

**MINUTES OF THE  
WASATCH COUNTY PLANNING COMMISSION  
APRIL 13, 2023**

PRESENT: Doug Hronek, Kimberly Cook, Doug Grandquis, Vice Chair Wendell Rigby, Scott Brubaker, Mark Hendricks  
EXCUSED: Chair Chuck Zuercher  
STAFF: Doug Smith, Wasatch County Planner; Austin Corry, Assistant Wasatch County Planner; Nathan Rosvall, Assistant Wasatch County Planner; Jon Woodard, Assistant Wasatch County Attorney; Alex Stodter, Assistant Wasatch County Attorney  
PRAYER: Commissioner Doug Hronek  
PLEDGE OF ALLEGIANCE: Led by Commissioner Mark Hendricks and repeated by everyone

Vice Chair Wendell Rigby called the meeting to order at 6:00 p.m. and welcomed any public who was in attendance electronically or in person. All the Planning Commission Members are present except Chair Chuck Zuercher who is excused. The record should also reflect that the Wasatch County Planning Commission is meeting in the Wasatch County Council Chambers at the Wasatch County Administration Building located at 25 North Main Street, Heber City, Utah 84032.

Vice Chair Wendell Rigby then read the following:

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

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

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

Vice Chair Wendell Rigby then called the first agenda item.

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**APPROVAL OF THE MINUTES FROM THE MARCH 9, 2023 MEETING**

**Motion**

**Commissioner Mark Hendricks made a motion that we approve the minutes for March 9, 2023 as drafted.**

**Commissioner Doug Grandquis seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Mark Hendricks, Doug Grandquis, Kimberly Cook, Scott Brubaker, Doug Hronek.**

**NAY: None.**

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**CONSENT AGENDA**

Vice Chair Wendell Rigby indicated that all matters listed here are considered routine by the Planning Commission and will be enacted by one motion with no separate discussion of the items unless any member of the Commission or public requests the item to be moved to the public hearing agenda for discussion. There are two items on the consent agenda this evening and is anyone here wanting to comment regarding these two matters and there was none.

- ITEM 1        RUSSELL SKUSE, REPRESENTING PRIVATE CAPITAL DIVERSIFIED FUND, REQUESTS A 90 DAY EXTENSION UNDER THE PROVISIONS OF WCC §16.01.16 TO THE FINAL PLAT APPROVAL OF BENLOCH RANCH PHASE 3 (DEV-4466) WHICH WAS GRANTED BY THE PLANNING COMMISSION ON MARCH 10, 2022. IF APPROVED, THE NEW EXPIRATION DATE OF THE APPROVAL WILL BE JUNE 8, 2023. (DEV-7635; DOUG SMITH)**
- ITEM 2        JOSHUA CALL, REPRESENTING DENISE DARDER, REQUESTS A MINOR PLAT AMENDMENT TO TUHAYE TWIN PEAKS PHASE A IN ORDER TO VACATE AN ACCESS EASEMENT SHOWN ON LOT 14 FOR THE BENEFIT OF LOT 13 LOCATED AT 2720 E SHADOW RIDGE CIRCLE IN THE JORDANELLE BASIN OVERLAY ZONE (JBOZ). (DEV-7567; AUSTIN CORRY)**

### Motion

**Commissioner Doug Grandquis made a motion that we approve the Consent Agenda of the April 13, 2023 meeting with all the findings and conditions listed in both matters.**

**Commissioner Scott Brubaker seconded the motion.**

**The motion carries with the following vote:**

**AYE:    Vice Chair Wendell Rigby, Kimberly Cook, Doug Grandquis, Mark Hendricks, Doug Hronek, Scott Brubaker.**

**NAY:    None.**

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- ITEM 3        BRAD GERRARD, REPRESENTING ULA LLC, REQUESTS A CONDITIONAL USE PERMIT FOR CASCADE ACADEMY, A PROPOSAL TO CONVERT A SINGLE FAMILY RESIDENTIAL HOME TO AN EIGHT BED RESIDENTIAL FACILITY FOR PERSONS WITH DISABILITIES, LOCATED AT 1374 RED FILLY ROAD IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-6850; NATHAN ROSVALL)**

### Staff

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that this proposal is located at 1374 Red Filly Road on lot 4 in the Summit Meadows Subdivision. The proposal, Cascade Home, is a residential treatment facility for up to eight adolescent girls between the ages of 13-18 with severe anxiety disorders with specialized treatment for Obsessive-Compulsive Disorder (OCD). This is identified as a protected class by the Americans with Disabilities Act of 1990. Wasatch County Code has an accommodation for disabled persons built in, allowing for eight unrelated persons in a group home, WCC Section 16.21.17(B). Since Cascade Home is going to be providing residential treatment for eight disabled persons, the request for the CUP fits squarely within what is allowed by WCC.

Nathan Rosvall indicated that while enrolled, the average length of stay is 45-90 days with 24 hour supervision. Cascade runs a similar home in Midway, Utah called Cascade Academy which has been a successful residential treatment facility in Wasatch County. Cascade Home will obtain and maintain a business license for operation as well as seek licensure from the State of Utah Department of Health and Human Services. Cascade Home will be compatible with the surrounding structures in use, location, scale, mass, design and circulation. The visible impacts to the neighborhood will be some additional hard surface off street parking for the necessary employees. There will not be any changes to the exterior of the building for ADA compliance as all ADA requirements are done internally.

Nathan Rosvall went through some key issues to consider.

1. The Americans with Disabilities Act of 1990 considers this proposal as a Protected Class.
2. The proposal is a Conditional Use in the RA-1 zone of Wasatch County, Wasatch County Code Section 16.08.03.
3. The Fair Housing Act supports residential treatment in residential neighborhoods for persons with disabilities.
4. Proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Use Permits.
5. The proposal complies with Section 16.21.17(B) of the Wasatch County Code regarding residential facilities for persons with disabilities.

Nathan Rosvall indicated that the application complies with all requirements of 16.21.17 and 16.21.17(B). The business shall maintain a business license if required. The use will be compatible with surrounding structures in use, location, scale, mass, design, and circulation. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions. The use is consistent with the Wasatch County General Plan. The effects of any future expansion in use or scale can be and will be mitigated through conditions. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations have been adequately mitigated through conditions. The use will not place an unreasonable financial burden on the county or place significant impacts on the county or surrounding properties, without adequate mitigation of those impacts. The use will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County and any land uses requiring a building permit shall conform to the international uniform building code standard. The applicant also is aware of the requirements of Section 16.21.27(B), Uses for the Elderly and Persons with Disabilities, and has committed to comply with them. Also information furnished by neighboring landowners can be helpful but the decision on whether or not to approve or deny a conditional use permit cannot be solely based on public's concerns. A land use authority shall approve a conditional use if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with notable standards.

Nathan Rosvall indicated that the proposal has been reviewed by the various members of the Development Review Committee, DRC, for compliance with the respective guidelines, policies, standards, and codes. The DRC has accepted the item for Planning Commission to render a decision.

Nathan Rosvall then went through the DRC comments:

#### PLANNING comments:

- The biggest concern the Development Review Committee has for the residential treatment home is regarding the parking. The first concern is the parking stall placement. The two slanted stalls will need to be relocated as they are blocking ingress and egress of the covered parking access (garage). There is land to the north of the driveway, with a driveway expansion, would be an ideal placement for parking while eliminating blocking the covered parking and giving additional spaces for a shift change to occur without having to utilize the residential street as parking. Please revise the parking plan and resubmit. The rest of the application looks to be compliant with Wasatch County Code and will receive Planning approval once the parking plan has been resolved. Thank you.

#### ENGINEERING comments:

- My biggest concern would be on-site parking based on the narrative submitted for daily use. It would be difficult to utilize only on-site parking say during a shift change. The goal is to keep cars off the street especially during winter months hampering snow plowing activity. My recommendation is to use the property to the north if possible for added parking.

#### TCSSD comments:

- Based on the information provided for the project, the Twin Creeks Special Service District (TCSSD) produced a feasibility letter that was sent to Brad Gerrard on 1/30/2023. The feasibility study shows that the water requirement for the house/dwelling has changed from its original calculation. The additional water will need to be dedicated to TCSSD prior to approval of the project. Details of the water requirement are included in the letter sent.

Nathan Rosvall went through the proposed findings:

1. The staff analysis indicates the proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Uses.
2. Notice has been sent to neighboring property owners within 500 feet of the property.
3. There have been multiple concerns regarding this application and these concerns have been forwarded to the Planning Commission.

4. There are no known zoning violations on the property at this time.
5. The proposal will be in compliance with Section 16.21.17 of the Wasatch County Code regarding persons with disabilities.
6. Residents will be identified as a protected class by the Americans with Disabilities Act of 1990. Under the Fair Housing Act from the Department of Housing and Urban Development, individuals with disabilities have the right to live independently in the community with any supports they need, such as health care services, a care giver or live in aide, or other short or long-term services or supports.
7. The Development Review Committee has reviewed the project and has provided a favorable recommendation of approval.

Nathan Rosvall went through the proposed conditions:

1. All issues raised by the DRC, as noted in the DRC report dated January 19, 2023 shall be resolved to the satisfaction of the applicable review department.
2. The applicant shall, at all times, only operate a "Recovery residence for girls with anxiety with emphasis on OCD" within the meaning of Utah Code Ann. Section 62A-2-101(33). No other programs or services shall be delivered or occur at the Property, including those licensed under the Utah Human Services Code.
3. Pursuant to 42 U.S.C. Section 3604(f)(9), the Applicant shall not allow any registered sex offenders or any resident convicted of a violent crime or sex offense to reside at the Property and shall otherwise ensure that no resident imposes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others within the meaning of 42 U.S.C. Section 3604(f)(9).
4. The applicant shall, at all times, comply with all applicable rules and regulations for recovery residences, including, but not limited to, regulations promulgated under the authority of Utah Code Ann. Section 62A-2-108.2 and set forth in Utah Admin. Code R501, including the Core Rules contained in Rule 501-2.
5. The Applicant shall comply with Section 16.21.16 of the Wasatch County Code regarding outdoor lighting.
6. The Applicant shall promptly notify the County of any material change in the information required by Utah Code Ann. Section 62A-2-108.2, any change or material departure from the description of its program, and any suspension, alteration, or revocation of its licensure under the Utah Human Services Code.
7. Any suspension, alteration, or revocation of the Applicant's licensure under the Utah Human Services Code shall be grounds for terminating the reasonable accommodation/conditional use granted.
8. The Applicant shall comply with all other applicable provisions of the Wasatch County Code, including, without limitation, its zoning regulations and all applicable fire, safety and building codes.
9. Failure to comply with the conditions set forth in the written accommodation from the County shall result in revocation of the reasonable accommodation/conditional use permit.
10. The reasonable accommodation/conditional use permit shall be particular to this Property only and this use only.

Alex Stoedter, Assistant Wasatch County Attorney, addressed the Wasatch County Planning Commission and indicated that this decision is not what you consider a public hearing and doesn't require the public to give input. This isn't a policy making body. This will be a residential treatment facility for people with disabilities and limited to eight people. To deny the application would create concerns that we are going against the built in accommodation, against the protected class and there are obvious concerns that could arise from that.

Commissioner Doug Grandquis indicated that he would like to read the document myself and make my own conclusions. We not only have that thirty one page document and have other documents as well to go over. We, the Commission Members, did not receive this until late this afternoon and have not been able to read that material. In order to give a fair hearing on this matter we ought to continue this item until such time that the Commission can review those documents. In fairness we need to do that. Alex Stoedter replied that this matter has been continued before. This is the second time that it has been before the Commission and the applicant does have an interest as well. Nathan Rosvall replied that why it was continued because of some water right issues and that has been resolved.

### **Applicant**

Brad Gerrard, the applicant and current director of operations and co-founder of Cascade Academy and the proposed Cascade Home on 1374 Red Filly here Heber, the matter has been delayed a number of times. I would turn my time over to Caleb Cottle, co-founder and director of business development for Cascade Academy and also the proposed Cascade Home and will describe Cascade Academy. Rebecca Schuler will talk specifically to what is done at the academy.



Caleb Cottle, co-founder of Cascade Academy, addressed the Wasatch County Planning Commission and indicated that Cascade Academy is a residential treatment center and school for adolescent girls, ages thirteen to eighteen, who struggle with anxiety and OCD (Obsessive Compulsive Disorder) and specifically anxiety and OCD, which is our specialty. We have worked with over seventy four families since opening in 2020 to provide therapy, academics, recreational therapy and a host of other services that have served these young adolescents and their families to go through society better. We have a good success rate. Caleb then showed a brief video regarding our facility to the Planning Commission.

Rebecca Schuler, CEO, addressed the Wasatch County Planning Commission and went through what takes place in this facility. This is a very specific type of treatment and specialized. The kids aren't violent and don't have sexual concerns. The kids have a fear of certain things. OCD is a mental disorder that is least talked about and individuals with this have a hard time functioning in society. The Cascade facility in Midway has not diminished the property value of people's homes. We have shift changes three times a day and there are not many vehicles at the facility. Rebecca indicated that we would like to have anybody that have any questions to come to the facility and we will take them on a tour of the facility. The primary way that people find us is their kids haven't been able to attend school or have other problems. All of our kids have gone through mental health services and have been recommended to our facility and some have had psychiatric testing and have had licensed professionals that are qualified to do that. Also would not admit anybody that didn't have OCD and anxiety.

Commissioner Mark Hendricks asked with regard to the facility in Midway how many complaints have you had. Rebecca replied that since opening I don't know of a single one. Nathan Rosvall replied that as a code officer for Wasatch County there have been no written complaints. Doug Smith, the Wasatch County Planner, replied that the facility is in Midway City and we would not receive complaints on but he was with the Midway City Planner recently and the Midway City Planner indicated that he has never had a complaint.

Vice Chair Wendell Rigby asked, how did you go about picking this particular site and why did you pick it in the middle of a residential area? Rebecca replied the kids need to have a community feeling or walk in a neighborhood and be in a home environment.

Vice Chair Wendell Rigby also asked, how many staff members are you going to have? Rebecca replied that total staff would be around twenty. The peak number at one time would probably be less than ten during that shift change. Also our current parking plan have been accommodated for that have been submitted in addition of some extra parking area and off street. Also the water concern has been addressed with additional water being purchased.

Commissioner Scott Brubaker voiced a concern about receiving comments in a timely manner like this thirty-one page document that was received today should have been received fourteen days ago.

### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing up for public comment and reminded that those speaking will be limited to three minutes and will be strictly enforced.

AUDRA SIDWELL: I live across the street from the proposed site. I never received notice of what was going on in this area and wasn't given time to look into the matter further.

MARIE SHELTON: I am a family practice physician and practiced in the past twelve years. Most of my patients are going through mental health. I help some of these patients get disability approval from the government. Very familiar with someone getting a patient disability diagnosis and getting state funding for that. Anxiety and OCD can qualify as a disability but it doesn't automatically qualify as a disability. There are certain criteria that needs to be met in order for the government and ADA to consider such a facility. First it has to be long term or permanent. People in this facility would not qualify for this type of criteria and people would need to qualify with other criteria. They might qualify for one or two of the criteria but not for all. Also there are fines that will be imposed to facilities that have people in them that do not meet certain criteria for disability. Commissioner Mark Hendricks voiced a concern about having the knowledge to determine the different types of disabilities and programs concerning that from the government and how to qualify people who meet certain criteria.

JULIE SCHWARTZ: A conditional use permit is not necessary because these girls already have homes to live in. They can receive the necessary treatment in their own communities and while remaining in their comfortable homes, familiar surroundings with their families, friends, school and pets. To have them in such a facility is not a benefit. This facility would cause a harm to our

neighborhood and such approval is not reasonable. There is no need for this facility to be in a residential neighborhood zoned strictly for single family homes. Having anxiety or OCD does not require a person to live in a group home in a RA-1 zone.

GINNY TUIE: I want to read a comment from Erik Asarian who is out of the country and wanted me to read his comments. He lives directly behind the Midway Cascade Academy facility. He indicated that we have had various encounters with our children with the people in the facilities using foul language etc.; regarding myself I don't have any problems with the program but have problems on how this is brought through. Also a facility like this can expand in other areas and not residential areas.

DAVE HADLEY: I have been associated with a medical clinic in downtown Salt Lake and have patients like this. These kids have alcohol problems or sex issues. These problems are with everybody. You can't make the claim that these kids have none of those problems. The Americans with Disabilities Act and Fair Housing Act do require reasonable accommodations for housing for disabled people. This only applies to permanent based housing. The Cascade facility do not meet these requirements and therefore do not qualify for any accommodation. Cascade Home is a medical treatment facility and not a permanent residence. Cascade Home is a segregated institution that does not meet the requirements for integrated community based housing.

JILL JOHNSON: Cascade is primarily a business providing medical services to people who temporarily live there in order to receive the services.

BRIAN MYERS: I live right next door to the house. The major concern that I have is just overall. We have got five young kids. Safety is a concern to me. Also traffic that is coming up and down the road. I haven't heard anything to mitigate these concerns. My kids will interact with these kids.

MICHAEL FISER: I have a concern about safety and the other concern is the parking. Cascade Home does not meet the Wasatch County requirements of parking. The parking lot does not meet the ADA requirements for a rehabilitation facility. Because of the parking issues this plan cannot be approved.

WAYNE FRISBY: The Cascade Home has to be consistent with all federal and state laws. The zoning does not meet the federal laws for this to be given approval. Cascade Home is a business for profit.

BEN JONES: I live down the street from this project. Cascade Home does not meet Wasatch County Code. This is a for profit business that is being placed in the middle of a community. This will not be adequately mitigated with conditions. Increased traffic and the parking lot cannot be mitigated either. Not consistent with the General Plan. The approval of this permit would lower property values in the area which will impact surrounding properties. There will be safety issues due to the traffic and parking. The County shall not issue a permit unless these standards are met and I do not believe that they are met.

KRISTEN BROWN: I never knew this was happening in my neighborhood and would have liked to have had an opportunity to check into this matter. I am concerned about safety. This facility should be on a large piece of property away from a residential area.

ELAINA GILLESPIE, adjacent property owner: There is no good research or documentation that putting a residential treatment center in the middle of a neighborhood provides any better care or improvement or success. We ask, since they are a business and not coming in as a residential partner, that they be held to the highest possible standard to meet all codes for the County, ADA and for the American Disability Act. Concerned about safety.

TOM LATIMER: I just live around the corner of this proposal. Concerned about the parking facilities especially during shift changes. Parking on the street is illegal because it completely blocks one side of the road. Concerned about safety.

HAROLD NICOL: Our doors face each other and that is the CC&R's. When I moved in to this area I did my due diligence and did a lot of research to make sure something like this didn't happen. CC&R's are that if there is any change to the CC&R's it has to be done in accordance with all the members that are part of that neighborhood.

RODNEY EARNSHAW: My biggest concern is what will happen to the property value.

MARGARET NADAULD: This is a business for profit. This should be located in a zone that is developed for businesses where there is an adequate place for parking and other things for a business to survive. Please don't allow this business to locate in a sweet family residential neighborhood. Let's help Cascade find a location that is suitable that meets the requirements for such a business of this to survive.

Vice Chair Wendell Rigby then closed the public comment period.

Nathan Rosvall indicated that there were four parking spots in the garage. They have to be ADA parking stalls and then have parking on the north side. In the voided space there will be landscaping as well. They do meet the parking requirements as well. With regard to garbage pickup it is just trash cans. This is a residential house and neighborhood.

Commissioner Mark Hendricks indicated that his concern is that we have got members of the public who may or may not be qualified and let's assume that they are and are saying it is not in compliance. So much that is coming up people are challenging whether the facts comply with an ordinance or they don't. We are not a trier of fact. What is being proposed, is that compliant with code with regard to parking? We don't want to approve something that is not in compliance with the law. Jon Woodard replied that I cannot say that I have analyzed this application. I trust staff knows how to do their analysis but I haven't myself looked at this issue. Nathan Rosvall replied that on the parking computation the assisted living facilities that is the closest thing that we could have. That states that parking consists of one per two units. This will be four total required staff parking for eight girls.

Commissioner Doug Grandquis replied that my concern is that it is beginning to look like a business basically established in a residential neighborhood. I have concerns that the person who supports this activity should have looked at those CC&R's, the HOA. I am not going to be in favor of this I can tell you that right now. This could have been located in some other part of the County.

Brad Gerrard, the applicant, replied that we will be going with the regular trash pickup that everybody else does. Regarding parking we have gone with two different scenarios with Planning and Zoning. We are planning on making and pour an additional pad in the gravel space that you see is next to black rock, black gravel so that we don't have the parking on the road side. We will have motion sensors, no signage, motion sensors on the corner of the drive, no dumpsters and deliveries are done by typically a pharmacy and done in a regular vehicle usually once a week. There won't be a lot of people coming and going. The patients are being referred by their parents and not being forced against their will.

Commissioner Doug Hronek asked if you were aware of the CC&R's and HOA on this property. Brad Gerrard replied nothing specifically no. Jon Woodard replied there are some provisions of CC&R's that very, very rarely the County has gotten involved in and part of the CC&R's that relate to provisions of the code but we don't enforce CC&R's. We used to play a more active role in making sure that the HOA thought that the application was compliant with the CC&R's. We stopped doing that because we had HOA's that just not being well organized to not wanting to give an answer. They want to participate in the process and was making it so applications weren't moving forward as were required to process under State law. The other thing that we became concerned about is if we were being used as a hammer to force private covenants we could get pulled into the lawsuit in the event that those are found illegal. That would be very much my concern here is if this was found to violate the Fair Housing Act or the ADA. If we were tried to deny it on the basis of CC&R's we would definitely be pulled into that.

Commissioner Mark Hendricks replied that you have got CC&R's, HOA's in a home there are laws at the local, state and federal level that supersede all that. Jon Woodard replied that he would strongly advise the County using CC&R's that could being applied in violation of federal law as a basis for denying this application. Commissioner Mark Hendricks replied that we can't use that to say that we are not going to do it because of the CC&R's and the County will be sued.

### **Commission Comments**

Commissioner Scott Brubaker indicated that we need in the community not necessarily this spot. Some laws may require us to approve it. There are strong neighborhood concerns. It might violate the codes and definitions of the ADA so it becomes a legal issue. Neighborhood safety could be a problem. The shift change and traffic and parking is a real concern. My feeling is I would not vote for this to go through in this location unless we are required to by a federal and state statute. My concerns are mostly the same legal type issues and so rather than denial I would be glad to go along with vote on a continuance.

Commissioner Kimberly Cook replied that I want to make sure that we go by the code. We need to go by the code. Are we violating any codes? Conditional uses are put in there for a reason. I want to make sure that we have got all the information and we are following it and just make sure that we are not violating things. I would rather continue the matter just so we nail this down.

Commissioner Doug Grandquis replied that I think we have some discretion and we can't simply say at this point it is black and white. There is an interpretation here. It is a hard one and I really hate to see those residential neighborhoods affected and I think that is the way society is going. My vote is denial as well. There are a lot of federal and state laws that you have to work around.

When I came into this meeting tonight I was for continuation of it before but listening to both sides of the argument now I think my biggest concern is just changed the complexity and character of that neighborhood. That is really what gets to me and I have changed my view and I would go for denial.

Commissioner Mark Hendricks replied that there is a federal, local and state set of rules that allow this and that is not the same as saying oh you have to approve it. That is two different things. Nobody expects when they buy their home and yes he was given the CC&R's when he bought it. Nobody expects to have a commercial group home in their quiet neighborhood. The federal government says there are circumstances that you can go past things and go ahead and plot something that shouldn't be in a neighborhood and doesn't mean we have to approve it. One of the issues is with the public comment from the doctor. She was giving us one definition of disability and not sure that her definition that she was describing is the same disability that would apply in this kind of conditional use permit and I don't know that. The applicant needs to make sure that you can explain under what definition of disability you are following. Also this whole permanent versus temporary treatment and were given an analysis of the ADA and is qualified to make that analysis and I don't know that I don't analyze the ADA and I am not sure whether it makes a difference. Whether this had to be owned or leased by the disabled didn't make sense to me. Is this primary use medical or is it living and that suggests to me these two categories under our county code. I am not clear on that and that concerns me. The whole parking analysis and we need to make sure that is correct. There may be other concerns of that parking that we need to look in and not comfortable that we have complied with all the parking. The lighting and have been told there are no flood lights and signs so we need to stop worrying about that. The argument about lower property values that comes up every other Planning Commission and if you let this go in my property value is going to go down and nobody has brought data in for that. We can't rely on that without data of that. The whole thing about notice and those laws all laws we didn't set those laws that is the way it is done and they publish it where they publish it and nobody is going to send you a letter unless the law requires you to do it. Keeping them to the highest standards and if they don't comply with the conditions they lose their conditional use and he goes away but you do have some protection. My biggest concern is not being clear on application of the right legal regime given disputes about certain key facts. That is why I am uncomfortable voting in favor of this at this time. Now if the applicant can deal with all this and understand what these objections are and get it squarely in the legal regime then the community has to realize they complied with the law and hopefully make the most of it. That is my feeling on it.

Vice Chair Wendell Rigby indicated that there are still a number of questions that need to be answered and also the last minute comments that we received. I would like to make sure I understand everything that came in to us because I don't want to discount the comments that were in writing. The reason it was postponed last time was because the applicant did not have something that they needed to have to complete the application. I don't feel that we're at the point where we can make a decision.

Commissioner Hendricks indicated that the applicant has a right for a decision tonight if they want it and I would have to vote no. Once that has been denied are they precluded from coming again? Jon Woodard replied that they could try again and try appealing it. There isn't anything in this particular application at this stage that makes it so we need to approve it or deny it.

Commissioner Doug Grandquis indicated that his biggest concern, after hearing both sides of the argument, is that it just changes with the complexity, and the character of that neighborhood, therefore I have changed my view and I think we ought to move and I would go for denial.

Commissioner Mark Hendricks indicated that I would want to make sure that an applicant gets every opportunity, so I would rather continue it, because I am not comfortable with what I know tonight.

Commissioner Kimberly Cook indicated that she would also rather continue it, just so we nail this down.

Commissioner Scott Brubaker indicated that his concerns are legal type issues, so would like to continue it.

### **Motion**

**Commissioner Doug Grandquis made a motion for denial because I think that we have heard enough to make that decision.**

**There was not a second to this motion so the motion failed.**

### **Motion**



Commissioner Mark Hendricks, I would move to continue Item No. 3 on the agenda tonight and with that encourage the applicant to consider all the challenges and objections of concern what the community has and see if they can't adequately address that and give confidence to the Planning Commission and the community that they are in compliance with the legal regime that would govern this. Also to continue this matter to the Planning Commission Meeting next month on May 11, 2023.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

**AYE:** Doug Hronek, Kimberly Cook, Scott Brubaker, Vice Chair Wendell Rigby, Mark Hendricks.

**NAY:** Doug Grandquis.

Vice Chair Wendell Rigby indicated that the public comment period is closed so there won't be any public comment at the Planning Commission meeting on May 11, 2023.

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- ITEM 4**      **BRIAN BALLS, REPRESENTING CLASSIC JACK CONSTRUCTION LLC, REQUESTS A MINOR PLAT AMENDMENT TO MILL ACRES IN ORDER TO INCREASE THE SIZE OF LOT 3 FROM 5.7 ACRES TO 9.6 ACRES BY ADDING A PORTION OF LAND USED FOR THE DENSITY CALCULATIONS FOR A PROPOSED MILL CREEK MEADOWS RESIDENTIAL SUBDIVISION ADJACENT TO MILL ACRES LOT 3 LOCATED AT 1250 HIDDEN CREEK ROAD IN SECTION 9, TOWNSHIP 4 SOUTH, RANGE 5 EAST IN THE RESIDENTIAL AGRICULTURE 1-ACRE (RA-1) ZONE. (DEV-4582; AUSTIN CORRY)**
- ITEM 5**      **BRIAN BALLS, REPRESENTING CLASSIC JACK CONSTRUCTION, REQUESTS LARGE SCALE FINAL SUBDIVISION APPROVAL FOR MILL CREEK MEADOWS, A PROPOSED RESIDENTIAL SUBDIVISION CONSISTING OF 13 LOTS ON 13 ACRES AND 3.85 ACRES OF ADDITIONAL PROPERTY BEING DEEDED TO AN ADJACENT MILL ACRES LOT 3 LOCATED AT APPROXIMATELY 2020 S 1200 E IN SECTION 9, TOWNSHIP 4 SOUTH, RANGE 5 EAST IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-4291; AUSTIN CORRY)**

### Staff

Austin Corry, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and indicated that both Item No. 4 and Item No. 5 will be handled together but a separate vote will need to happen on each one of the items. The Mill Acres plat amendment DEV-4582 was heard by the Planning Commission on January 12, 2023. The application proposal was approvable at that time, but was related to the proposed Mill Creek Meadows subdivision on the same agenda. Ultimately the applicant then requested the item be continued so it could be heard again when the Mill Creek Meadows subdivision was ready. That other related item DEV-4291 has now provided the information requested and has been re-advertised. The previously recommended findings and staff report are still valid as the issues related to the development were tied to the new subdivision and not this plat amendment request. The plat amendment itself is with Lot 3 of Mill Acres and an expansion to take some un-platted agricultural land to make the lot larger. The lot line is here and the request is to push out to this new boundary. Lot 3 right now has no buildable rights because the road is not built. This plat amendment itself would not add any buildable rights either because there is no frontage to the lot right now. They have to either execute construction of that easement or construct the subdivision which is Item No. 5 on the agenda. As far as the plat amendment there are no changes at all to the staff report or the recommendation or anything that is in there. It was continued related to the subdivision.

Austin Corry then went through the DRC comments:

JORDANELLE SSD comments:

- Plan review to be coordinated and approved with Twin Creeks Special Service District and District Engineer.

PLANNING comments:

- The plat will need to be clear about the vacating of the access easement.

RECORDER comments:



- COA: Needs a narrative or note on the plat. The purpose of this plat is to \_\_\_\_\_.
- COA: In the Recorder box please fill in the necessary information required by me. This box as it is does not fit my stamp. I gave Mike Johnston a copy of the recording stamp so he knows the necessary wording.

Austin Corry then went through the proposed findings:

1. Lot 2 and Lot 3 of the Mill Acres subdivision plat executed a boundary line adjustment on 5/27/2020.
2. After the boundary line adjustment, Lot 2 is 9.197 acres and lot 3 is 5.697 acres.
3. Lot 3 is the subject property.
4. Lot 3 lost frontage on Hidden Creek Lane and obtained potential new frontage through a recorded right-of-way across parcel 09-2549 (Entry #478562).
5. Lot 3 is currently unbuildable, per owner executed agreement acknowledging lack of frontage until such time as a County standard road is built to the property.
6. If approved, Lot 3 would increase in size to 9.556 acres and will still have the same unbuildable status as it currently has.
7. The applicant is also proposing an adjacent subdivision (DEV-4291) Mill Creek Meadows, that would provide the required frontage if approved and constructed as proposed.
8. Good cause for the amendment exists as the proposal is consistent with a proposed increase in the lot size that was included in an adjacent preliminary subdivision approval granted by the County Council on April 21, 2021.
9. No public or private roads are being vacated as part of this plat amendment.
10. Based on the applicant using the 3.859 acres towards maximizing the density in an adjacent proposed subdivision, the applicant would forfeit the right to re-subdivide the property in the future.
11. This proposed revision conforms to the Wasatch County development standards only if the lack of frontage is resolved through conditions prior to plat recording.
12. The proposal is consistent with Utah Code Section 17-27a-609.
13. The Development Review Committee has reviewed the project and forwarded the item on September 14, 2021 for decision by the Land Use Authority.
14. Per the applicant request, the proposed plat amendment has been held off an agenda until the adjacent proposed Mill Creek Meadows subdivision was ready to be heard by the Planning Commission.

Austin Corry then went through the proposed conditions:

1. All issues raised by the DRC shall be resolved to the satisfaction of the applicable review department prior to plat recording.
2. The amended plat must be recorded within one year of the date of approval for the amended subdivision.
3. If no road is constructed or platted at the time of amended plat recording, the amended plat shall include a note that Lot 3 is unbuildable until such time as a legally constructed, Wasatch County standard road is completed that provides legal frontage in compliance with current County code.

**The next discussion will discuss Item No. 5 on the agenda.**

### **Staff**

Austin Corry, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and indicated that the main issue of discussion back in January was a discrepancy between the boundary description they provided at preliminary and the boundary description that arrived in final being different. The staff noted that about a year and a half before you saw it. Back in November of this year the applicant provided a record of survey recommending boundary line agreements as being the legal instrument to resolve that discrepancy between the boundaries or where the additional acreage was coming from between their preliminary plan and final plan.

So you likely recall back in January you heard this item and there was lengthy discussion and ultimately at the end of that the applicant asked you to continue the matter so that they could address the boundary line issue. That was continued in January and on March 14, 2023, the applicant submitted to the DRC executed boundary line agreements with two of the three property owners, Bert Webster and WBI Holdings. The third property owner, Corporation of the Presiding Bishopric LDS, has not yet executed an agreement, but the applicant has provided an email from a Church representative dated March 13, 2023 indicating they see no issues with the ability to execute an agreement using the existing fence line. The submitted document from the applicant is included as Exhibit B. These representatives of the LDS Church aren't the ones that can actually sign or execute the agreement but they are at least representatives from the LDS Church that they are okay with proceeding.

Also attached is the January 12, 2023 staff report. At the January 12, 2023 meeting, it was indicated by staff that the primary unresolved issue that prevented the ability of recommending approval for this project was the boundary line agreements. The Planning Commission continuance was at the request of the applicant to be able to resolve this issue.

Jon Woodard, Assistant Wasatch County Attorney, addressed the Wasatch County Planning Commission and indicated that this is regarding the boundary issue. The County does keep record of all surveys that are filed in the Recorder's Office so this survey was filed with the surveyor's office of Wasatch County. The south line where you have got the property from the Church of Jesus Christ of Latter Days Saints and the Webster's property and that line says in the survey "proposed existing fence line boundary line agreement recommended." That is for all of Line F. There was a boundary line agreement with Webster that creates a new agreement as to exactly what that boundary is and the parties agreed on that. So that is a very strong way of establishing a legal boundary. The people from the LDS Church don't have the authority to represent the Church. I was concerned when I saw the initial email and the chain says that my understanding that there is some discrepancy in the county records showing a property line. I believe that some records show the boundary line falls on our side of the fence meaning that fence would be on the neighbor's land. What I am not clear on is whether or not they are understanding the issue correctly from the initial email it appears that here there is a potential dispute of property that we would be getting as opposed to we would be losing property. The LDS Church agrees that the fence line is the property boundary and we are fine with moving forward. On its surface this seems great but I am worried that neither one of these individuals has the ultimate authority to make a result of a potential boundary question with any legal authority for the L.D.S. Church. There could be other issues that are going on here that make it so it is all clear but what I am seeing is evidence that corresponds with what the survey shows that the boundary line agreement would be the best way to do that. Whether or not that is handled through a condition of approval or whether we need to debate this more I would leave that up to you.

Commissioner Mark Hendricks replied that I read the email and I understand it that the Church thinks its fence has encroached on somebody else's property and if they agree that it is the fence the Church in essence would be gaining more square footage. That is the way that I read that and that is the way that you are reading it and then they are saying we don't have a problem with that. We are just going to have to move it. My concern is that the Church thinks their fence is on somebody else's property and if they agree that the fence as a boundary line they are gaining dirt and not losing dirt. Jon Woodard replied that is right. The concern is that we are hearing no concern from the Church but is that based on the right understanding of the issues. I am clear that a boundary line agreement would resolve any potential issues and a court order would do the same thing. Quit Claim deeds also but I don't think that we are there if that makes sense. Commissioner Mark Hendricks asked do we solve that by just putting a condition on any approvals. Jon Woodard replied that would be up to your discretion. That would be consistent and that is what Austin Corry has recommended. Jon Woodard replied that a condition could be an appropriate way to do it. I would make sure that the condition offered more than just the boundary line agreement. A court judgement or quit claim also would be okay.

Austin Corry then read the proposed changed findings that were updated in the staff report.

1. The subject property is in the Residential Agriculture 1 (RA-1) zone.
2. The RA-1 zone is a 5 acre minimum lot size zone with the ability for a density increase up to 1.3 acres per unit if serviced by a public water and sewer provider.
3. The project is being serviced by Twin Creeks Special Service District.
4. The project received preliminary approval with conditions on April 21, 2021.
5. The applicant's claimed legal description of ownership submitted with the final subdivision is different than the legal description, warranty deeds, and associated title insurance provided at preliminary.
6. The legal description provided with the preliminary application was stated to be 17.754 acres (13.895 acres of subdivision and 3.859 acres being deeded to Mill Acres Lot 3)
7. The legal description provided with the final application claims 17.885 acres (14.026 acres of subdivision and 3.859 acres being deeded to Mill Acres Lot 3).
8. Calculations of constrained lands were not completely identified by the applicant at the preliminary application primarily because final agreements with the Mill Road dedication requirements were undefined as it involved coordination with Heber City Engineering.
9. The final application shows a road dedication of 0.98 acres. This results in 16.774 acres if using the preliminary plan and deeds for the property or 16.905 acres if using the legal description the applicant is claiming ownership of with the final subdivision.
10. The DRC requested that the applicant provide evidence for ownership in the first review cycle which completed on June 17, 2021.

11. The project went through 6 different reviews with the DRC where the applicant has not provided any guarantee of ownership for the 0.13 acres of additional property added to their legal description.
12. The applicant has filed a Record of Survey on November 10, 2022 that recommends Boundary Line Agreements be executed to resolve boundary discrepancies.
13. On December 15, 2022, the applicant requested the item be placed on the next available Planning Commission agenda, acknowledging that they were not resolving the concerns related to the boundary lines.
14. On January 12, 2023, the Planning Commission heard the item, including presentation from the applicant. After lengthy discussion, the applicant requested the item be continued so they could work on providing the requested evidence to the Planning Commission.
15. On March 14, 2023 the applicant provided a document to the DRC with two executed boundary line agreements and an indication from a representative of the third property owner that they see no issues with being able to execute a boundary line agreement.
16. All other analysis provided by staff previously is still applicable and indicates an ability to approve the project as modified by the new information received March 14, 2023.

Austin Corry then went through the conditions.

1. The development agreement, as drafted, shall be recorded prior to plat recording. Any minor alterations as a result of the public hearing shall be incorporated.
2. All issues raised by the DRC shall be resolved to the satisfaction of the applicable review department prior to plat recording.
3. A Boundary Line Agreement, decree of court of jurisdiction, or an appropriate deed for resolution of the boundary question with adjacent property owner, The Church of Jesus Christ of Latter Day Saints, shall be finalized and executed prior to plat recording.
4. A fencing plan for all agricultural properties adjacent to the subdivision must be submitted and approved by the DRC prior to plat recording.

Austin Corry then went through the DRC comments:

JORDANELLE SSD comments:

- Coordinate detail plan review comments for TCSSD water and sewer facilities with JSSD District Engineer.

ENGINEERING comments:

- Condition of approval: Resolve the ROW easement to be for the knuckle turn-around and not just for a single family home. The easement must match the intent of the plans.
- Condition of approval: Upon subdivision construction permitting, the plan set must match the approved plat and associated drawings. We will review the construction set for consistency upon permit application.

SURVEYOR comments:

- We will send this plat forward and reserve the right to review the final plat.

### **Applicant**

Brian Balls, representing the applicant, addressed the Wasatch County Planning Commission and indicated that as long as we are holding to the fence we are good with it. That is really the main form that they want to convey here. My communication via emails was verbal that is really their most important part. How we got there and quite frankly as we look at deeds on that fence a boundary agreement on our south boundary which is their north boundary actually would be granting them additional foot and a half of extra ground is not inside of their deed right now so there is not a contest there when it comes to an overlap. Usually in practice we don't see contest when it comes to gaps. Overlaps become the real sticking point. We see the conditions. The only thing we would note and just say to this body that there are other legal means in which conveyances take place and one of which is boundary by acquiescent which we believe as a course of our survey all conditions acquired by that statue or by that doctrine has been satisfied here. We accept the fact that boundary line agreements that affect front line survey that is the best way to ultimately and open and notorious about someone's boundary and that is why we recommend this and the fence has been there more than twenty years. That has been attested by all the property owners adjacent to that property. It has also been our experience because we have surveyed every one of those properties since 1972 as a function of myself or members of my team so we have a long history of the fence that has existed around the property. That is really not a point of contest. We are fine with conditions just like

to note that because of our feeling that boundary by acquiescent is another document in which that conveyance is actually taken place and we would accept that and do it under protest but we would still comply with that requirement we are good with it.

### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing for public comment.

My name is Stewart World and here representing Bert Webster. Bert is fine with the boundary agreement. His condition was is that his deed says he has got 820 feet. There was a twenty-five foot discrepancy. We talked about the acquiescent concern. Those fence lines were put there clear back when they were flood irrigated based on one of those irrigation canals. I am a little concerned that property line agreement that he signed that he signed really knowing what he was signing. Bert is just fine in helping the development go through and has no real issues there. He wants to be compensated for the land. Little concerned as to how that agreement was signed and who was present during that agreement. Bert Webster indicated that he got his deed out and read it to the Commission. This is what is recorded.

Commissioner Mark Hendricks asked Bert Webster if he had anybody's advice before you signed that. Did you have Counsel? Bert Webster replied that he didn't. He indicated that he just wants this to get cleared up by somebody and the whole thing to get straightened up right now. Jon Woodard asked Bert Webster a couple of questions. Did you get paid anything to execute the boundary line agreement? Bert Webster replied no. Do you understand what the boundary line agreement did or could you tell me in your own words what the boundary line agreement did? Bert Webster replied no it just cleared where my property line would be but I haven't looked at this for a long time. I agreed they could have it. I am not fighting for money or nothing else I just want to get the thing straightened up.

Brian Balls indicated that we spent quite a bit of time with Bert for about an hour and a half going through and re-visiting all of the lines, the titles of the fences that are there. I want it to be noted is that the discussion that really is being brought up here is one between Bert and the church. We did find some errors and really big discrepancies that ultimately at this point I don't know where they are going to fall but they don't fall between our boundary line and Mr. Webster because our fence lines actually are sitting. Brian Balls then went to the whiteboard and drew a picture of what he is saying to help the commission understand what he is indicating. We have told Bert Webster that we would do pro bono to work with the church to fix this east/west line on the church's side of it. Commissioner Mark Hendricks then goes to the whiteboard and asks some things. If you take this 820 feet and slide it down to its starting point you are lining up is that right Bert? Bert Webster replied that is right.

Vice Chair Wendell Rigby then closed the public comment.

Austin Corry indicated that these are two separate applications so you do need to make a motion separately for each one.

Commissioner Doug Grandquis made a motion regarding Item No. 4.

### **Motion**

**Commissioner Doug Grandquis made a motion that we approve of the minor plat amendment for Mill Acres Lot 3 consistent with staff findings and conditions.**

**Commissioner Kimberly Cook seconded the motion.**

**The motion carries with the following vote:**

**AYE: Doug Grandquis, Kimberly Cook, Mark Hendricks, Vice Chair Wendell Rigby, Scott Brubaker, Doug Hronek**

**NAY: None.**

Commissioner Mark Hendricks made a motion for Item No. 5

### **Motion**

**Commissioner Mark Hendricks made a motion that we approve Item No. 5 in light of the findings and subject to the conditions drafted by the staff but amend it as follows: For Condition No. 3 I would like to delete "which the Church representative has indicated appears acceptable" and delete that language and that is not part of a**



condition and don't think we should represent that it is not necessary for what we want to accomplish. It should say instead a boundary line agreement, decree of court of jurisdiction, an appropriate deed, or other means of resolution of the boundary question with adjacent property owner, the Church of Jesus Christ of Latter Day Saints, shall be finalized and executed prior to plat recording.

Jon Woodard replied that you can make that your motion. You are throwing us in the position of determining if it is a boundary line agreement, an appropriate deed, or a court order we have got clear guidance on what we are looking for. With the fourth one and we have got a disagreement here over whether or not it is acquiescent.

**Commissioner Mark Hendricks amended his motion to strike "or other means" from the motion. The three options are boundary line agreement, decree of court of jurisdiction, or an appropriate deed.**

**Commissioner Doug Grandquis seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Doug Grandquis, Kimberly Cook, Mark Hendricks, Scott Brubaker, Doug Hronek.**

**NAY: None.**

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**ITEM 6      LAREN GERTSCH REQUESTS THE CREATION OF AN AGRICULTURAL PROTECTION AREA OF 209.11 ACRES ENCOMPASSING PARCELS 07-6427 (5.73AC), 07-6468 (5.26AC), 07-6435 (6.86AC), 07-6443 (16AC), 07-6484 (10.47AC), 07-6542 (29.37AC), 08-0072 (11.14AC), 08-0056 (16.4AC), 07-6245 (10.5AC), 07-9611 (21.81AC), 07-9553 (10.26AC), 07-9538 (31.2AC), 07-9637 (13.22AC), 00-5889 (2.14AC), 08-0270 (1.04AC) AND 07-9520 (17.71AC) ALL LOCATED IN THE NORTH FIELDS AREA IN THE AGRICULTURE 20 (A-20) ZONE. *\*IF FORWARDED, THE RECOMMENDATIONS BY THE PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON APRIL 19, 2023. (AGPRO-7612; NATHAN ROSVALL)***

### **Staff**

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the proposed agriculture protection area includes two agricultural sheds for storage of farm equipment and a hay barn on parcel #07-6435. A cattle shed is located on parcel #07-6542 and also on parcel #08-0072. A cattle weigh scale station is located on parcel #07-9637. The remaining 12 parcels do not have any structures located on site. The applicant is anticipating maintaining the existing agricultural operation and structures. The adjacent property owners currently use their properties primarily for residential and agricultural purposes. The application is made pursuant to the recently adopted County code (16.29 Agricultural Protection Area) which code is allowed by the State code 17-41-201. The intent of these codes is to protect agricultural areas from encroachment of urban development and the impacts that come with it including nuisance complaints, future road expansion, changes in zoning regulations, eminent domain, etc.

The process for obtaining the designation of an agricultural protection area includes review and recommendation by the Agricultural Advisory Board and the Planning Commission prior to the consideration for approval or denial by the County Council. Wasatch County Code Section 16.29.06 requires that the Planning Commission and Agriculture Advisory Board shall report their analysis to the County Council.

The Wasatch County Code Section 16.29.04 requires the following noticing methods: sending notice to all property owners within 1,000 feet of the requested agricultural protection area, posting notices on the Utah Public Notice Website, and posting notice at five places within or near the proposed agriculture protection area.

Nathan Rosvall then went through the proposed findings:

1. The request is to create an agriculture protection area to maintain the agricultural use and the rural environment.
2. The subject properties are located in the Agricultural (A-20) zone (North Fields) of Wasatch County.



3. The parcels total acreage is 209.11 acres.
4. The current use of the property proposed for protection status is raising, grazing livestock and cultivating grass to produce hay.
5. Properties are in agricultural production year-round.
6. The proposed areas with structures include: five sheds, a barn and a cattle weigh station on three (3) parcels.
7. There are 13 parcels without any structures.
8. The property owner plans to maintain the properties as an agricultural use.
9. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
10. Commonly found soils in the A-20 Zone (North Fields) are: Fluventic Haploborol, this soil is common for tall grasses; Kovich, this soil occurs on broad valley floors and is a slow permeable soil; Logan, this soil is common for meadow hay and pasture.
11. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area and the proposal is consistent with the evaluation criteria of the code and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
12. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
13. Surveys of the parcels have not been included in the application, which limits the County's ability to precisely determine the eligibility of some of the property for the Agriculture Protection Area under WCC Section 16.29.02(F), and could affect the ability of the property owner to prove they have the protections afforded under the Agricultural Protection Area. Errors, ambiguity, and risks in applying the protections of the Agricultural Protections in the boundary of the Agriculture Protection Area resulting from the property not being surveyed and from using legal descriptions that did not come from surveyed legal boundaries are assumed by the property owner.
14. There are two properties, Parcels 07-6427 and 07-6468 that will be affected by an offset of 100' from the centerline of State Road 113. WCC Section 16.29.02(F)(1)(2). These property descriptions for the Agriculture Protection Area will also read, "Less and excepting 100' offset from the centerline of SR-113", or language as needed to record the Agriculture Protection Area but not the portion of any property that is within 100' from the centerline of SR-113. If a more refined legal description is needed for initially recording the Agriculture Protection Area, the property owner will be responsible to obtain such legal description.
15. Parcels 08-0072, 07-6542, 07-6435 and 07-6427 may or may not include some property to the east of the transmission line, and property east of the transmission line, if any, is not eligible to be included in the Agricultural Protection Area. WCC Section 16.29.02(F)(1). The property descriptions for these Agriculture Protection Area for these parcels will also read, "Less and excepting east of the transmission line, if any" or language as needed to record the Agriculture Protection Area but not include property that is east of the transmission line. If a more refined legal description is needed for initially recording the Agriculture Protection Area, the property owner will be responsible to obtain such a legal description.
16. A letter from the Utah Department of Transportation has been received in response to the notices sent or signs posted on the property.
17. If the Agricultural Protection Area is approved, the approval will be in effect until its 20<sup>th</sup> calendar review year.

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

Nathan Rosvall indicated that as a modification of the proposal and recommendation to the County Council, staff recommends that according to Section 16.29.02(F), land not eligible to be included in the Agriculture Protection Area based on their condition as of November 1, 2022. This land includes:

1. Land in an area described as north of SR-113 and west of Heber City's boundary and bordered on the north and west sides by the existing transmission line, but excluding the rectangular area 270 feet to the south and 520 feet to the east of the transmission line adjacent to the northwest corner of the previously described area.
2. Land that is within 100 feet of the centerline of SR-113, 2400 South, 1200 South, Southfield Road, Midway Lane, US 40, River Road, SR-32, 189, Main Canyon Road, the portion of the bypass alignment as shown on Wasatch County General Plan Map 32 which is south of SR-113 or Road 10 (Wallsburg second access) as shown on the Wasatch County General Plan Map 21.

There are two properties, Parcels 07-6427 and 07-6468 that will be affected by an offset of 100' due to State Road 113. WCC Section 16.29.02(F)(1)(2). These property descriptions for the Agriculture Protection Area for these parcels will also read, "Less and excepting 100' offset from centerline of SR-113", or language as needed to record the Agriculture Protection Area but not the portion of any property that is within 100' from the centerline of SR-113.

There are four properties, Parcels 08-0072, 07-6542, 07-6435 and 07-6427, that may or may not be affected by an offset of any property to the east of the transmission line. WCC Section 16.29.02(F)(1). The property descriptions for the Agriculture Protection Area for these parcels will also read, "Less and excepting east of the transmission line if any", or language as needed to record the Agriculture Protection Area but not include property that is to the east of the transmission line.

No proposed limitations on types of agriculture production allowed on the protected area.

Nathan Rosvall then summarized what the letter from the Utah Department of Transportation said which is you do your thing and we will do ours.

Jon Woodard, Assistant Wasatch County Attorney, indicated that when the Council approved the Agricultural Protection Ordinance excluded from eligibility that square of land that is between the transmission line, the Heber City Boundary and North of 113. You have got this square of land that was excluded because the Council's intent was to leave that area open for the bypass route. So without surveys I don't have a great way of knowing exactly where that falls. So what those legal descriptions are designed to do is make sure that we are not going against the intent of the Council by including those parcels that may or may not cross that boundary because I don't have a survey that tells me for sure.

### **Applicant**

Laren Gertsch, the applicant, addressed the Wasatch County Planning Commission and indicated that the modifications were made known to me yesterday and I am aware of the modifications. Laren Gertsch replied that he is agreeable to the modification about the irrigation company being able to clean the ditches and agreeable to and basically all my properties are east of this yellow brick road and that was what was intended and so all right with the modifications. It sounds really complicated when it is really the County protecting themselves from the new ordinance. Commissioner Scott Brubaker asked Laren Gertsch are you comfortable with the conditions that the staff has in your report right now? Laren Gertsch replied yes with one small tweak. Commissioner Scott Brubaker asked if we passed it tonight subject to staff conditions you would be okay with that? Laren Gertsch replied that I will live with that.

### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing for public comment and there was none so the public comment period was closed.

Commissioner Mark Hendricks indicated that he is grateful for Laren Gertsch's willingness to commit to this and my grandchildren will be grateful too. This is great.

### **Motion**

**Commissioner Scott Brubaker made a motion that we accept this Item No. 6 on the agenda with the staff conditions as outlined and modifications as outlined in the agenda tonight and recommend to the Wasatch County Council for approval.**

**Commissioner Doug Grandquis seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Doug Grandquis, Kimberly Cook, Mark Hendricks, Doug Hronek, Scott Brubaker**

**NAY: None.**

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**ITEM 7      DANIEL AND TRUDY SIMMONS REQUEST THE CREATION OF AN AGRICULTURAL PROTECTION AREA OF 148.56 ACRES ENCOMPASSING PARCELS 07-7649 (36.41AC), 20-3321 (23.26AC), 20-3320 (35.09AC), 07-8217 (6.74AC), 21-0104 (15.98AC), 07-8134 (3.98AC), 15-4711 (2.44AC), 07-8191 (11.4AC) AND 07-8233 (13.26AC) ALL GENERALLY LOCATED NEAR 3455 N HIGHWAY 40 IN THE AGRICULTURE 20 (A-20) ZONE.    *\*IF FORWARDED, THE RECOMMENDATIONS BY THE***

***PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON APRIL 19, 2023. (AGPRO-7649; NATHAN ROSVALL)***

**Staff**

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the applicant, Daniel Simmons, is requesting an Agriculture Protection Area for properties located in the Agriculture 20 (A-20) Zone of Wasatch County. There are a total of nine properties with 148.56 acres. The application is made pursuant to the recently adopted County Code (Section 16.29 Agricultural Protection Area) which code is allowed by the State Code Section 17.41.201. The intent of these codes is to protect agricultural areas from encroachment of urban development and the impacts that come with it including nuisance complaints, future road expansion, changes in zoning regulations, eminent domain, etc.

Wasatch County Code Section 16.29.04 requires the following noticing methods: sending notice to all property owners within 1,000 feet of the requested agricultural protection area, posting notices on the Utah Public Notice Website, and posting notice at five places within or near the proposed agriculture protection area. There are no proposed limits.

Nathan Rosvall then went through the proposed findings:

1. The request is to create an Agriculture Protection Area to maintain the agricultural use and the rural environment.
2. The subject properties are located in the Agricultural (A-20) Zone of Wasatch County (North Fields).
3. The combined acreage of the Agricultural Protection Area is 148.56 acres.
4. The current use of the property proposed for protection status is greater than 50 percent of the land is devoted to agriculture, including hay production, livestock/animal husbandry, grazing, orchard/garden, aquiculture, livestock training areas, barns and farm instrument storage, corrals, and agricultural land bank.
5. The proposed area includes one existing single family structure and one shed located on parcel 20-3320. There are four structures located on parcel 07-7649.
6. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
7. Commonly found soils in the North Fields are: Fluventic Haploborol, this soil is common for tall grasses; Kovich, this soil occurs on broad valley floors and is a slow permeable soil; Logan, this soil is common for meadow hay and pasture.
8. There are three properties that will be affected by Wasatch County Code Section 16.29.02 (F)(2), which requires a 100' offset from the centerline of the road. These properties include: 20-3320, 20-3321 and 07-7649. These property descriptions for the Agriculture Protection Area will also read, "Less and excepting 100' offset from US Highway 40", or language as needed to record the Agriculture Protection Area but not the portion of any property that is within 100' from the centerline of US Highway 40.
9. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area, and the proposal is consistent with the evaluation criteria of the code and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
10. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
11. No objections have been received in response to the notices sent or signs posted on the property.
12. If the agricultural protection area is approved, the approval will be in effect until its 20<sup>th</sup> calendar review year.

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

As a modification of the proposal and recommendation to the County Council, staff recommends that according to Section 16.29.02(F), land not eligible to be included in the Agriculture Protection Area based on their condition as of November 1, 2022. This land includes:

1. Land in an area described as north of SR-113 and west of Heber City's boundary and bordered on the north and west sides by the existing transmission line, but not excluding the rectangular area 270 feet to the south and 520 feet to the east of the transmission line adjacent to the northwest corner of the previously described area.
2. Land that is within 100 feet of the centerline of SR-113, 2400 South, 1200 South, Southfield Road, Midway Lane, US 40, River Road, SR-32, 189, Main Canyon Road, the portion of the Bypass Alignment as shown on Wasatch County General

Plan Map 32 which is south of SR-113, or Road 10 (Wallsburg second access) as shown on the Wasatch County General Plan Map 21.

There are three properties, 07-7649, 20-3320 and 20-3321 that will be affected by an offset of 100' due to US Highway 40, Section 16.29.02(F)(1)(2) Wasatch County Code. These property descriptions for the Agriculture Protection Area will also read, "Less and excepting 100' offset from centerline of US Highway 40", or language as needed to record the Agriculture Protection Area but not the portion of any property that is within 100' from the centerline of US Highway 40.

### **Applicant**

Daniel and Trudy Simmons via telephone addressed the Wasatch County Planning Commission and indicated that he doesn't have anything to add and I wanted to make sure that I understood. The condition will be that there will be 100' offset from Highway 40 for the parcels on that road from the centerline.

### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing up for public comment and there was none so the public comment was closed.

### **Motion**

**Commissioner Doug Grandquis made a motion to approve of the Agricultural Protection Area of 148.56 acres in the North Fields with modifications as stated and consistent with the staff findings and conditions and recommend to the Wasatch County Council for approval.**

**Commissioner Kimberly Cook seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Kimberly Cook, Doug Grandquis, Doug Hronek, Mark Hendricks, Scott Brubaker**

**NAY: None.**

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**ITEM 8      TRIPLE V RANCH, LLC REQUEST THE CREATION OF AN AGRICULTURAL PROTECTION AREA OF 15 ACRES ENCOMPASSING PARCEL 07-4416 LOCATED IN THE NORTH FIELDS AREA AT 1465 NORTH 1750 WEST IN THE AGRICULTURE 20 (A-20) ZONE. *\*IF FORWARDED, THE RECOMMENDATIONS BY THE PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON APRIL 19, 2023. (AGPRO-7644; NATHAN ROSVALL)***

### **Staff**

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the applicant, Triple V Ranch LLC, is requesting an Agriculture Protection Area for property located in the Agriculture (A-20) zone at 1465 North and 1750 West in the North Fields. The property contains 15 acres. The proposed Agriculture Protection Area includes an agricultural shed for storage of farm equipment (fence building, farm tools and other miscellaneous tools) in the Northeast corner of the parcel. The application is made pursuant to the recently adopted County Code (16.29 Agricultural Protection Area) which code is allowed by the State Code 17-41-201. The intent of these codes is to protect agricultural areas from encroachment of urban development and the impacts that come with it including nuisance complaints, future road expansion, changes in zoning regulations, eminent domain, etc. Wasatch County Code Section 16.29.04 requires the following noticing methods: sending notice to all property owners within 1,000 feet of the requested agricultural protection area, posting notices on the Utah Public Notice Website and posting notice at five places within or near the proposed agriculture protection area.

Nathan Rosvall then went through the proposed findings:

1. The request is to create an agriculture protection area to maintain the agricultural use and the rural environment.
2. The subject property is located in the Agricultural (A-20) zone off 1465 North and 1750 West.
3. The parcel is 15 acres.
4. The property is a legal nonconforming parcel.
5. The current use of the property proposed for protection status is for the grazing of cattle and other animals.
6. The proposed area includes one existing agricultural storage shed to the northeast of the parcel.
7. The property owners plan on building a single-family dwelling and a barn in the northerly portion of the property.
8. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
9. After the home and barn are built, the property owners intend to maintain the same farming operations as is currently being utilized on the property.
10. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area, and the proposal is consistent with the evaluation criteria of the code and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
11. Commonly found soils in the North Fields are: Fluventic Haploborol, this soil is common for tall grasses; Kovich, this soil occurs on broad valley floors and is a slow permeable soil; Logan, this soil is common for meadow hay and pasture.
12. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
13. No objections have been received in response to the notices sent or signs posted on the property.
14. If the Agricultural Protection Area is approved, the approval will be in effect until its 20<sup>th</sup> calendar review year.
15. The Westside Ditch is located on the southeastern corner of the parcel.

As a modification of the proposal and recommendation to the County Council, staff recommends that the applicant be required to maintain historic irrigation channels and that the irrigation company would have the right to maintain and clean the canal/ditch to ensure downstream flows.

#### **Applicant**

The applicant had no comments.

#### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing for public comments and there was none so the public comment period was closed.

#### **Motion**

**Commissioner Scott Brubaker made a motion that we forward this onto the Wasatch County Council with the recommendation for approval with the proposed modifications as listed in light of the findings and conditions.**

**Commissioner Doug Grandquis seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Mark Hendricks, Doug Grandquis, Kimberly Cook, Scott Brubaker, Doug Hronek.**

**NAY: None.**

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**ITEM 9      CORT LOCKWOOD, REPRESENTING TREVOR MILTON, REQUESTS A TEXT AMENDMENT TO WASATCH COUNTY CODE §16.05.02 IN ORDER TO ADD PRIVATE HELIPADS AS A PERMITTED ACCESSORY USE IN THE PRESERVATION (P-160) ZONE. *\*IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON APRIL 19, 2023. (DEV-7623; AUSTIN CORRY)***

#### **Staff**



Austin Corry, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that during a Planning Commission meeting regarding a request to amend the Milton Diamond Bar X Plat the public comment received identified a zoning violation on Lot 1 of the plat seeking to be amended. Wasatch County Code 16.21.40 requires that private helipads obtain a conditional use permit from the Planning Commission before being constructed or operated. Neighboring property owners identified that a private helipad was in operation at the site and the County staff was unable to find any evidence of a conditional use permit being issued for the property. On January 20, 2023 the applicant agreed to cease operations of the helipad until such time as the necessary permits could be obtained. Through the course of applying for the permits, it was discovered that the current Wasatch County code does not include private helipads as an allowance in the P-160 zone.

One of the key elements that we look for whenever a code amendment is proposed is whether it is consistent with our General Plan or not. The General Plan doesn't directly speak to it. The closest thing that I could find were Policy 1.1.3 and 1.1.4 that talked about being careful about protecting physical or environmentally constrained areas and more specifically focused on development, so again it is not directly related but trying to analyze it as best we can. Goal No. 3 says that we do need to review the land use portion of the General Plan on a regular basis. This would be a policy decision ultimately that is being made. It is a code amendment so you as a Planning Commission are a recommending body. The inclusion of this is really a policy decision of whether it falls in line with what the County would want to see from a land use policy.

Austin Corry indicated that there are two questions you ought to debate as a Planning Commission. The first is the use of private helipads acceptable as a use in the P-160 zone. The second is if the use of helipads be considered accessory to a single family dwelling. The reason that this is key is that the place that the applicant has put that in the proposed code is important because their particular project they are looking for is a non-conforming subdivision. It is in the P-160 zone but it is not a 160 acre lot. What that means by listing it as an accessory use is that you can apply that to non-conforming subdivisions. If it were in the permitted uses table itself or the conditional uses table itself we have a provisions under our legal non-conforming standards that state that you don't get the whole host of options that are available in the zone. That is why the second question is an important one for you to consider as part of this that making sure that you understand what their particular amendment would do for the code and allow.

I will note that in 16.21.40 it does require a minimum lot size of ten acres in order to apply it though so you couldn't do this on a one acre lot of record.

Austin Corry then went through possible findings for approval.

1. The proposed amendment is in the interest of the public, and is consistent with the goals and policies of the Wasatch County General Plan.
2. The proposed amendment is consistent with the purpose and objectives outlined in Section 16.05.01 in that the amendment does not conflict with other provisions for determining the impacts to health, safety, and welfare.
3. The General Plan states that development of remote areas should be limited.
4. According to the applicant, the positive impacts of the proposed change would be "providing property owners with greater flexibility in managing/accessing their land and will attract more affluent individuals to the area which will help bolster the local economy".
5. According to the applicant, the negative impact of the proposed changes "could be an increase in noise pollution from helicopter flights".
6. Wasatch County Code 16.21.40 establishes criteria for mitigating impacts of helipads for private use through a conditional use permit process.
7. The DRC, including the Sheriff and Fire Marshal, have not identified major concerns with the inclusion of private helipads as accessory uses in the P-160 zone.
8. The Wasatch County Council, as the legislative body, has broad discretion for amendments to the Wasatch County Code.

Austin Corry then went through possible findings for denial.

1. The proposed amendment is not in the interest of the public, and is not consistent with the goals and policies of the Wasatch County General Plan.
2. The proposed amendment is not consistent with the purpose and objectives outlined in Section 16.05.01.
3. The General Plan states that development of remote areas should be limited.
4. Positive impact of the proposed changes identified by the applicant do not address items of general health, safety, and welfare.

5. Negative impact of the proposed changes could be increased noise pollution, increased desire for residential uses in remote areas of the county where services are limited, specifically emergency response times.
6. The Wasatch County Council, as the legislative body, has broad discretion for amendments to the Wasatch County code.

### **Commission Comments**

Commissioner Scott Brubaker replied that possibly increasing the minimum size for helipad greater than ten acres might make this acceptable. Also indicated that I am not interested in this.

Commissioner Doug Hronek asked, is this something that could be obtained through a conditional use permit and why there is a need to amend the code for a small number of people. Why not address this on a as it comes basis. Austin Corry replied if you approved this and the Council approved this as written as an accessory use it would still go through a conditional use process to grant that accessory use. Right now the code doesn't allow it at all.

Commissioner Mark Hendricks replied that it has to create a 160 acre minimum. My feeling is you can make a good argument for safety and having either for aircraft emergency purposes or access purposes for helipads all around clearance and for search and rescue, fire or law enforcement purposes and an argument could be made for that. Helicopters are noisy and doesn't help with peace and tranquility. I am more comfortable in having that way out away from everything and more comfortable with bigger lots than ten acres. Doug Smith, the Wasatch County Planner, indicated that he was here when that code was written and involved in writing that code and as far as I am aware we have got two legal helicopter pads in the County. One is by Deer Creek Dam and the other was close to Wasatch View. In dealing with the Wasatch View one, the neighbors were so upset with this and got calls on a daily basis complaining of that. Possibly a motion that said that we will pass it on with a recommendation to deny unless there was a minimum acreage or a substantial acreage or something like that.

Vice Chair Wendell Rigby indicated that one helicopter landed near to us because it was a foggy day and couldn't get in to the hospital. I guess I am opposed to helipads unless it is way far out; we have enough aircraft in the valley which makes enough noise. This really doesn't fit in our rural nature.

Commissioner Kimberly Cook said that she doesn't want helicopters at all.

### **Public Comment**

Vice Chair Wendell Rigby then opened the public hearing up for public comment.

Ginny Tuitte indicated that there is a helicopter next to my property that lands quite frequently in the North Fields and was curious when you talked about the lot of record and how that impacts us. Austin Corry replied that for this code the way it is written it would not apply to the North Fields, that is A-20 zoning, and this would only apply to the P-160 zone as an accessory use.

Vice Chair Wendell Rigby then closed the public comment period.

### **Motion**

**Commissioner Mark Hendricks made a motion that we move this forward to the County Council with a recommendation to deny unless it is applied to a conforming 160 acre lot in that zone and this doesn't change any of the conditional thing.**

**Commissioner Scott Brubaker seconded the motion.**

**The motion carries with the following vote:**

**AYE: Vice Chair Wendell Rigby, Mark Hendricks, Doug Grandquis, Doug Hronek, Kimberly Cook, Scott Brubaker.**

**NAY: None.**

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## **ADJOURNMENT**

**Motion**

Commissioner Scott Brubaker made a motion to adjourn.

Commissioner Mark Hendricks seconded the motion.

The motion carries with the following vote.

AYE: Vice Chair Wendell Rigby, Mark Hendricks, Doug Grandquis, Doug Hronek, Kimberly Cook, Scott Brubaker.

NAY: None.

Meeting adjourned at 10:30 p.m.

  
WENDELL RIGBY/VICE CHAIR