Commissioner Doug Grandquis made a motion that I would recommend to the County Council to approve the proposed amendment to the Wasatch County Code Titles 2, 14, and 16 in compliance with SB174 based on staff's recommendations and subject to the findings.

Commissioner Wendell Rigby seconded that motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Scott Brubaker, Kimberly Cook, Doug Grandquis.

NAY: None.

ADJOURNMENT

Motion

Commissioner Wendell Rigby made a motion to adjourn.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Wendell Rigby, Scott Brubaker, Kimberly Cook, Doug Grandquis

NAY: None.

Meeting adjourned at 8:00 p.m.


CHUCK ZUERCHER/CHAIRMAN