

Minutes of the Western Weber Planning Commission meeting of December 13, 2016, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT

Members Present: Mark Whaley, Chair  
Jannette Borklund  
Roger Heslop  
Blake Hancock  
John Parke  
Jennifer Willener

Member Excused: Wayne Andreotti

Staff Present: Rick Grover, Planning Director; Ronda Kippen, Principal Planner, Chris Crockett, Legal Counsel; Sherri Sillitoe, Secretary

- Pledge of Allegiance
- Roll Call

Chair Whaley indicated that the members have indicated that they do not have any conflicts of interest or exparte communication for the items on the agenda.

1. Administrative Items

Approval of the November 15, 2016 meeting minutes

Commissioner Heslop indicated that he had some amendments to the minutes. On Page 4, the presenter was Brad Blanche who spoke about adding the amenity for the sprinkler systems. On Page 6, 3<sup>rd</sup> Para., there is no reference to Doug Hansen's comments. Sherri will need to listen to the recording to make those amendments. Commissioner Borklund asked if they wanted to review the minutes after the amendments have been made and Commissioner Heslop agreed they should table. Chair Whaley stated that the minutes were tabled until the corrections are made before the next meeting.

2. Consent Agenda Items

**2.1. LVV041116 Consideration and action on a request for final approval of Vaquero Village Cluster Subdivision for 13 lots located at approximately 7100 West 900 South, West Warren - Dean Barrow Applicant**

Neal Davis, 7212 W. 900 S., indicated that that at the previous meeting where this subdivision was addressed they were told it would be reported when it comes back to the Planning Commission. They felt there were a few items that were not resolved and he wanted to know how many water shares would be given to the property owners. Who will own the pond because it is on adjacent property and not part of this proposal for their secondary water? Where will the point of diversion for the canal be? Will livestock be allowed to roam in the open space areas? There was a piece of property that was sold, so was that 1/3 acre taken off the lots for the open space?

Ronda Kippen stated that they have adequate proof of irrigation shares to be provided by Warren/West Warren Irrigation. The Engineering Division has approved this and the Engineering Division is also okay with the secondary pond being part of the subdivision. As far as animals allowed in the open space; they are not part of the plan, but it is their open space. Regarding the trail system was going to be allowed; the three feet hard surface and three feet crushed gravel was proposed so that they could walk horses along the trails through there. It is anticipated that animals will be going through there but not necessarily be pastured there. There will be a landscape plan with trees and turf grass that would be beneficial for animals.

Commissioner Borklund clarified that since it is a cluster subdivision, large animals would be allowed in the open space if they choose to. Ronda Kippen indicated that if they designate the open space to agricultural parcels, they can. She

has a letter from the Health Department and the West Warren/Warren Improvement District has given their approval. She also has proof of Warren Irrigation Company for 30 shares of water.

Ronda Kippen stated that the title report does not reflect the sale of any property. If there has been a transaction that has been recorded, they would be part of this plan. The County Recorder's Office at the time of recording will check the vesting and map this out. We can get an updated title report prior to recording to make sure that is okay. Justin Barrow, one of the applicants, stated that no property has been sold. There was 1/3 acre sold a year and a half ago, but it was not part of this proposal.

**2.2. Approval Consideration and action for approval of the Amended Planning Commission Rules of Order dated November 21, 2016**

**MOTION:** Commissioner Heslop moved for approval of the Consent Agenda for Agenda Items 2.1 and 2.2. Commissioner Borklund seconded the motion. A vote was taken and Chair Whaley indicated that the motion carried by a unanimous vote with Commissioners Borklund, Hancock, Heslop, Parke, Willener and Chair Whaley voting aye.

**Administrative Items**

**3.1. CUP #2016-18 Consideration and action for a conditional use permit for a Stealth Verizon Wireless Cell Tower, located at approximately 1770 East 6200 South in the South Ogden area – Verizon Wireless, Applicant; Nefi Garcia, Agent**

Rick Grover, Planning Director, introduced the item and indicated that the property is within the RE-15 Zone. As a conditional use, the Planning Commission would decide which conditions they would like to see imposed on this use. They will want to see how the use is compatible with the area. They are not required to take public comment on this, but if they choose to, they can.

Nefi Garcia, with Technology Associates and Agent for Verizon Wireless, stated that Verizon for their client, the Washington Heights Church, looked at many spots to find a good location for the cell tower site on the south end of their property and they decided it would be best to have a stealth site along the frontage on Highway 89. It will be a three-legged pylon sign will be a triangle basically and the top will be three sides with the cross and their logo on it and the antennas will be hidden behind that. It is modeled after a catholic church in Boise, Idaho, and people don't even know it is a cell site. He spoke with the property owner today and they asked if the color could be a darker blue with the cross being white. He wanted to bring that to staff's attention because a different color was presented before. Commissioner Borklund asked if the blue color was shown on the diagram they have in their meeting packet. Mr. Garcia replied no, it would be a darker blue with a white cross and would match their logo. The banding that is around the tower would match.

Commissioner Willener asked if it would be a lit cross, and Mr. Garcia replied no.

Felix Lleverino, planner, presented a PowerPoint presentation that showed the location. It is a well-thought out design. The cell tower would be located on the top of the ridge. There will be a fence around the site and the proposal will be landscaped and have an irrigation plan. A couple of conditions that the planning staff and the applicant worked through; one of which was that the vinyl enclosure material would be a tan color and have a maximum 6 ft. fence height. The site will maintain a good visual appearance and have a structural integrity. After conducting a review, it is staff's recommendation to approve the cell tower design, a stealth design, based on the following conditions that are listed in the staff report:

Commissioner Heslop asked how high the tower would be and Felix Lleverino replied 60 ft.

Commissioner Borklund indicated that there is a landscaping plan so she asked if there was water. Mr. Lleverino replied that there is a drip water system that would water the landscaping.

Tony and Deborah Atkinson stated that there are many RF frequency studies that are not financed by government and cell phone companies. They are about 60 ft. on the bluff from the site and the proposed tower would be right in front of his bedroom. Deborah Atkinson stated that there are scientific studies showing that there is some detriment to these transmitter frequencies. There are scientific studies showing that there is some transmitter radiation from 500 meters to a mile. They are within 500 ft. of the proposed site. These studies have shown that cancer rate has gone up; neurological and physiological problems associated over a course of over time are being realized. They are finding out through different studies and different countries that agriculturally, livestock aren't producing milk, etc.

She is susceptible to this radiation and cannot be on a cell phone for more than a few minutes without getting a headache. She believes it is devaluing the property value of her home.

Chair Whaley indicated that they have to make their regulations through the standards in their code.

Commissioner Parke stated that in the recommendations to staff it states that they need to find that it would not be detrimental to the safety, health and welfare but he doesn't see where the Health Department has given their review. Chair Whaley indicated that they have to have proof and a standard that they have to compare it to. Commissioner Borklund indicated that if there are factors that can be mitigated, they can find ways to mitigate those on a conditional use permit. If there are ways to lessen the effects, they can mitigate any detrimental effects that they find.

Chair Whaley stated that they have to have a way to measure the issues. If there are issues that can be addressed and designated by the County staff, then they have a way to measure; other than that, they cannot. Commissioner Parke asked if it wouldn't be prudent to have the health department review the proposal.

Planning Director Grover stated that they could ask them to do a range study or look at co-location and also work with the health department for finding impacts that we don't have. If they do not feel comfortable with the proposal, they can ask the applicant to provide further information.

Chris Crockett stated that Land Use Code 108-4-5 indicates that any conditions that they must pose must be based on credible evidence and part b. states that the Land Use Authority must consider the expertise and experience of applicable reviewers and qualified professionals to help determine credible evidence, relevant standards, and reasonable conditions. The Planning Commission has the ability to ask those experts. Mr. Atkinson stated that all the experts have something to gain and everyone will be making money off of it.

Commissioner Heslop stated that in looking at the conditional use review, they have considerations with traffic, landscaping, building and site lay out, considerations related to utility easement, drainage and engineering, considerations to any zoning, but he doesn't see any considerations for any health, safety, and welfare. Commissioner Borklund stated that this is the finding that they need to make.

Chris Crockett stated that in the code, there are provisions that allow them to impose conditions/standards relating to safety for persons or property.

Nefi Garcia indicated that there are valid concerns that are brought up in these hearings. He reminded them that under Federal Telecom Act of 1996 which states that a facility cannot be denied for health reasons. As long as the carriers operate within that frequency or threshold regulated, then they are obeying the law. The internet is full of evidence. They know that FCC tells carriers how they can operate and under what threshold. If they follow these regulations, then they are operating under Federal standards.

Commissioner Borklund asked if they have looked at other locations. Would the tower work at less height?

Nefi Garcia stated that typically when he gets a new search area, he looks for structure locations that they can use. In this case, there is a Wendy's with a power substation and an ATT&T tower there and also there is a south Weber water tank on the hill with antennas. He presented these two locations to Verizon to see if that would work for them, but they indicated that for what they have to cover in this area, those locations do not work. Once you get 50 ft. or

lower, you have trees and other obstructions and they wanted to be in this proposed location. Sixty to 70 ft. is about the standard height for such towers. The facilities are getting closer together and the height is being lowered in some instances.

**MOTION:** Commissioner Borklund moved to table CUP #2016-18, a conditional use permit request for a Stealth Verizon Wireless Cell Tower, located at approximately 1770 East 6200 South in the South Ogden area – Verizon Wireless, Applicant; Nefi Garcia, Agent, in order to ask for information on range studies and information from the health department as to what effect this proposal would have on the public health, safety and welfare. Commissioner Parke seconded the motion. A vote was taken and Chair Whaley stated that the motion carried by a unanimous vote, with Commissioners Borklund, Hancock, Heslop, Parke, Willener and Chair Whaley voting aye.

**3.2. AE #2016-09 Consideration and action on an alternative access request to use a private right-of-way as the primary access and frontage for three-lot subdivision located at approximately 6260 South 2125 East – Somerset Lands, LLC, Applicant; Sharon Clark, Representative**

Rick Grover, Planning Director, introduced the item. He indicated that there is no vesting of approval. They are looking only if access can be given to this property. The back portion backs onto Highway 89 and a portion is surrounded by an existing subdivision development. It is located in and RE-15 Zone. The Planning Commission can take public comment on this. The applicant has changed his application for approval of 3 lots, but the lots are not being reviewed at this time; that would be at the subdivision level. They are only looking at whether access can be given. This is an access request, not an access easement.

Sharon Clarke, 2408 Lamborne Avenue, Salt Lake City, indicated that she has asked Donald Fulton to speak for her. Donald Fulton, 266 E 7845 South, Midvale Utah, stated that they both work for Somerset Lands LLC. They have demonstrated how it is not practical or feasible to extend access to this lot from the access on Highway 89. There is historical access through a private right of way through the backside and they are asking that it be acknowledged as an alternate access to this land.

Commissioner Borklund stated that right now it is recorded as one lot, but they will be pursuing three lots.

Ronda Kippen presented a staff report and indicated that this is a very conceptual level of the development process. They are asking tonight for an alternative access for the Hidden Oak Subdivision. It is currently approved as a flag lot. The applicant has requested to divide this into three separate lots. Per the County standards, we have some criteria that the application would have to meet for approval for access without frontage. Mrs. Kippen read the criteria listed in Land Use Code 108-731-1b. The applicant's site meets two of those standards at this point. The topography does not allow for a connecting street to go through there. It has frontage along Highway 89. The applicant has tried to gain access along 89 for access to this site, but UDOT has denied that. We are bound to a private right of way and it meets the standards for that. Based on this, staff is recommending approval. At subdivision we will be looking at a geotechnical report, a geologic report, engineered improvement plans, and engineered improvement drawings for the structure and private right of way. This property is located in an area that has been identified as a potential natural hazard area. The geologic and geotechnical reports will be required and all of the engineering drawings will need to have certifications that they are designing them to meet the recommendations from the geologist and the geotechnical engineer. They are at a conceptual state right now so they cannot ask for this information, but they can at the subdivision state. They will have to prove that the property is safe for three lots. The code requires that a condition of approval be put on all alternative accesses that if the county ever deems they want to put a right of way through there, they would have to pay a proportionate cost of developing the street in the future.

Commissioner Borklund asked how they can ask for three lots when they don't know if the property can handle three lots. Don't they have to prove the site can handle three lots? Ronda Kippen stated that it all comes down to design and it is premature to ask for that information.

Commissioner Heslop asked if it will be extended through the total parcel as proposed on the conceptual drawing. Will it be wide enough to access for fire safety, additional cars parking along the street, etc.? Ronda Kippen stated

that the private drive will more than likely be developed at 29 ft. However, the cul-de-sac or turnaround would have to be designed to handle the fire truck apparatus, etc. They will have a shared driveway and will have to maintain that driveway so that emergency services can get in there.

Commissioner Borklund asked if they are approving the access shown as a dashed line. Is the dashed line what they are proposing? They are not approving a survey level detail at this point.

Larry Garrett, 6254 S 2125 E, asked the requirements and what exactly they are trying to approve today. Chair Whaley explained the request and the sequence of events. Mr. Garrett asked why they would try to gain access to something that isn't there. Ronda Kippen stated that they are asking for frontage for three lots. The Code requires as part of the subdivision process that you have not only access, but frontage and lot width. There is access for one lot based upon it being a flag lot, which is one of the alternative access tools in our code. The other one is access by a private right of way and the other is access across a lot other than the front property line. The applicant is asking that they create a private right of way that will connect of 2125 E. and provide frontage and access to lots 1, 2 and 3. Currently, there is access for one lot. We would need soil samples saying it would handle the weight of a fire truck. The code allows for it to be an unimproved surface but it would need to withstand the 75,000 lbs. There will need to have a cul-de-sac or a hammerhead at the end.

Chris Crockett stated that in order for them to submit to them to have connection to three lots, they will have to demonstrate that they have that access. Rick Grover, Planning Director, stated that a lot of things would have to be addressed per the subdivision ordinance. They are looking at access at this point. It is only a conceptual plan right now; all they are doing is looking at three lots. There are many things that they don't know that right now; the details will be flushed out at subdivision approval.

Chair Whaley suggested that they could modify the application to say: "Consideration and action on an alternative access request to use a private right-of-way as the primary access and frontage for a proposed three-lot subdivision located at approximately 6260 South 2125 East – Somerset Lands, LLC, Applicant; Sharon Clark, Representative." He asked if that would satisfy the applicant and Mr. Garrett. Larry Garrett stated that he does not understand, it was rejected at six lots so why would it be approved at three lots? Commissioner Borklund stated that it would be helpful for the public to know the history of what happened since their last approval. Ronda Kippen indicated that submitted an application for six lots in late fall and it was approved for only one lot. It went to the Board of Adjustment and they upheld the decision. The applicant missed the deadline to appeal it to District Court. The only way we could bring it back to the Planning Commission was if substantial changes were made. Based upon there being a substantial change, we were able to bring the application forward for consideration on a new application to the Planning Commission. Per the State Ombudsman, the applicant had the right to submit a new application if there was substantial change. What they are looking at this time is only if it is impractical and unfeasible to extend a county road down into there to create access for three more lots. Per staff's review, yes it is. There are standards for that and the applicant will need to design the subdivision so that it is safe per whatever geologic and geotechnical standards there are at this state.

Mr. Garrett indicated that he would hope they would take safety into consideration. People buy homes on a cul-de-sac for safety for their kids. He is still confused as to how access can be granted here to more than one lot.

Deanne Adams, 2167 E., 6225 S., indicated that she lives above this property. This is basically her back yard. She gets to enjoy the wildlife that comes up from Highway 89. This owner has asked for it to be a six lot subdivision and now a three-lot subdivision. She would like to see the historical data of this property and what has been asked of it.

Ronda Kippen stated that according to County records, there has been an access other than frontage from Highway 89 approved for one lot in 2003. In 2004, a private access without frontage for two lots approved, and in 2016 a one-lot subdivision was approved, the Hidden Oaks Cove Subdivision. In 2016, they did a private access without frontage for six lots but that was approved for one lot. As far as past information in those files, those were based on Board of Adjustment which varied part of the code. This is now part of the code and not a variance any longer and those reports are outdated. We will go off the more up-to-date reports going forward to subdivision approval.

Commissioner Borklund asked if nothing has changed since it was originally recorded in the late 1980's and Ronda Kippen replied no, with the exception of the Hidden Oaks Subdivision being recorded.

Chair Whaley asked Legal Counsel to explain their duty regarding these applications: Chris Crockett stated that the question is going to be what can be identified in the staff packet; you apply the standards and then the appropriate criteria as Mrs. Kippen outlined.

Commissioner Borklund stated that it is difficult to come up with a different finding than what they have already approved. Based on what staff is telling them, they cannot make any findings to deny access, but they don't know what they can or cannot do based upon how that access can be defined or how the lots can be configured or whether the lots are even safe to be developed. Ronda Kippen stated that their consideration tonight is based upon the information that has been provided, has it been shown that it is not practical or unfeasible to extend a street to serve such lot or parcel. Commissioner Borklund asked that if it is unfeasible for the County to extend access to serve such property, why is does it then become feasible to have a private access to do that same thing? Mrs. Kippen stated because County standards are 66 ft. width and they only have 29 ft. If they cannot meet that County standard, they have an alternative process that they can create that access by a private right of way, by a flag lot, or come across the front lot line of your property as access. This used to be something that was an exception to the rule, but now they have rules. They have to meet the exceptions in the code and if they can do that, then they should be granted approval. The actual evidence as to whether it can be done comes at subdivision. We cannot require that level of detail at this stage.

There is a subdivision at the top of Powder Mountain with an 18 ft. right of way that serves probably 10 lots with an additional 12 next units (approximately 20 lots on an 18 ft. right of way). Is 29 ft. adequate, she doesn't know, this will be addressed by the County agencies in step 2. Commissioner Borklund asked if slope will matter and Ronda Kippen replied yes it will; they cannot have more than a 15% grade.

Commissioner Parke stated that based on the criteria in the code that they have and the evidence that has been submitted, there is no other way that they have other than to approve it.

Chris Crockett stated that they are limited to what County Code provides and that is found in LUC 108-7-30.

**MOTION:** Commissioner Parke moved to approve File AE 2016-09 based on the findings that it is unfeasible to extend a lot to serve such parcel and approval of a private right of way or easement, based on topographic cited in 108-7-31-1b. Commissioner Hancock seconded the motion. A vote was taken and Chair Whaley stated that the motion carried by a unanimous vote with Commissioners Borklund, Hancock, Heslop, Parke, Willener and Chair Whaley voting aye.

### **3.3. Sketch Plan Discussion and action on a conceptual sketch plan endorsement request for the Giovanni's Legacy Cluster Subdivision located at approximately 2267 South 3500 West in the Taylor area of Western Weber County – Bob Favero, Applicant**

Robert Favero stated that their neighbors have asked that they be allowed to bring their sewage line through their property over to meet the main line. They have shown on the sketch plan where they want to put the sewer line. In addition to that, they want to get some sort of clarification as to the pattern, the number of lots they could have, and get their opinion on the existing homes that are there. Between Lots 109 and 108, there would be a sewer line that would come through there that would serve the property to the south and then it would follow the street over to the main line. The main line comes up from the east, makes an angle turn and then goes to the northwest, makes an angle turn and then follows the street beyond their property across the canal.

Mr. Favero laid out a pattern and indicated that Lot 100 is Gary Farr's home and north of that is also Gary's land. He would be joining in the subdivision if they go forward with it. North of that is his family's ground. He has a duplex there, his deceased Father's home and then another duplex north of that so Lots 119, 120 and lot 121 have existing buildings on them. Gary has access to sewer and they would then want to sewer Lots 119, 120 and Lot 121 in this process. This is a cluster subdivision and they are asking for some bonus density to put more than what would

normally be 16 lots there and they are basing that request upon landscaping. They are going to landscape both sides of the main road that goes back in plus some entry ways there. In addition to that, they will put a landscaped path there and plant more trees in that other. They would need about probably 30% higher bonus density than what would normally be there. They include some of the suggestions that have been made and they are trying to make it more pleasurable.

Commissioner Borklund indicated that she believes it would make more sense to have the triangle attached to what is on the back of the cul-de-sac or to the duplex lot. Bob Favero indicated that he would do that if he was allowed to go below the 40,000 requirement. Commissioner Borklund indicated that if Mr. Favero did this as a PRUD, he could do what he is asking for. Chair Whaley asked if sewer would make a difference in this.

Commissioner Willener asked if Mr. Favero anticipates a timeline. Bob Favero stated that they anticipate in the spring to submit the subdivision. On the front of that, there is a property that has its own tax id. number. They received a variance and it was then put on their own property number. That lot would come to the canal and then go back to the canal.

Rick Favero stated that typically they don't like to create unusual lot configurations like that. Maybe they could shift the cul-de-sac to the west. Where this is conceptual, maybe they could look at some things like this.

Felix Lleverino stated that sewer has been relegated to the southern subdivision Gallop Bend. It was mainly just discussion as to connections; , running that line from the south up into the Giovanni Cluster Subdivision. We don't have much information on the future sewer route or line. Commissioner Borklund likes the lay out but believes the smaller lot should be removed from the subdivision.

Commissioner Hancock stated that there is that access point down toward the west end; doesn't that run into the canal and isn't that the canal that runs back in there. He asked if it was for additional frontage for the corner lots. Bob Favero stated that it was more for connectivity to the rest of the ground in the future. The only walking trail they would have is connecting the two subdivisions.

Felix Lleverino stated that when an applicant would like to develop a subdivision there is the 30% of open space designated but also reduced lot sizes that would have to be earned through bonus density, trails, open space, the roads in some instances they would provide a community garden or something of that nature, etc.

**MOTION:** Commissioner Borklund moved to give Sketch Plan approval and ask the applicant to scrub the small lot or include it in the PRUD. Commissioner Heslop seconded the motion. A vote was taken and Chair Whaley stated that the motion carried by a unanimous vote with Commissioners Borklund, Hancock, Heslop, Parke, Willener and Chair Whaley voting aye.

Under the current cluster subdivision ordinance, it is really difficult to get bonus density. There is not much there to use. He urges the Planning Commission to take another look at that ordinance. Commissioner Whaley asked for any input Mr. Favero would like to give on this issue.

Bob Favero stated that the 2" caliper trees that are required are \$180 each. The requirement is for too many trees of that nature.

**4. Public Comment for Items not on the Agenda - None**

**5. Remarks from Planning Commissioners - None**

**6. Planning Director Report**

- Planning Director Rick Grover introduced Steve Burton, a new staff planner. Steve Burton stated that he was originally from Layton Utah. He was in Rexburg going to school for a couple of years. He graduated from BYU Idaho and that is where he met his wife. He was a planner for Franklin County for a year and a half and he wanted to move closer to home and gain more planning experience. He is excited to work at Weber County.

- Rick Grover asked if they can ask for public comment and then have staff address all of those issues. It keeps a little more order.
- The Annual Planning Commission Dinner is scheduled for January 11, 2017 and will be held at Bella's in Farr West. Please R.S.V.P. Sherri before January 5, 2017.
- Rick Grover announced Sherri Sillitoe's retirement party on January 12, 2017 at 2:00 p.m. Comments were made that she will be missed.

**7. Remarks from Legal Counsel**

**Chris Crockett stated that he believes there is a provision in the LUC that prevents Sherri from retiring. He is pretty sure that it cannot be appealed either.**

**8. Adjourn**

The meeting was adjourned at 7:41 p.m.

Respectfully Submitted,

Sherri Sillitoe, Secretary  
Weber County Planning Commission

DRAFT