



OGDEN VALLEY TOWNSHIP PLANNING COMMISSION

REGULAR PLANNING BOARD MEETING AGENDA

July 26, 2011

4:00 p.m.

Pledge of Allegiance
Roll Call

1. Minutes:

- 1.1. Approval of the June 28, 2011 regular meeting and work session minutes

2. Consent Agenda

- 2.1. Consideration and action on a request for preliminary approval for the Felt Subdivision and a recommendation for the vacation of Lot 5 of the Shawn Knight Subdivision No. 2 and all public utilities located therein.

3. Regular Agenda Items:

Old Business

- 3.1. Clarification and action regarding the Planning Commission recommendation to the County Commission for the amendments to Chapter 34 Home Occupation as identified May 24, 2011.

- 3.2. ZO 2010-10 An Ordinance to amend Chapter 29 Board of Adjustment of the Weber County Zoning Ordinance

4. Public Comments:

5. Planning Commissioner's Remarks:

6. Staff Communications:

- 6-1. Planning Director's Report
6-2. Legal Counsel's Remarks

7. Adjourn to convene a work session

PLANNING COMMISSION BOARD WORK SESSION AGENDA

WS1. Discussion of Heliports in the Ogden Valley

WS2. Adjourn at 6:00 p.m. to hold a combined Ogden Valley and Western Weber County Township Planning Commission field trip to visit Barker's Trout Farm

The meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.

No pre-meeting will be held in Room 108.



In compliance with the American with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791

Minutes of the Ogden Valley Township Planning Commission meeting held June 28, 2011, in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Greg Graves, John Howell, Laura Warburton, Jim Banks; Kevin Parson, Dennis Montgomery

Absent/Excused: Ann Miller

Staff Present: Jim Gentry, Asst Director, Sean Wilkinson, Planner; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Sherri Sillitoe, Secretary

Pledge of Allegiance

Roll Call

1. Minutes:

- 1.1. Approval of the May 3, 2011 and the May 24, 2011 meeting minutes

Chair Parson declared the May 3, 2011 and the May 24, 2011 meeting minutes approved.

Chair:

Commissioner Warburton moved to nominate Kevin Parson as Chair for the remainder of 2011.

Commissioner Graves seconded the nomination.

Vice Chair:

Commissioner Howell moved to nominate Greg Graves as Vice Chair for the remainder of 2011.

Commissioner Montgomery seconded the nomination.

VOTE: The nomination for Kevin Parson as Chair for the remainder of 2011 carried by a unanimous vote (5-0).

VOTE: The nomination for Greg Graves as Vice Chair for the remainder of 2011 carried by a unanimous vote (5-0).

2. Regular Agenda Items:

New Business

- 2.1. Consideration and action on a request for renewal of Conditional Use Permit 2008-21 allowing the use of a temporary trailer for the Powder Mountain Kids Ski School (Western America Holding LLC, Applicant; Angela Illum Agent)

Sean Wilkinson presented a staff report and indicated that in 2008, the Planning Commission approved CUP 2008-21 allowing the use of a temporary trailer for the Powder Mountain Kids Ski School for one year. In November 2009, the Planning Commission approved a two-year time extension for this use. This time extension expired at the end of the 2010-2011 ski season. The applicant is requesting a new three-year time extension for use of the temporary trailer through the 2013-2014 ski season, until a more permanent structure can be completed.

When the trailer received the first extension in 2009, the Planning Commission required additional landscaping and architectural detail to meet the requirements of the Zoning Ordinance Chapter 18C. The applicant complied with the Planning Commission's recommendations by building a new deck on the trailer and installing landscaping around it. The deck and landscaping are still in place. The Planning Commission also required an escrow for the cost of removing the trailer in the future. The County currently holds \$8,000 in escrow for this purpose.

If the PC does grant a time extension, consideration should be given to a time certain and they could request a progress inspection within the 3-year time extension. Staff's recommendation is for approval through the 2013-2014 ski season.

Commissioner Warburton asked the location of the temporary trailer and how long the structure could remain temporary. Mr. Wilkinson asked if the trailer is continually monitored by the County for safety by the Weber County Building Inspection office. Angie Illum said they use the trailer to house their children's program, which involved 100-150 lessons last year.

Commissioner Howell noted that if the conditional use extension is approved, after three years, if a permanent structure is not proposed, they would need to remove the temporary trailer.

MOTION: Commissioner Warburton moved to grant approval of CUP 2008-21 a request for a temporary structure for an additional three years. She does not see any harm with granting the extension. The structure meets safety regulations and is routinely inspected by the Weber County Building Inspection office. She does not see any reason for them to force the private business to cease at the end of another three years. The code does not say that they have to. The structure is currently working for the business. Commissioner Howell seconded the motion.

Commissioner Graves indicated that when the new 3-year extension ends, they would have had a temporary structure for five years. He would like to see a permanent structure proposed by the end of the three-year extension. Commissioner Howell agreed.

Commissioner Howell asked clarification that staff is recommending that eventually a permanent structure would be proposed and the temporary trailer removed. Chris Allred said it is a conditional use permit and the Planning Commission has discretion. The Planning Commission can vote to put a cap on the number of extensions given for the temporary trailer. They can put a cap on at that time. Once the 3-years end, approval ends; they would have to reapply for another extension.

Commissioner Graves proposed a friendly amendment: He would like to see a progress report once a year for three years. Commissioner Warburton and Commissioner Howell agreed.

VOTE: A vote was taken and Chair Parson indicated that the motion carried (5-0).

2.2. ZO 2010-10 An Ordinance to amend Chapter 29 Board of Adjustment of the Weber County Zoning Ordinance

Sean Wilkinson reported that the proposed amendments to Chapter 29 (Board of Adjustment) are meant to simplify and clarify the existing language. There is a need to bring the criteria for appeals and variances from the Weber County Zoning Ordinance into conformance with Utah state code.

The Ogden Valley Planning Commission on March 1, 2011, the Western Weber Planning Commission on March 8, 2011, and the Board of Adjustment on March 31, 2011 previously made separate recommendations to the Planning Division in work sessions to amend Chapter 29. Staff has made changes based on these recommendations and is now proposing that the Planning Commission make a recommendation to the County Commission on the proposed amendments.

In the March 1st work session, the following policy questions were discussed:

1. Should the Board of Adjustment have more duties and powers than staff is proposing?
2. Which body (staff, planning commission or board of adjustment) should handle special exceptions?
3. If special exceptions are removed from Chapter 29, where in the Zoning Ordinance should they be relocated?
4. Are the existing criteria for special exceptions adequate?
5. How should notice for Board of Adjustment meetings be handled?
6. Should citizens from outside the unincorporated area of the County be allowed on the Board?
7. How should extensions be handled for Board decisions that have not been acted upon within the specified period?

Most of the existing duties and powers will be eliminated because they are redundant or the power to make the decision has been given to another group, like the Planning Commission, or located elsewhere in the Zoning Ordinance. For example, the Planning Commission can vary the number of parking stalls based on language from Chapter 24 (Parking) of the Zoning Ordinance, thus eliminating the need for the existing duty and power number 5.

29-4. Decision criteria and standards: This section discusses the criteria and standards associated with appeals and variances from the Weber County Zoning Ordinance. The language for this section comes almost completely from Utah State Code. This section now provides much more detail than was previously available. A 15-day appeal period is being proposed, as well as designating a review of the record as the standard of review.

29-5. Procedure: This section describes and clarifies the application process, notice to neighboring property owners, notices of decision, filing of minutes, expiration of approvals, and appeals of the Board's decisions (**Policy Question 7**). Staff is recommending that no time extensions be given for variance approvals if no action has been taken within an 18-month period.

Commissioner Warburton had the following concerns:

29-2.3 Should read: "and" ethics instead of "or."

29-2 After a brief discussion, Mr. Wilkinson noted that he will work on the wording for this section.

29-5 Procedures – Commissioner Warburton expressed concern especially after reading 31-4 on how a person who has gone to the Planning Commission for administrative decisions/appeals. An application or citizen only has so much time before they can appeal (15 days). There is nothing required of the County to let people know the procedure of when they need to appeal, so is there a way that they can do that with the minutes? Sean Wilkinson replied that the timeline kicks in from the date the board approves the minutes. If the staff fails to send a notice of decision, then the minutes are their safeguard.

29-8.4b (clarification) deals with the interpretation of the ordinance. When someone appeals that to the board, staff would interpret the code as a policy. At some point in the future, staff may propose an ordinance amendment. Commissioner Warburton indicated that in essence that sets a precedent.

Chris Allred said if someone challenges an interpretation of our ordinance, that appeal goes before the Board of Adjustment who would then provide what they believe to be the correct interpretation is and that interpretation then goes. At some future time, staff could propose a text amendment to the ordinance that would clarify that interpretation.

On 29-5.3a, he is not sure the proposed wording is appropriate and he will work with staff to provide the appropriate language to reflect state law.

Steve Clarke congratulated Commissioner Warburton on her thorough analysis of this issue. He had one experience with a Board of Adjustment case where he sat through the Planning Commission's review of an issue and then sat through the Board of Adjustment's review of that issue. He was dismayed after that process. He would suggest that the Planning Commission table this ordinance and ask the County Commission for a review.

The ordinance says it is being modified; it seems to embed the process of decision making and record keeping about an issue of which there is a contention deeper into Planning staff and not bringing it out into the legislative body like the Planning Commission or County Commission, and that makes him very uncomfortable that an applicant may never get a fair hearing. He believes that the County Commission should be asked for opinion on whether the Board of Adjustment should be operated under the control of the Planning Commission, which the staff support of the Planning Division or whether the staff support should be done by another County department such as legal. It is a very difficult job to capture the conversation into a set of minutes without transcribing word for word. He has read enough of these minutes that he believes that motions are often incompletely transcribed or that the discussion is incompletely recorded. He would have to say that he believes it is unfair to the citizen to have the same

group that he is appealing presenting all the facts and record of the case, saying this is what it was and why it was, and that the Board of Adjustment should approve it. He would ask that the members table this, think about this issue of fairness to the residents and take it back to the County Commission to make a decision on how the Board of Adjustment operates.

Commissioner Warburton indicated that there are many ways a county can create an appeals board. The Board of Adjustment's decisions are appealable to District Court. Steve Clarke indicated that the court reviews the record by the person who made the recommendations in the first place. The applicant has to stand up and defend his own record and that is not what he would call an appeal.

Commissioner Warburton asked Steve Clarke if he had done any research on any other appeals board where they have done things differently, and Mr. Clarke replied no. He believes this ordinance further embeds what he calls nepotism into the Planning staff. He believes this is a significant ordinance modification and warrants careful scrutiny.

Sean Wilkinson pointed out that Utah State Code puts appeals and variances in the hands of the appeal authority. Special Exceptions should not be in the hands of the Board of Adjustment. Staff has the power to administrative approve subdivisions. If the flag lot makes sense based upon the criteria of that ordinance, then staff would make a recommendation based upon that criterion. There would still be a staff report with a recommendation that staff would argue for or against whatever the appeal is. It is not an arbitrary decision. Staff is not handling variances.

Commissioner Howell clarified that State Law sets the regulations. Sean Wilkinson indicated for an appeal and a variance, the burden of proof is on the appellate. Staff does not set that responsibility.

Chris Allred said the State Legislature recognized in essence what Mr. Clarke argued for. State Law indicates that no member of the Planning Commission may sit on the Board of Adjustment.

Commissioner Warburton indicated that people could not appeal a fee. Is there somewhere that it states that if people disagree with a fee, that they can appeal it to someone. Jim Gentry indicated that fees are appealable to the County Commission.

Steve Clarke said in appeals people either believe or do not believe that they meet the criteria. It is not a matter of black and white.

Lee Schussman, an Eden resident, asked in this process does an applicant have a chance to present their case to staff. Chair Parson indicated that the appellant would still make their case. Mr. Wilkinson agreed.

MOTION: Commissioner Montgomery moved to table this item for further study. Commissioner Warburton seconded the motion.

Commissioner Warburton made a friendly amendment that they table the issue until the next regular meeting and direct staff to address those items, and that staff work with legal to make sure that all language met State code.

Commissioner Graves indicated that he felt good about the way the ordinance is drafted. He believes it is an appropriate way to streamline some things. They are not putting an evil conspiring element in the ordinance; he believes there is enough separation between the two groups to get a fair hearing. Commissioner Warburton indicated that she does not believe that was what Mr. Clarke meant; she believes there is some frustration there. Commissioner Graves indicated that he could appreciate that there is some frustration there.

Commissioner Howell indicated that he does not have a problem with streamlining but believes they can table so the new members can have time to study the issues.

Chair Parson said when he read the ordinance he thought about the de-novo concept. Sean Wilkinson indicated that the Board of Adjustment has rules of procedure including ethical conduct. Chris Allred said de-novo does mean that you cannot bring up new issues at that hearing that were not raised previously. Commissioner Warburton indicated that the very nature of a hearing is to hear. Chair Parson indicated that it is not fair to go the appeal board and bring up new issues.

VOTE: A vote was taken and Chair Parson indicated that the motion carried (5-0).

4. Public Comment

Chandra Barong, Liberty, indicated that staff recommended that she ask the Planning Commission a question on an issue that rose previously. There is a problem because all of her existing fencing is chain link. All the property in the manufacturing zone has chain link fencing. The chain link fence at the County Road Shops has existed for many years. The zoning was originally A-3.

Staff indicated that she would have to apply for an ordinance amendment. Chair Parson said he is assuming that she would have to make an application for such amendment to the ordinance.

Chandra indicated that none of the existing businesses complies with the present ordinance requirement. She believes it would be more logical that on the existing seven lots chain link fence could be allowed.

Commissioner Warburton asked why the Planning Commission could not ask staff to propose an ordinance amendment rather than requiring a citizen to apply for an ordinance amendment.

Commissioner Graves indicated that there was a lot of discussion about what type of fencing and how it should be applied in the Ogden Valley when Chapter 18-C was drafted. There is a reason for that requirement in the ordinance. It applies to commercial/manufacturing. The fence at the County shops is grandfathered.

Chandra Barong indicated that she is not trying to circumvent the system. She saw the surrounding chain link fencing and matched what was there for 50 feet.

Jim Gentry indicated that they have required other applicants to apply for an ordinance amendment.

Commissioner Warburton indicated that staff sent her to the Planning Commission. Jim indicated another staff member did. Chandra Barong indicated that she would propose an ordinance amendment.

5. Planning Commission Comment

Commissioner Warburton indicated that the statement "subject to staff and other agency recommendations." It occurred to her that if she does not have everything in front of her, she does not want to make a decision. Chris Allred said that other agencies need to sign off or give a recommendation. Commissioner Warburton indicated that when she was at the National APA Convention in Boston, MA she brought up that statement and the feeling in the room seemed to say however, "can they do that?"

Chris Allred indicated that if they are uncomfortable with that broad statement of "subject to staff and other agency recommendations," they could be more specific.

Commissioner Warburton said in the Planning Commission Handbook D2-7 it indicates that if at all possible, the Planning Commission members are to get the meeting agenda seven days in advance. Sometimes it is on the state site and sometimes it is not. The county worked really hard with the State Legislature this year to try to remove the requirement for public notice in a newspaper because of the cost and based on the fact that we would be moving more and more to electronic notification, the state site for posting is acceptable but it doesn't always get done. She knows how hard things are but she would like to get the agenda closer to 7 days ahead of each meeting.

Commissioner Warburton indicated her concern that when people are talking at the podium, it is in their rules to order that they are not to whisper to each other or have a conversation. She knows that is hard sometimes, but she would like them to pay more attention to those rules and not do that.

Chair Parson questioned the expiration date of the Park and Ride Lot, Pat's Place. Ben Hatfield indicated that he believes the approval will end approximately July 19, 2011.

The meeting was adjourned to convene a Work Session

WS1. Heliport in the Ogden Valley

Sean Wilkinson indicated that the issue was tabled by the Planning Commission so that heliports in the Ogden Valley could be discussed. This use may be appropriate in the Ogden Valley.

Staff presented four options:

1. Remove the heliport in the CV-2 Zone.
2. Allow heliports above a certain elevation in multiple locations in the Ogden Valley. All the CV-2 Zones are on the Valley floor. Option 2 would be to move heliports to the MV-1 Zone. Elevations above 6,200 ft. are in the F-40 Zone or they can create an overlay zone.
3. Allow heliports only in the DRR-1 Zone

They have not defined heliport, helipad or airport in their ordinance. Do we want to eliminate heliport use in the Ogden Valley? Commissioner Howell indicated that a heliport and heli-stop is the same thing. He believes that at a heli-stop, there would be no refueling.

Commissioner Warburton indicated that she believes a solution would be to create an aviation chapter. She believes that they could allow helipads in ski areas in the DRR-1 Zone only above 6,200 ft.

Commissioner Howell indicated that he believes they should give a specific elevation.

Commissioner Parson said that he believes it would be appropriate to say "out of the Ogden Valley."

Steve Clarke shared the GEM Committee's considerations. They believed that the valley could be well served by operating out of the DRR-1 Zone and that any helicopter traffic above the valley floor be at least 2,200 ft. above the heliport over the valley floor.

Commissioner Warburton said if they are in the DRR-1 Zone they could have a heliport.

Lee Schussman, Eden, indicated that he and Dave Holmstrom submitted the zoning ordinance amendment. Dozens of people in the Ogden Valley discussed this (the GEM Committee). He believes it is a whole issue than operating out of a DRR-1 Zone. They believe heli-port should be in a DRR-1 Zone above 6,200 ft. He agrees with the North Carolina definition; where they had concerns about safety, noise and other things..

Chair Parson said that he believes that the heliport should be removed from the CV-2 Zone.

Commissioner Graves said it is eliminated from the CV-2 Zone if they place an elevation requirement above 6,200 ft. Commissioner Warburton said she would like to know the elevation at Snow Basin where they have been landing. It was indicated that the elevation was barely above 6,200 ft.

Commissioner Warburton asked if they designated the flight path, would that eliminate the problem. You are going to have helicopters in the Ogden Valley that take off from the valley floor. Sean Wilkinson said that most of the ski areas at Powder Mountain are zoned F-40.

Lee Schussman indicated that he believes there may be legitimate business needs to fly in and out of the valley. He believed that to the GEM Committee 2,200 ft. seemed like a compromise. He spoke with Commissioner Dearden who indicated that he would not even consider dictating the flight paths. Mr. Schussman said he believes they should have a heliport rather than allow heli-stops.

Chair Parson said that if they are completely out of the encompassing valley,

Commissioner Graves said he likes the idea of having some elevation control as part of their base. Maybe they should also look at the F-40 Zone in some areas where it doesn't affect the valley.

After further discussion Chair Parson said he believed that the consensus is to allow heliports in elevations above 6,200 ft. and allow them in the F-40 Zone.

Chair Parson said that the F-40 Zone is on the periphery in the Ogden Valley. He does believe that they should place conditions on the use in the F-40 Zone so it does not get out of hand. Commissioner Warburton, indicated that it is a heli-stop they need in the F-40 if they want to de-incentivize to go to a DRR-1 Zone.

Mr. Schussman indicated that F-40 does include the Sourdough area and he was wondering if they want to include the potential in that area. Commissioner Graves said they would need to look at the elevation there. Sourdough is not a residential area such as on the main valley floor.

Chair Parson asked if they prefer it out of the CV-2 Zone?

Commissioner Warburton said her preference is to eliminate the use from the CV-2 Zone.

Chair Parson said in his opinion if they keep it to the DRR-1 ski resorts, heliports could be allowed in ski resorts above 6,200 ft. Commissioner Montgomery said if they restrict it to ski resorts, what about where people wanting to fly a helicopter to property to hunt.

- WS2. ZO 2011-1** Consideration and/or action on a text amendment to the Weber County Zoning Ordinance by amending the definition of "school," and adding the definition of "Therapeutic School," establishing facility requirements and to include "Therapeutic School" as a conditional use in the F-5, F-10, F-40, AV-3, FR-3, and CV-2 Zones (Fred Smullin, Applicant)

Ben Hatfield said when they looked at the proposal, he believes that it was good to have the information about the State Fair Housing Act, but they already regulate treatment centers in single-family residential zones.

Commissioner Howell said he believes it is a commercial venture. He thanked Mr. Hatfield for this well thought-out report. Commissioner Warburton agreed.

Should they change the definition or go with State Code. State Code defines facility but not a school. Overnight accommodations are not allowed in the school definition.

Commissioner Graves said given current schools are allowed, he does not believe they should come up with a definition.

Commissioner Warburton said Craig Call indicated that they should define the different school types. She spoke today with the Litigator and Duchesne County where a case was appealed and filed against the Planning Commission. She cautioned the need to be aware of making discriminatory decisions. Can they look at a way to limit the number of people allowed on an acre?

Commissioner Howell said he believes they need an environmental impact study. Fair housing goes both ways. He believes such centers should be in the right location based upon some concerns stated such as ground water concerns.

Ben Hatfield said if they took out every overnight accommodation in an FV-3 and AV-3 Zone, then they do not have to allow such centers. Chris Allred said if a zone permits residential dwellings, it permits residential facilities for disabled persons.

Fred Smullin, the applicant, said the hotel industry has standardized "extended stay to seven days."

Chris Allred said therapeutic schools do not have to be for disabled persons.

Kathy Peterson, Eden, said the Green Valley people are not representing them as being for disabled people. In several hearings, they stated that their clients are not disabled. She believes they should be limited to a commercial zone, not in an AV-3 Zone. She does not believe they would approve a single-family dwelling for 36 people. She believes they should consider the density and believes they should be located in a commercial zone.

Chris Allred agrees that they can regulate according to how many residents, etc.

Commissioner Parson said he believes they had progress in terms of the suggested standards during the design review for Green Valley.

Mr. Smullin indicated that the process should be as follows:

The first round is to get the definition of schools allowed

The second round is to list the conditions tied to those schools

And the third round is to determine the Zones for location.

The petitioner presented a definition for a private school. Staff was not comfortable with the petitioner's definition.

There being no further business, the work session adjourned at 8:35 p.m.

Respectfully Submitted,

Sherri Sillitoe, Secretary
Weber County Planning Commission



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and or action on a request for preliminary approval for the Felt Subdivision and a recommendation for the vacation of lot 5 of the Shawn Knight Subdivision No.2 and all public utilities located therein.

Agenda Date: Tuesday, July 26, 2011

Applicant: Vince and Alyson Felt

File Number: UVF062111

Property Information

Approximate Address: 4911 N 3000 East, Liberty

Project Area: 4.20 acres

Zoning: AV-3 and FV-3

Existing Land Use: Agricultural

Proposed Land Use: Residential and Agricultural

Parcel ID: 22-008-0020 & 22-174-0022

Township, Range, Section: 7N 1E Sec 18

Staff Information

Report Presenter: Ben Hatfield
bhatfield@co.weber.ut.us
801-399-8766

Report Reviewer: SW

Applicable Ordinances

- Weber County Subdivision Ordinance
- Weber County Zoning Ordinance Chapter 12B (FV-3 Zone)
- Weber County Zoning Ordinance Chapter 5B (AV-3 Zone)
- Weber County Zoning Ordinance Chapter 40 (Ogden Valley Pathways)

Background

The applicant is requesting preliminary approval of the Felt Subdivision and a recommendation for the vacation of lot 5 of the Shawn Knight Subdivision No.2 and all public utilities located therein, located at 4911 N 3000 East in Liberty. This one lot subdivision is on 4.20 acres and is located in AV-3 and FV-3 zones. Both zones require a minimum of 3 acres in area and a lot width of 150 feet per dwelling. This subdivision is an expansion of a previously existing lot, lot 5 of the Shawn Knight Subdivision Phase 2 which will be vacated. The previously existing lot currently has 150 feet of road improvements for 3000 East. With this subdivision amendment utilities and improvements will be extended and stubbed to the end of the property, which will consist of an additional 280 feet of road and water line.

Presently 3000 east is approximately 850 feet in length; with the additional 280 feet of improvements the total length will be about 1100 feet. This length of road is less than the maximum (1300 feet) block length required by the Subdivision Ordinance (26-2-3-a).

Culinary water is provided by the Liberty Pipeline Company and wastewater treatment is provided by an individual septic tank. A future side path along 3000 East can be placed within the right of way. A new fire hydrant will be placed on 3000 East.

Summary of Planning Commission Considerations

- Does the subdivision meet the requirements of applicable Weber County ordinances?

Conformance to the General Plan

The proposed subdivision meets the requirements of applicable Weber County ordinances and conforms to the General Plan.

Conditions of Approval

- Requirements of the Weber County Engineering Department
- Requirements of the Weber Fire District
- Requirements of the Weber County Health Department
- Requirements of the Weber County Surveyors Department

Staff Recommendation

Staff recommends preliminary approval of the Felt Subdivision based on its compliance with applicable Weber County Ordinances as explained in this staff report.

Exhibits

- A. Proposed Preliminary Plat for the Felt Subdivision

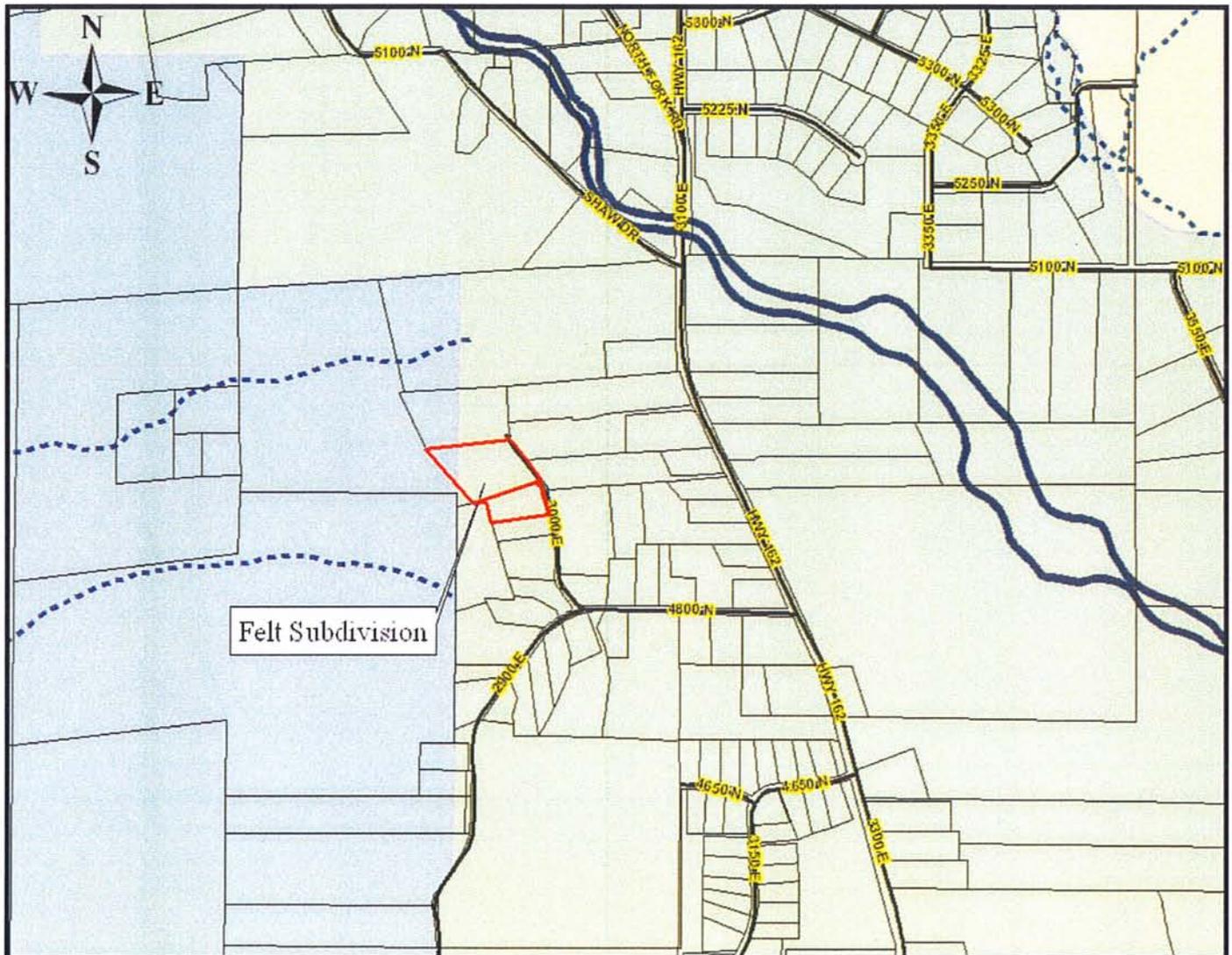
Maps

Adjacent Land Use

North: Vacant/Agricultural
West: Forest

South: Residential
East: Residential/Agricultural

Map 1







Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Staff Amendment to the Weber County Zoning Ordinance Chapter 34 Home Occupation - Short Term Vendors-Temporary Outdoor Sales-Farmer's Markets

Agenda Date: Tuesday, July 26, 2011

Applicant: Weber County Planning Staff

File Number: ZO-2010-09

Property Information

Approximate Address: Not Applicable

Project Area: Not Applicable

Zoning: Not Applicable

Existing Land Use: Not Applicable

Proposed Land Use: Not Applicable

Parcel ID: Not Applicable

Township, Range, Section: Not Applicable

Adjacent Land Use

North:	Not Applicable	South:	Not Applicable
East:	Not Applicable	West:	Not Applicable

Staff Information

Report Presenter: Robert Scott
rscott@co.weber.ut.us
(801) 399-8791

Report Reviewer: SW

Applicable Ordinances

- Chapter 34 Home Occupation

Background

At the May 24, 2011 Ogden Valley Township Planning Commission meeting Chapter 34 Home Occupation-Short Term Vendors-Temporary Outdoor Sales-Farmer's Markets was on the agenda to take action on a recommendation to the County Commission to adopt the amendments. There were several votes taken regarding various amendments, specifically, the elimination of nail salons, tattoo parlors, tanning salons, and massage therapy parlors as recommended by the Weber Morgan Health Department and condition 7 relating to the sale and production onsite of merchandise be eliminated. However, there was no motion on the overall ordinance. The purpose of this agenda item is to rectify this oversight and make a motion regarding the overall ordinance.

The attached ordinance reflects the motions to date from both the Ogden Valley and Western Weber Planning Commissions. There are some differences between the two Planning Commission recommendations. Staff has included both recommendations so the County Commission can understand the rationale for them and make a policy decision at the public hearing.

Staff Recommendation

An appropriate motion would be, to make a motion that the Weber County Commission adopt the overall ordinance and amendments to Chapter 34 as identified on May 24, 2011.

Exhibits

- A. Zoning Ordinance Chapter 34 Home Occupation-Short Term Vendors-Temporary Outdoor Sales-Farmer's Markets

**HOME OCCUPATION-SHORT TERM VENDORS-TEMPORARY
OUTDOOR SALES-FARMER'S MARKETS**

- 34-1. Purpose and Intent
- 34-2. Use Home Occupation
- ~~34-3. Required Conditions~~
- ~~34-4. Full Time-Part Time Use~~
- 34-3. Short Term Vendors
- 34-4. Temporary Outdoor Sales
- 34-5. Farmer's Markets

34-1. Purpose and Intent

~~It is~~ The purpose and intent of this chapter is to allow persons residing in dwellings in residential, forest, and agricultural zones areas, to use their mental or physical expertise and talent to limited extent in providing provide a service, developing a product for sale to the public operate certain kinds of small businesses, or maintaining a professional, or business office work space in the dwelling while at the same time maintaining the peace, quiet, and domestic tranquility not changing the character of the neighborhood. within all residential or agricultural areas of the county and guaranteeing to all residents freedom from excessive noise, traffic, nuisances, fire hazard, and other possible adverse effects of limited business activities being conducted in such areas.

This chapter also addresses short term vendors, temporary outdoor sales, and farmers markets.

34-2. Use Home Occupation

A. Use Regulations

Home occupations ~~shall be~~ are allowed in various specified residential and agricultural districts of the county as listed in the Use Regulations of such various districts zones and in accordance with the regulations and restrictions of this Chapter ordinance. The following uses are examples of uses not allowed as home occupations, i.e., nail salons, massage therapy salons, tanning salons, and tattoo parlors. The following uses are examples of allowable home occupations:

1. Barber ~~or beautician services~~ with not more than 2 stations on the premises.
2. Business Office to include book keeping and phone calls.
3. Child day care of not more than eight (8) children, including care giver's children under six (6) years of age.
4. Computer information services.
5. Group instruction or motivational meetings as a forum for sales presentations held not more than once every month.
6. Musical instruction.
7. Phone-order or mail order services.
- g. ~~Retail sales of goods produced off premise including short term boutiques, etc. or group garage sales of personal used items held more than once every 6 months.~~
3. The following uses shall not constitute home occupations:
 - A. ~~Any activity which noticeably produces electrical interference, smoke, dust, odors, or heat.~~
 - b. ~~Garage sales of personal used items from a single dwelling held no more than once every 3 months~~

- C. ~~Any activity which violates existing or criminal codes of Weber County, the State of Utah or the U.S. Government.~~

B. Required Conditions

A home occupation must meet all of the following conditions and requirements:

1. A land use permit is required in order to verify zoning requirements and setbacks.
2. A home occupation may be carried on in a dwelling unit by the resident(s) who actually reside on the premises; non-resident employees shall not be allowed; except that within the Western Weber Township 2 non-resident employees may be allowed. The occupation is limited to persons who actually reside on the premises.
3. The home occupation shall retain the general character and appearance of a residential dwelling and not change the general character of the neighborhood except for approved signage and vehicle parking.
4. Home occupations shall be allowed provided that the home occupation is limited in extent, incidental and secondary to the use of the dwelling unit for residential purposes, and does not produce increased foot and vehicular traffic, parking, noises, lighting, vibration, smoke, or anything that is uncommon to the established character of the neighborhood to such a degree as to constitute an annoyance to the residents of the immediate area. Home occupations that have employees other than a resident of a dwelling, or, shall not be considered home occupations and shall be located in an appropriate zone.
5. The home occupation shall not include occupy more than 400 square feet or 25 percent, whichever is less, of the ground floor area of the home. This does not apply for child day care.
6. The home occupation shall not use any space in an attached or unattached garage, accessory building, yard or any space on the premises outside of the dwelling ~~except for garage sales. Child day care may have an outdoor yard space.~~
7. The home occupation shall ~~not only include merchandise and items which are produced on the premises. the storage on or sale from the premises of goods or commodities, which are not produced on the premises.~~ This does not apply to phone order or mail order sales with factory delivery direct to an off-premise buyer.
8. The home occupation must ~~obtain a Home Occupation Permit or Conditional Use Permit and obtain an annual business license.~~
9. The home occupation shall not be open to the public at times earlier than 8:00 a.m. ~~nor later than 9:00 p.m. nor on Sundays.~~ The hours of operation for child day care shall not begin any earlier than 6:00 a.m., ~~nor operate later than 10 p.m. seven days a week. The 25 hour per week limitation on Home Occupations shall not apply to day care. Hours of operation shall be set by the Planning Commission upon granting of a Conditional Use Permit.~~
10. No more than one home occupation with visiting clientele or merchandise oriented home occupation shall be permitted within any single dwelling.
11. ~~An occupation that attracts customers, clients, or students to the premises for sales or services shall not~~ No home occupation with visiting clientele shall be allowed in multi-family dwelling units consisting of four units or more.
11. ~~Selling parties shall be limited to not more than 10 buying customers at any one time and not more than one party every three months.~~
12. An Home occupations that attracts customers, clients, or students to the premises shall provide adequate off-street parking as specified in Chapter 24 of the Weber County Zoning Ordinance. determined by the Planning Commission or by the Building Inspector in the case of the permitted use.
13. There shall be no storage or parking on the premises or on the adjacent streets in the vicinity of the premises of tractor trailers, semi-trucks, or other heavy equipment used

in an off-premise business for which the dwelling is being used as a home occupation office except that not more than one truck of one-ton capacity or less may be parked on premise during off work hours at night. A work trailer up to 22 feet in length may be parked at night as part of the home occupation business. All trucks and trailers used as part of the home occupation business shall be licensed and registered, and parked in accordance with parking as Chapter 24 of the Weber County Zoning Ordinance.

14. ~~3. In order to guarantee that the Home Occupation, once authorized, will not become a nuisance to the neighbors, the Planning Commission may impose other reasonable conditions initially and also subsequently to protect the public health, safety, peace and welfare of the residents of the surrounding residential or agricultural area. (Previous #34-3-14 deleted as per ordinance 96-35) The home occupation approval may be revoked by the planning commission if the home occupation does not remain in compliance with this ordinance.~~
15. The property owner's written authorization shall be submitted as part of the application for home occupation.
16. Home occupations that require bodily contact with patrons or equipment that create a potential for contamination between residents and clients are not allowed, e.g., nail salons, massage therapy salons, tanning salons, and tattoo parlors.

C. Signs

One (1) flat sign or name plate not exceeding two (2) square feet attached to the house or mail box may be permitted. A land use permit is required. Any modification made to the permitted sign requires a new land use permit. No freestanding or banner signs shall be permitted.

34-4 ~~Full Time—Part Time Use~~

1. ~~There are two types of Home Occupations allowed as follows:~~
 - A. ~~Home Occupations, which operate on a full-time employment or service basis where full-time, is defined as the time and effort spent by a person or persons in an activity, which produces the major financial income, which supports that person, or persons. Time spent in this activity is not less than 25 hrs. per person and is usually 40 hrs. or more per week per person.~~
 - B. ~~Home Occupations, which operate on a part-time employment or service basis where part-time, is defined as the time and effort spent by a person or persons in an activity which supplements the major financial income of that person or persons. Time spent in this activity shall not be more than 25 hrs. per week per person average over a 6-month period.~~
2. ~~A Home Occupation may consist of full-time employment or service by persons who actually reside on the premises if:~~
 - A. ~~There are no products, supplies, goods, or commodities delivered to the premises or from the premises and no purchases made on the premises.~~
 - B. ~~There is no visiting clientele.~~
 - C. ~~There is no business equipment or vehicles used primarily for business stored or parked on the premises or on adjacent streets.~~
 - D. ~~There is no outward visual evidence of the Home Occupation activity.~~
 - E. ~~The Home Occupation is information, computer, phone or mail-oriented or if the major part of the activity occurs off premise with only the office work performed on the premises.~~
3. ~~A Home Occupation MUST consist of only part-time employment or service or for the emergency treatment or consulting by persons who actually reside on the premises if:~~

- A. ~~There are supplies, goods or commodities delivered to and/or products delivered from the premises or purchased on-site.~~
- B. ~~There is visiting clientele.~~
- C. ~~There are outside visual evidences of the activity such as increased foot or vehicular traffic and parking, increased sounds or noise, increased lighting, vibration, etc.~~

34-3. Short Term Vendors

Short term vendor consists of the sales of goods and/or services from a trailer, mobile store, or kiosk on a commercially zoned property. Application for a short term vendor is subject to the following requirements:

- A. A design review application.
- B. Site plan.
- C. Required application fees. (Fees are the same for Design Review application for a home occupation with visiting clientele).
- D. Water and sanitation facility plans to be approved by the Health Department.
- E. Signage plan.
- F. A building permit for temporary power.
- G. A land use permit shall be obtained for a short term vendor.

A short term vendor's business license expires one hundred and twenty (120) consecutive days after the date of issuance.

34-4. Temporary Outdoor Sales

Temporary outdoor sales site consist of the sale of seasonal goods (e.g. Christmas tree lot, pumpkins, or fireworks), that are associated with a recognized holiday, on a commercially zoned property. An application for a temporary outdoor site is subject to the following requirements:

- A. A design review application.
- B. Site plan.
- C. Required application fees. (Fees are the same for Design Review application for a home occupation with visiting clientele).
- D. Water and sanitation facility plans to be approved by the Health Department.
- E. Signage plan.
- F. The sales lot area shall not exceed 10 percent of the parking area on an improved commercial lot.
- G. The period of operation for a sales site shall be as per State Code, if established, and in no case shall be more than thirty (30) days from the date of the holiday. The sales site shall be cleared of all debris and restored within five (5) days after the day of the holiday.
- H. Temporary fencing, including chain link, up to six feet in height.
- I. A building permit for temporary power.
- J. All outdoor lighting, including temporary lighting, shall comply with Chapter 39, Ogden Valley Lighting, for outdoor sale sites located within the Ogden Valley Township.
- K. A land use permit shall be obtained for a temporary outdoor sale site.

34-5. Farmer's Markets

A farmer's market consists of a group of local farmers and other vendors who gather to sell fresh produce, other food products, and craft items on a commercially zoned property or at a public park. Operation of a farmer's market is from June through October. Application for a farmer's market is subject to the following requirements:

- A. A design review application.
- B. Site plan.

- C. Required application fees. (Fees are the same for Design Review application for a home occupation with visiting clientele).
 - D. Water and sanitation facility plans to be approved by the Health Department.
 - E. The property owner(s) shall sign the application.
 - F. The vendors at these markets are limited to local farmers/growers selling products from their own farms or gardens, crafters selling their own crafts and food vendors.
 - G. A building permit for temporary power.
 - H. All vendors planning to sell or dispense food or beverages at public events shall have permits from the Health Department prior to the start of the event.
 - I. A land use permit shall be obtained for a farmer's market.
-

New section to be added to Chapter 23 Supplementary and Qualifying Regulations

23-28. Garage Sales/Yard Sales

Garage sales/yard sales of personal used items from a single family dwelling shall not be held more than once every 3 months.

Revised minutes:

2.2.1. ZO 2010-09: Consideration and action on amendments to the Weber County Zoning Ordinance Chapter 34 Home Occupation

Chair Siegel said this was moved down from the consent agenda to the regular agenda by Commissioner Warburton who had some concerns with a couple of items and one of them was addressed. Commissioner Warburton replied that B-13 was addressed, B-7 and B-16 was not addressed.

Jim Gentry said on B-7 the Home Occupation shall only approve merchandise and items which are produced on the premise. This does not apply to phone order or mail order sales with mail order sales, by factory direct deliveries made to an off-premise buyer. As he understood, you would like to be able to store merchandise within the 400 square feet of the home occupation.

Commissioner Warburton said that her issue is that it's already defined that they can have a home occupation in 25% of the home or 400 square feet. In a prior meeting, the issue was brought up that the county did not see fit having people coming to the house, constant cars coming to the house, or delivery trucks. The problem with that is there are times that somebody has to have one item delivered, that would last them the entire month. They could use that to create things and sell them. Or they may buy a whole shipment from EBay of products, and turn around and resell it. As the code is, they wouldn't be able to do that. Mr. Gentry replied that they had a situation with Amway, where there was a distributor having everything shipped to his house; he was constantly getting deliveries five times a day, and then selling them. Because of the volume that he was handling, they ended up forcing him to move to a commercial area.

Commissioner Warburton said there's another law that prohibits that; they cannot disturb a typical neighborhood. But when they're looking at something where there is just one shipment that comes in, that's not fair to the person that gets on huge shipment of items that comes in and turns around and makes a profit from that shipment she don't see why they have to prohibit that person. If that person has 20 deliveries, and disrupts the neighborhood, then they should be going to a commercial zone. Chair Siegel asked how would regulate the number of shipments someone receives in one day. Mr. Gentry said they can't, this is monitored on the number of complaints that they get.

MOTION: Commissioner Warburton moved to remove B-7 entirely from the proposed ordinance. Commissioner Graves seconded the motion.

DISCUSSION: Commissioner Graves asked if there was advantage by striking B-7 completely versus amending it. Commissioner Graves said if they strike B-7, would they strike something out that they do not intend to and Commissioner Warburton replied that she did not think so. Chair Siegel said you can never tell what the unintended consequences are going to be. Mr. Gentry said after reading this he was not sure what the unintended consequences would be. Commissioner Warburton said the way it is written, it is almost impossible to enforce, but if there are trucks going up and down the neighborhood roads all the time, that is something the people will complain about.

Chair Siegel asked if they would vote on these amendments one at a time or vote on them both and the ordinance as a whole at the end. Commissioner Warburton suggested voting on this particular one because she felt they would not want to do what she will suggest next.

Commissioner Howell said many ordinances are impossible to enforce and they are enforced only when they get complaints.

VOTE: A vote was taken and Chair Siegel indicated the motion carried (5-0).

Commissioner Warburton said B-16 states home occupations that require bodily contact with patrons or equipment that create a potential for contamination between residents and clients are not allowed, such as nail salons, massage therapy salons, tanning salons, and tattoo parlors.

Chair Siegel called for a five-minute recess.

Chair Siegel suggested to Commissioner Warburton she look at this like any other motion they have made as to the why it should be changed.

MOTION: Commissioner Warburton moved to allow residents to have nail salons, massage therapy salons, tanning salons, and tattoo parlors, as long as they are licensed and have a recommendation from the Health Department.

Chair Siegel asked Commissioner Warburton what use is the least appealing in B-16. Any one of those items that you would not want next to you, which one would she choose. Commissioner Warburton replied that she could not do that because granted she would not want a tattoo parlor next to her, but she could not choose to take it out because there are many good people with tattoos and she would not want to have to make that delineation. Chair Siegel replied that you move to take the whole thing out but if there one of these that are the least appealing to you, which one would you take out. Commissioner Warburton replied that she would allow all of them because they can enforce any nuisances in the future on a complaint basis. If they want to do this in their own home, and they want to charge people for making a beautiful tattoo, or do their nails and toes, or giving them massage, or any of the other things, they need to let them someone do that. If what they are supposed to be doing is protect those people, then they will require of them what should be required. Chair Siegel questioned the reason for the motion.

MOTION: Commissioner Warburton moved to amend B-16 under Required Conditions to allow residents to have nail salons, massage therapy salons, tanning salons, and tattoo parlors, as long as they are regulated and approved by the Weber Morgan Health Department and staff and other agency recommendations. Commissioner Howell seconded the motion.

DISCUSSION: Monette Hurtado said that you have comments from the Health Department, is it their concern that they cannot really regulate home occupations well versus commercial businesses. Mr. Gentry replied that it is a little more difficult for them because they could inspect commercial businesses anytime and inspect the facilities where they cannot in home occupations, so that was one of their big issues. Commissioner Warburton said that they could make it so they cannot get a license unless they have the approval. The Health Department can say they are not going to give you a recommendation unless you abide by a, b, and c. Ms. Hurtado replied that with commercial businesses, the Health Department can just drop by unexpected to inspect compliance, but they cannot with a home. Commissioner Warburton said they should not be in the business of prohibiting people from doing a home occupation, and the government should step up and change the law. Ms. Hurtado replied that the only way that someone could get into a home is through a search warrant.

Commissioner Warburton said they should understand that if they pass these ordinances as is, that everyone that does a massage at home and charges for it, is would be illegal. Commissioner Howell said that if they obtain take a license, that alerts the Health Department, and they know that this location is going to have this business, and the Health Department does not want these as a home occupation, because of contamination and they want to eliminate it as a home occupation. Commissioner Allen said the only way you can make this work is have a separate facility outside the house. You have to separate the commercial deal from the home occupation. Chair Siegel read the

statement from the Weber Morgan Health Department where they recommend not having these as home occupations.

VOTE: A vote was taken with Commissioner Warburton voting aye, and Commissioners Graves, Allen, Howell, and Chair Siegel voting nay. Chair Siegel indicated the motion failed (4-1).

Chair Siegel said they've addressed the issues of Commissioner Warburton. There is no further discussion after the amendments and the vote. He asked for a vote on ZO 2010-09 amendments to the Weber County Zoning Ordinance Chapter 34 Home Occupation in its entirety with the amended section B-16.

VOTE: A vote was taken with Commissioners Graves, Allen, Howell, and Chair Siegel voting aye, and Commissioner Warburton voting nay. Chair Siegel indicated the motion is approved (4-1).

(**STAFF NOTE:** No motion was made to approve ZP 2010-09: Consideration and action on amendments to the Weber County Zoning Ordinance Chapter 34 Home Occupation for the above vote to be valid).



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Staff amendments to the Weber County Zoning Ordinance Chapter 29 (Board of Adjustment), Chapter 23 (Supplementary and Qualifying Regulations), and Chapter 31 (Administration)

Agenda Date: Tuesday, July 26, 2011

Applicant: Weber County Planning Staff

File Number: ZO-2010-10

Property Information

Approximate Address: Not Applicable

Project Area: Not Applicable

Zoning: Not Applicable

Existing Land Use: Not Applicable

Proposed Land Use: Not Applicable

Parcel ID: Not Applicable

Township, Range, Section: Not Applicable

Adjacent Land Use

North: Not Applicable	South: Not Applicable
East: Not Applicable	West: Not Applicable

Staff Information

Report Presenter: Sean Wilkinson
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(801) 399-8765

Report Reviewer: JG

Applicable Ordinances

- Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)

Background

At the June 28th Planning Commission meeting, the Planning Commission voted to table this ordinance amendment to allow time for further review and directed staff to make the changes requested by Chris Allred, Deputy County Attorney, regarding the effective date of final decisions. Staff has made the requested changes (see Section 29-5 below).

The purpose and intent of Chapter 29 is to establish rules and procedures, consistent with Utah state code, which govern the Board of Adjustment in considering appeals from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps, and variances from the requirements of the Weber County Zoning Ordinance.

The Planning Division, in administrating this ordinance has found that the ordinance is in need of updating. The proposed amendments to Chapter 29 (Board of Adjustment) are meant to simplify and clarify the existing language. There is a need to bring the criteria for appeals and variances from the Weber County Zoning Ordinance into conformance with Utah state code.

The Ogden Valley Planning Commission on March 1, 2011 and June 28, 2011, the Western Weber Planning Commission on March 8, 2011, and the Board of Adjustment on March 31, 2011 previously made separate recommendations to the Planning Division regarding the amendments to these chapters. Staff has made changes based on these recommendations and is now proposing that the Planning Commission make a recommendation to the County Commission on the proposed amendments.

In the March 1st and June 28th meetings, the following policy questions were discussed:

1. Should the Board of Adjustment have more duties and powers than staff is proposing?
2. Which body (staff, planning commission or board of adjustment) should handle special exceptions?

3. If special exceptions are removed from Chapter 29, where in the Zoning Ordinance should they be relocated?
4. Are the existing criteria for special exceptions adequate?
5. How should notice for Board of Adjustment meetings be handled?
6. Should citizens from outside the unincorporated area of the County be allowed on the Board?
7. How should extensions be handled for Board decisions that have not been acted upon within the specified time frame?

Each of these questions is addressed in the proposed language amendments for Chapter 29. Recommendations from both Planning Commissions and the Board of Adjustment have been considered and incorporated as appropriate. Each section in Chapter 29 is addressed below with an explanation of the changes that were made. Please see Exhibit A for the specific language.

29-1. Purpose and Intent: A purpose and intent statement which explains the Board of Adjustment's role was created for this chapter.

29-2. Board Membership and Organization: This section explains how the Board of Adjustment is organized and how members are appointed. Staff is recommending that only residents of unincorporated Weber County be allowed to serve on the Board of Adjustment (**Policy Question 6**).

29-3. Duties and Powers of the Board: (Policy Question 1) This section lists the duties and powers that the Board of Adjustment has been given. The existing ordinance has 12 duties and powers, but state code mentions only the two duties and powers that are proposed in the amended language, granting appeals and variances from the Zoning Ordinance requirements. Staff is recommending that the Zoning Ordinance language be consistent with state code.

Most of the existing duties and powers will be eliminated because they are redundant or the power to make the decision has been given to another group, like the Planning Commission, or located elsewhere in the Zoning Ordinance. For example, the Planning Commission can vary the number of parking stalls based on language from Chapter 24 (Parking) of the Zoning Ordinance, thus eliminating the need for the existing duty and power number 5.

(Policy Questions 2, 3, and 4) The special exceptions (existing duty and power 10a, 10b, and 11) for flag lots, private rights-of-way, and access at a location other than across the front lot line will be moved to Chapter 23 of the Zoning Ordinance. Staff is recommending that these special exceptions become administrative reviews handled by staff and appealable to the Board of Adjustment. The criteria for these uses are the same, but the organization and placement of the criteria within the sections has changed. Please see Exhibit B for the specific language.

By making these changes, the approval process for these uses will be cut in half. For example, a flag lot must first be approved by the Board of Adjustment, and then by the Planning Commission as a subdivision. This current process cuts efficiency and effectiveness, and puts the Board of Adjustment in the position of a land use authority, rather than as a quasi-judicial body. Staff reviews will save time and will allow the Planning Commission to focus on policy matters rather than administrative actions.

29-4. Decision criteria and standards: This section discusses the criteria and standards associated with appeals and variances from the Weber County Zoning Ordinance. The language for this section comes almost completely from Utah state code. This section now provides much more detail than was previously available. A 15 calendar day appeal period is being proposed, as well as designating a review of the record as the standard of review.

29-5. Procedure: This section describes and clarifies the application process, notice to neighboring property owners, notices of decision, filing of minutes, expiration of approvals, and appeals of the Board's decisions. (**Policy Question 7**) Staff is recommending that no time extensions be given for variance approvals. Also, staff is proposing amendments to Chapter 31 Sections 2, 4, and 7 regarding the Planning Director's administrative authority, the date of final decisions, and the process for appeals. Section 2 adds flag lots, private rights-of-way, and access at a location other than across the front lot line as administrative approvals for the Planning Director or designee. Section 4 adds the Planning Director or designee as an approving authority and clarifies that decisions are final when the written notice of decision has been issued (see Chapter 29 Section 5.3.A). Section 7 clarifies the process for appeals and designates the Board of Adjustment as the appeal authority for administrative decisions.

Summary of Planning Commission Considerations

- Are the proposed amendments consistent with the purpose and intent statement in the ordinance?
- Are the proposed amendments clear and reasonable?

Conformance to the General Plan

This is a legislative matter. The draft ordinance is consistent with both General Plans.

Conditions of Approval

Not Applicable

Staff Recommendation

Staff recommends that the Ogden Valley Planning Commission recommend that the Weber County Commission adopt the amendments to Chapters 29, 23, and 31.

Exhibits

- A. Weber County Zoning Ordinance Chapter 29 (Board of Adjustment) Proposed Amendments
- B. Weber County Zoning Ordinance Chapter 23 (Supplementary and Qualifying Regulations) Proposed Amendments
- C. Weber County Zoning Ordinance Chapter 31 (Administration) Proposed Amendments
- D. Public Comments

Exhibit A

Revised: July 18, 2011

CHAPTER 29

BOARD OF ADJUSTMENT

- 29-1. Purpose and Intent
- 29-12. Board Membership and Organization
- 29-3. Duties and Powers of the Board
- 29-4. Procedure Decision Criteria and Standards
- 29-5. Procedure

29-1. Purpose and Intent

The purpose and intent of this chapter is to establish rules and procedures, consistent with Utah state code, which govern the Board of Adjustment in considering appeals from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps, and variances from the requirements of the Weber County Zoning Ordinance. The Board of Adjustment serves as Weber County's final arbiter of issues involving the interpretation or application of the Weber County Zoning Ordinance.

29-12. Board Membership and Organization

1. The Board of Adjustment shall consist of five (5) members and two (2) alternate members from the unincorporated area of Weber County.
 - A. Board members shall be appointed by a simple majority vote of the County Commission.
 - B. Board members shall serve for a term of five years, and expirations of terms shall be staggered so that an overlapping of terms occurs.
 - C. Any vacancy(s) occurring on the Board shall be filled via appointment by a simple majority vote of the County Commission. Any vacancy occurring because of resignation, removal, disqualification, or other reason shall be filled for the unexpired term of the vacating member.
2. The Board of Adjustment shall annually elect a Chairperson and Vice-Chairperson from its membership. Each officer shall hold office for a one year period and not longer than two years consecutively.
3. Members of the Board of Adjustment shall be subject to all applicable County ordinances regarding conflicts of interest and ethics. A violation of these provisions shall be grounds for removal from the Board of Adjustment. The County Commission may remove or replace any board member for cause. Removal or replacement of a board member requires a majority vote of the full County Commission. in a public meeting.

~~The Board of Adjustment shall consist of five (5) members and two (2) alternate members who shall be appointed by the Board of County Commissioners. Each member and alternate member shall be appointed for a term of five (5) years and may be removed from membership for cause by the appointing authority upon written charges and after~~

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public hearing except that the first five (5) members so appointed One member shall be appointed to serve one (1) year, one member two (2) years, one member three (3) years, one member four (4) years and one member five (5) years. In the month of June each year one member shall be appointed for a five year period to take the place of the member whose term shall next expire. Any vacancy occurring on the Board by reason of death, resignation, removal, or disqualification shall be promptly filled by the Board of County Commissioners for the unexpired term of the vacating member. Not fewer than three members of the Board of Adjustment shall be residents of the unincorporated area of Weber County.

29-2. Organization

The Board of Adjustment shall organize and elect from its members a chairman and vice chairman and adopt rules of procedure and regulations not inconsistent or in conflict with state laws or with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the chairman and at such time as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action; all of which shall be immediately filed in the office of the Board and shall be a public record.

29-3. Duties and Powers of the Board

Amd.98-26

In addition to any other powers given by State law or this Ordinance, upon the timely filing of an appeal, within 15 days, from the date of the final decision being appealed, after proper notice and Public Hearing, The Board of Adjustment shall have the following duties and powers:

1. To act as the appeal authority from decisions applying the Weber County Zoning Ordinance and Zoning Maps.
2. To hear and decide variances from the requirements of the Weber County Zoning Ordinance.

29-4 Procedure Decision Criteria and Standards

1. Appeals from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps
 - A. The Board of Adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Weber County Zoning Ordinance and Zoning Maps.
 - B. The Board of Adjustment may hear only those decisions in which the land use authority has applied the Weber County Zoning Ordinance or Zoning Maps to a particular application, person, or parcel.
 - C. The appellant has the burden of proof that the land use authority erred.
 - D. All appeals to the Board of Adjustment shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority.
 - E. Appeals to the Board of Adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.

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2. Variances from the requirements of the Weber County Zoning Ordinance
 - A. Any person(s) or entity desiring a waiver or modification of the requirements of the Weber County Zoning Ordinance as applied to a parcel of property that they own, lease, or in which they hold some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the Zoning Ordinance.
 - B. The Board of Adjustment may grant a variance only if the following 5 criteria are met:
 1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
 - a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
 - a. In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
 5. The spirit of the land use ordinance is observed and substantial justice done.
 - C. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
 - D. Variances run with the land.
 - E. The appeal authority may not grant a use variance.
 - F. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 1. Mitigate any harmful effects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified.

1. ~~_____ To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made in the enforcement of this Ordinance.~~

2. ~~_____ To hear and decide requests for decisions on special questions upon which such Board is authorized to pass.~~ 21-83

3. ~~To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be preserved and substantial justice done.~~

4. ~~_____ To interpret the zoning map and zoning ordinance.~~

5. ~~_____ To reduce the amount of off-street parking required, where acquisition of land for such use would cause exceptional hardship.~~

6. ~~_____ Where a zone boundary line divides a lot in single ownership at the time of the passage of this Ordinance, permit the extension of a use or building situation on the portion of such lot which lies in the less restricted zone into the more restricted zone, provided that such extension shall be subject to all regulations of the less restricted zone and shall extend not more than one hundred (100) feet into the other portion of the lot in the more restricted zone.~~

7. ~~_____ Permit for a period not to exceed one (1) year in a residential zone a temporary building or use of a commercial or industrial nature which building or use is incidental and necessary to the construction of the residential development.~~

8. ~~_____ To permit a nonconforming use to be changed to another use permitted in the same or a more restricted zone than the one in which the nonconforming use would be a permitted use; and which, in the opinion of the Board of Adjustment either by general rule or on decision in a specific case, will be out of harmony or incongruous with existing and prospective uses in the neighborhood to a less degree than is the nonconforming use that it replaces, with respect to noise, odor, atmospheric emission or pollutant, or physical hazard, and to no greater degree with respect to traffic related to the proposed use, display or use of illumination, general activity, probable duration of the proposed use, or other factors having a bearing on the harmonious relation to one use to another.~~

9. ~~_____ To permit the relocation on a lot of a nonconforming building or structures occupied by a nonconforming use, provided the building or structure shall comply with all the height, yard and area requirements in the zone in which it is located.~~

10A. ~~To permit as a special exception and subject to No. 12 below, the construction of a dwelling or a building upon a lot, which does not have frontage on a street but has access to said lot by a private right of way, where the Board of Adjustment considers it unfeasible or impractical to extend a street to provide access to such lot because of unusual topographic or property boundary conditions. Before approval by the Board of Adjustment to build on any private right of way, the land owner of record shall place a covenant to run with the land agreeing to participate in the cost of developing any future road required by the county to replace the private right of way as required access to additional lots.~~ 96-11, 96-43

10B. ~~To permit Lots with Access Strips known as Flag Lots by Special Exceptions meeting the following criteria:~~

1. ~~_____ Lots not having frontage on a street as required by this ordinance, but having access to such street by means of fee title access strips may be approved as "Special Exceptions" by the Board of Adjustment in any zone, provided that:~~

- A. — The Board of Adjustment determines that it is not feasible or desirable to extend a street to serve such lot or lots at that time. Criteria to be used in determining feasibility or desirability of a street shall include, but not be limited to, topography, boundaries, and/or an area in which a road would not open an area of 5 acres or more for development.
 - B. — The access strip shall have a minimum width of 20 ft., a maximum width of 30 ft., a maximum grade of 15%, and a minimum vertical clearance of 14.5 ft.
 - C. — The area of the access strip shall not be included within the minimum lot area requirement.
 - D. — The lot shall meet all minimum yard and area requirements of the zone in which it is located, exclusive of the access strip.
 - E. — Buildings shall be setback a minimum of 30 feet from any property line and 30 feet from the extension of the flag lot access strip. The depth of the front yard shall be the distance between the front line of the building and the property line or nearest line of the access strip which the building faces.
 - F. — The lot address shall be displayed in a prominently visible location at the street entrance to the access strip.
 - G. — Each lot shall access a street by means of its own access strip. Successive stacking of lots on the same access strip is not permitted.
 - H. — No building, structure or parking is allowed in the access strip which is to be used solely as access to the lot.
 - I. — The Board of Adjustment shall impose such other conditions to ensure safety accessibility, privacy, etc. to maintain or improve the general welfare of the immediate area.
 - J. — No access strip shall exceed 800 feet in length.
 - K. — A maximum of two flag lot access strips may be adjacent to each other.
 - L. — A minimum turnout measuring at least 10 feet by 30 feet be provided adjacent to the traveled surfaces of the access strip at a maximum distance of 200 feet from the public street.
 - M. — A turn-around area be provided at the home location to allow firefighting equipment to turn around. This area shall be a year round surface, capable of supporting fire equipment (a minimum inside turning radius of 30 feet and an outside turning radius of not less than 45 feet.)
 - N. — Bridges, including decking and culverts shall be capable of supporting a minimum 20-ton weight capacity.
 - O. — Switchback turns in sloped areas shall have a minimum 75 foot radius.
 - P. — Road surfaces on private access ways shall have a minimum 12-foot finished road surface capable of supporting a 20-ton weight capacity with a surface approved by the County Engineer.
 - Q. — A fire hydrant or other suppression method MAY be required by the Fire Chief.
 - R. — The home location shall be shown on a plan submitted to the Fire District.
2. — No flag lot shall be allowed which proposes to re-subdivide or include within it (including the access strip) any portion of an existing lot in a recorded subdivision.
 3. — The lot area exclusive of the access strip shall be a minimum of 3 acres.
 4. — The flag lot shall meet the minimum lot width requirements for the zone in which the lot is located, at the end of the access strip.
 5. — Application for subdivision shall be filed and recorded within 18 months of approval of Flag Lot. If not filed and recorded within 18 months, said Flag Lot approval shall expire and be null and void.
 6. — No subdivision shall be vacated, re-subdivided or changed in order to meet the

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requirements of this chapter.

2003-11

11. To allow by Special Exception access to lots at a location other than across the front lot line provided the following criteria are met:

1. Special circumstances are attached to the property covered by the application which does not generally apply to other property in the same zone.

2. Special or unique boundary conditions exist regarding the property for which an application has been submitted.

3. Topographic or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access.

4. The Board of Adjustment shall consider but not be limited to the following:

1. The access strip shall have a maximum grade of 15%.

2. A minimum turnout measuring at least 10 feet by 30 feet be provided adjacent to the traveled surfaces of the access at a maximum distance of 400 feet from the public street.

3. A turnout area be provided at the home location to allow firefighting equipment to turn around. This area must be a year round surface capable of supporting fire equipment (a minimum 45 foot radius if circular) 2002-7

4. Bridges including decking and culverts must be capable of supporting a minimum 20-ton weight capacity.

5. Switchback turns in sloped areas must have a minimum 75 foot radius.

6. Road surfaces on private access ways shall have a minimum 12 foot road surface width and be capable of supporting a 20,000 pound weight capacity with a surface approved by the County Engineer. 2002-7

7. A fire hydrant or other fire suppression method may be required by the fire district. 2002-7

8. The home location shall be shown on a plan submitted to the fire district. 96-43

12. In exercising the above mentioned powers, such Board may, in conformity with the provisions of the law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken; provided, that before any variance may be granted it shall be shown that:

1. The variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan. 2002-7

2. Special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

3. That because of said special circumstances, property covered by application is deprived of privileges possessed by other property in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

4. That the condition and/or circumstances are not considered to be economic hardships or self-imposed hardships. 2002-7

13. The concurring vote of at least three (3) of the five (5) members of the Board shall be necessary to

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reverse any order, requirement or determination of such administrative official, or to decide in favor of such applicant on any matter on which it is required to pass, or to affect any such variation or special exception to this Ordinance. _____ 98-26

14. _____ If an affirmative decision is made by the Board of Adjustment in exercising any of the powers listed in paragraphs 3, 4, 6, 9 and 10 of this Section, that approval shall be valid for a period of time not longer than 18 months from the date of the decision of the Board. Any interpretation or affirmative decision made in exercising any of the powers listed in paragraphs 5 or 7, shall be valid until an amendment to the Zoning Map or Ordinance is made which changes the conditions upon which the interpretation or decision was made.

22-85, 96-3

29-45. Procedure

The Board of Adjustment shall adopt rules and regulations, consistent with Utah state code and Weber County ordinances, for conducting its business and may amend such rules from time to time. Such rules may include policies and procedures for the conduct of its meetings, the processing of applications, the handling of conflict of interest and any other purpose considered necessary for the functioning of the board.

1. Application and Notice.

A. Any person or entity wishing to petition the Board of Adjustment for an appeal or interpretation of the Zoning Ordinance or Zoning Maps, or for a variance from the requirements of the Zoning Ordinance may commence such action by completing the proper application and submitting it to the Weber County Planning Division office. Applications must be submitted at least 30 days prior to the date of the meeting at which the application will be considered. The application must clearly explain the appeal, interpretation, or variance being requested, and must be accompanied by the required fee and applicable supporting information.

B. After a complete application has been submitted and accepted, the Planning Division shall prepare a staff report with a recommendation to the Board of Adjustment, schedule a meeting of the Board, and send notice to property owners within 500 feet of the parcel on which the request has been made. Notice may be sent to other interested persons or organizations upon written request.

2. Meeting.

A. The Board of Adjustment shall hold a public meeting to decide upon the appropriate action to be taken on an appeal, variance, or interpretation request. The concurring vote of at least three (3) of the five (5) Board members is required to decide in favor of the request.

3. Decision and Minutes.

A. Decisions of the Board of Adjustment shall be final at the time a notice of decision is issued. After the Board of Adjustment has made a decision, a notice of decision shall be prepared by the Planning Division and sent to the appellant in accordance with Chapter 31 Section 4 of the Weber County Zoning Ordinance. This notice acts as the Board's written decision on an appeal, variance, or interpretation request.

B. The minutes of all meetings of the Board of Adjustment shall be prepared and filed in the Weber County Planning Division office. The minutes shall be available for public review and access in accordance with the Government Records and Access Management Act.

4. Expiration.

- A. If the Board has decided in favor of a variance request, the approval is valid for a period of 18 months. If an approved variance request has not been acted upon within this time frame, the approval shall expire and become void.
- B. If the Board has made an interpretation to the Zoning Map or Zoning Ordinance, the interpretation is valid until an amendment to the Zoning Map or Zoning Ordinance is made which changes the conditions upon which the interpretation or decision was made.

5. Appeal of Decision.

- A. Appeals from decisions of the Board of Adjustment are made directly to the District Court as designated in Utah state code.

~~Each appeal to the Board shall be on a form provided by the Board and all information called for by such form shall be furnished by the appellant. Before making its decision, the Board shall hold a hearing upon the appeal. Notice of the time and place of such hearing shall be sent by mail to the appellant, to the owners of all property contiguous to the property with which the appeal is concerned and of all properties opposite said property measured at right angles to the intervening street or streets, and to the Planning Commission and the Building Inspector, at least five (5) days previous to the day fixed for the hearing. Such notice shall contain the name of the appellant, the time and place fixed for the hearing, and a brief statement of the error alleged by the appellant or of the special exception or other question or variance for which the appellant appeals. Before any appellant shall be entitled to any hearing or decision, he shall pay to the Board the expenses of the appeal, including the sending of notices, as fixed by the Board, such payment or the estimated amount of same to be paid with the filing of the appeal. The Board may give notice to other interested persons and organizations.~~

~~The hearing may be adjourned from time to time, and if the time and place of the adjourned meeting be publicly announced at the hearing at the time of the adjournment, no further notice of such adjourned meeting shall be required.~~

~~2. — Each appeal, filed in proper form with the required dates, shall be numbered serially, docketed, and shall be placed upon the calendar of the Board and shall be heard in the order in which they appear on the calendar, unless advanced for hearing by order of the Board for good cause shown. The calendar of cases to be heard shall be posted in the office of the Board five days before the meeting at which the hearing is scheduled.~~

~~3. — A Letter or Decision or any other action of the Board shall be sent to the applicant informing him/her that the minutes of such meeting are available at the Planning Commission Office upon the Board's approval of the minutes. The minutes shall contain findings as the basis for the Board's decision or action and the vote of each member of the Board, those absent being so marked.~~

~~22-85, 2002-~~

SUPPLEMENTARY AND QUALIFYING REGULATIONS

2009-14

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23-30.	<u>Access to a Lot/Parcel Using a Private Right-of-Way</u>	
23-31.	<u>Access to a Lot/Parcel at a Location Other than Across the Front Lot Line</u>	

23-28. Access Strip/Private Right-of-Way Standards

1. In order to provide for safe and consistent access to lots/parcels using flag lot access strips and private rights-of-way as the primary access, the following standards shall be met:

A. Design standards.

1. The access strip/right-of-way shall have a minimum width of 20 feet and a maximum width of 30 feet.
2. The access strip/right-of-way shall have a maximum grade of 15%.
3. The access strip/right-of-way shall have a minimum vertical clearance of 14.5 feet.
4. The finished road surface on the access strip/right-of-way shall be approved by the County

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Engineering Division. It shall be a minimum of 12 feet wide and shall be capable of supporting a 20-ton weight capacity.

5. A minimum turnout measuring at least 10 feet by 30 feet shall be provided adjacent to the traveled surface of the access strip/right-of-way at a maximum distance of 200 feet from the public street.
6. No building, structure, or parking is allowed within the access strip/right-of-way.
7. Bridges, including decking and culverts shall be capable of supporting a minimum 20-ton weight capacity.
8. Switchback turns in sloped areas shall have a minimum 75 foot radius.
9. Water and sewer lines located within the access strip/right-of-way require written approval from the agencies providing such services.

B. Safety standards.

1. The lot address shall be displayed in a prominently visible location at the street entrance to the access strip/right-of-way.
2. A turn-around area shall be provided at the home location to allow firefighting equipment to turn around. This area shall be a year round surface capable of supporting fire equipment (a minimum inside turning radius of 30 feet and an outside turning radius of not less than 45 feet.)
3. A fire hydrant or other suppression method may be required by the Fire District.
4. The home location shall be shown on a plan submitted to the Fire District.
5. The Planning Division may impose other conditions to ensure safety, accessibility, privacy, etc. to maintain or improve the general welfare of the immediate area.

C. Lot/parcel standards. Lots/Parcels using a flag lot access strip or a private right-of-way as the primary Access shall meet the following standards:

1. The lot/parcel shall meet all minimum yard and area requirements of the zone in which it is located.
2. The area of the access strip/right-of-way shall not be included within the minimum lot/parcel area requirement.
3. Buildings shall be set back a minimum of 30 feet from any property line and 30 feet from the end of the access strip/right-of-way.
4. The lot/parcel shall meet the minimum lot width requirement for the zone in which the lot is located at the end of the access strip.
5. The depth of the front yard shall be the distance between the front line of the building and the property line or nearest line of the access strip which the building faces.

23-29. Flag Lots

1. The Planning Division shall determine whether or not it is feasible or desirable to extend a street to serve a lot or lots at the current time, rather than approving a flag lot. Criteria to be used in determining feasibility or desirability of extending a street shall include, but not be limited to topography, boundaries, and whether or not extending a road would open an area of five (5) acres or more for development.
2. The lot area exclusive of the access strip shall be a minimum of 3 acres.
3. Each lot shall access a street by means of its own fee title access strip. Successive stacking of lots on the same access strip is not permitted.
4. No access strip shall exceed 800 feet in length.
5. A maximum of two flag lot access strips may be located adjacent to each other.
6. No flag lot shall be allowed which proposes to re-subdivide or include within it (including the access strip)

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any portion of an existing lot in a recorded subdivision. No subdivision shall be vacated, re-subdivided, or changed in order to meet the requirements of this section.

23-30. Access to a Lot/Parcel Using a Private Right-of-Way

Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way/easement may be allowed to use the private right-of-way/easement as the primary access in zones which allow single family dwellings, subject to meeting the following criteria:

1. The Planning Division determines that it is unfeasible or impractical to extend a street to serve such lot or lots at the current time, Criteria to be used in determining whether or not it is unfeasible or impractical to extend a street include unusual or unstable topographic conditions or unusual property boundary conditions.
 2. Legal access to the lot must be proven prior to any approvals for use of the private right-of-way being granted.
 3. The land owner of record shall place a covenant to run with the land agreeing to participate in the cost of developing any future road required by the county to replace the private right-of-way as required access to additional lots.
-

23-31. Access to a Lot/Parcel at a Location Other than Across the Front Lot Line

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access in zones which allow single family dwellings, subject to the following criteria:

1. The Planning Division determines that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access,
2. Legal access to the lot/parcel must be proven prior to any approvals for use of the private access being granted.

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CHAPTER 31

ADMINISTRATION

2009-28, 2010-20

- 31-1. Purpose and Intent
- 31-2. Administrative Authority
- 31-3. Fees for Processing Applications
- 31-4. Notice of Decision
- 31-5. Hearing and Publication Notice for County Commission
- 31-6. Permits and Licensing
- 31-7. Appeals
- 31-8. Temporary Exceptions
- 31-9. Penalties
- 31-10. Validity

31-1 Purpose and Intent

The purpose of this section is to establish regulations and procedures for the processing and consideration of applications allowed by the Weber County Zoning Ordinance.

31-2 Administrative Authority

The Planning Director, or designee, is authorized to deny, approve, or approve with conditions an application for an administrative approval. Administrative approval can be given for the following applications: site plans with buildings under 10,000 square feet located on a parcel less than one acre in size, home occupations with or without visiting clientele, combining of lots within an approved subdivision which meet ordinance requirements, and minor subdivisions as defined by the subdivision definition, flag lots, access to a lot/parcel using a private right-of-way, and access to a lot/parcel at a location other than across the front lot line. The Planning Director may deny an application for an administrative approval if the use fails to comply with specific standards set forth in this ordinance or if any of the required findings are not supported by evidence in the record as determined by the Director. At the discretion of the Planning Director, the Planning Commission can hear the request for an administrative approval.

The administrative approval process includes public notice and comment from adjacent property owners, as required by state code.

31-3 Fees for Processing Applications

Fees for processing applications shall be established by ordinance.

Applications except subdivisions that have been deemed complete and have not been acted on by the appropriate board shall expire after six-months. The applicant will have to submit a new application and fees to restart the process.

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31-4 Notice of Decision

After hearing the evidence and considering the application, the approving authority (Planning Commission, Planning Director or designee, Board of Adjustment, and County Commission on land use applications) shall make its findings and have them entered in the minutes. Upon a decision by the approving authority, a notice of decision shall be mailed to the applicant at the address or e-mail address given in the application. A Notice of Decision can be either a new written notice, a copy of the administrative approval form signed by the Planning Director or designee, or a copy of the approved minutes. A decision by the approving authority is ~~final until the time for appeal expires at the time the notice of decision is issued~~. If a notice of decision is not sent, the decision shall be effective final on the date the minutes from the meeting are approved by the approving authority. The Planning Division shall also mail notice of any decisions to any person or agency who, in writing, requested such notification before the decision was rendered. Decisions are subject to requirements and conditions stated in the staff report and listed in the meeting minutes.

31-5 Hearing and Publication Notice for County Commission

Before finally adopting any such legislative amendment, the Board of County Commissioners shall hold a public hearing thereon, at least fourteen (14) days notice of the time and place of which shall be given as per state code. The unanimous vote of the full body of the County Commission is required to overturn the recommendation of the Planning Commission, if there was a unanimous vote of the Planning Commission in favor or denial of the petition.

31-6 Permits and Licensing

All departments, officials, and public employees of Weber County, which are vested with the duty or authority to issue permits or licenses, shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of this Ordinance. Any permit or license, issued in conflict with the provisions of the Ordinance, shall be null and void.

31-7 Appeals

All Appeals ~~from administrative decisions~~ shall be submitted to the Weber County Planning Division not more than filed 15 calendar days from after the date of the written notice of decision in accordance with Chapter 29 Section 5 of the Weber County Zoning Ordinance. Appeals from administrative decisions shall be heard by the Weber County Board of Adjustment.

31-8 Temporary Exceptions

The Weber County Commission has the authority to grant, by motion, temporary exceptions from any term or condition of the Weber County Zoning Ordinance for a period of not to exceed three (3) months in duration. Time may be extended for an additional three (3) months by the County Commission, for a total duration for any one tract of land not to exceed six (6) months. The granting of a temporary exception may be made by the County Commission with or without a recommendation from the Planning Commission. Such temporary exceptions may be granted upon the County Commission determining that such a temporary exception is justified because of some extraordinary, or emergency situation, or

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act of God situation, and that the health, safety, convenience, order, and welfare of the inhabitants of Weber County will not be substantially affected, if such temporary exception is granted.

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31-9 Penalties

Any person, firm, or corporation who intentionally violates this Ordinance shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted. Any person, firm, or corporation that violates the provisions of this ordinance shall be guilty of a misdemeanor and punishable as provided by law.

31-10 Validity

Should any section, clause, or provision of this Ordinance be declared by the courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part declared invalid.

Exhibit D

To: Weber County Planning Commission

July 3, 2011

Subject: Board of Adjustment Ordinance Amendments

Reference: My comments in the Planning Commission meeting 6/28

I offer the following to clarify my comments and suggest modifications to the proposed changes. The Weber County Board of Adjustment (BOA) is organized according to State law. I recently witnessed the Planning Commission hearing and decision of the Green Valley Academy application for a design review followed by the appeal hearing by the BOA. The applicants and/or appellants endured a process no citizen should endure.

ISSUE: The County Planning Division has all the power in these situations. They mentor, advise, and befriend members of both the Planning Commission and the BOA. They analyze the application, interpret the law, plead the case, decide what issues are permissible to hear, and ask for concurrence from the citizen Planning Commission and BOA. To suggest the Planning Commission or the BOA has real power is a stretch. To suggest, as the proposed ordinance modification does, that more power should be given to the Planning Staff to administer decisions administratively rather than bring the application to the Planning Commission further reduces the limited independent oversight and application of land use law in the County. The applicants and/or appellants are not well served by this process. They are attempting to appeal to the very persons who defined and pled the case in the first place.

POSSIBLE REMEDIES: The most obvious remedy would be to introduce an independent person or group who would handle the appeal case. Perhaps State law could be changed to have a State ombudsman oversee the appeal process with land use experts from another jurisdiction presenting the County case. In addition, the BOA should be supervised by the County Commission directly.

A second and more easily achieved remedy would be to use the existing process with a few modifications:

1. Require different Planning Division staff to present the appeal case to the BOA than the one who had worked with the application and Planning Commission.
2. Have the County Commissioners provide an experienced ombudsman (I think of Craig Call) to oversee the appeal, advising both parties.
3. Introduce a new appeal step to permit a hearing with the County Commission before going to District Court.

A minimal remedy would be to require all land use applications to be heard by the Planning Commission and reject the current suggestion of moving further in the direction of staff administrative approvals.

I ask you to carefully consider the implications of the proposed BOA ordinance modifications, rejecting those aspects which increase administrative approval opportunity.

Sincerely, Steve Clarke, 5824 E. 2200 N., Eden, Utah 84310 – 801.745.1348 – sdclarke@oValley.net





Weber County

July 26, 2011

RE: Options for heliports in the Ogden Valley

To: Ogden Valley Planning Commission

From: Sean Wilkinson *SW*
Weber County Planning Division

Dear Commissioners,

At the June 28th work session staff presented several options for the Planning Commission to consider regarding the use of heliports in Ogden Valley. Staff has prepared the following summary of the meeting and is asking for the Planning Commission's verification that the summary reflects the discussion and direction given to staff.

- Heliports are considered a desirable use in Ogden Valley in appropriate areas, e.g., off the valley floor, and with appropriate regulations.
- A definition for "heliport" would include facilities for repair, maintenance, and refueling.
- A definition for "helistop" would include loading and unloading of passengers only with no permanent facilities.
- The DRR-1 and F-40 Zones are the two most likely zones for these uses.
- There was discussion about but no direction given on which uses would be allowed in which zones.
- Regardless of the zoning, there will be an elevation component for these uses. A decision on the specific elevation was not made.
- There was discussion about how to handle heliports in the CV-2 Zone, but no final direction was given.
- There is a difference between a helicopter flying in the Valley and allowing a heliport as a use in the Valley.
- The Planning Commission does not want to address private-use landing strips or helistops.

Staff is requesting further direction from the Planning Commission on these issues and any others that may not be listed in the summary so that a draft ordinance can be prepared. While the Planning Commission may not want to address the issue of private landing strips and helistops, staff does want to clarify that these uses are currently not discussed in the Zoning Ordinance, and, therefore, are not allowed. This may not have been an issue in the past, but going forward staff's determination is that these uses are not allowed and will be treated as violations of the Zoning Ordinance.

Please contact me with any questions or clarifications in advance of the meeting so that we can have an efficient and thorough discussion that will lead to the creation of an ordinance. Thank you for your continued hard work.