Minutes of the Work Session of the Ogden Valley Planning Commission for November 30, 2021. To join the meeting, please navigate to the following weblink at, [https:/lus02web.zoom.us/j/85774900400](https://lus02web.zoom.us/j/85774900400), the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** John Lewis, Chair; Shanna Francis, Vice Chair; Commissioners John (Jack) Howell, Trevor Shuman, and Justin Torman.

**Absent/Excused:** Commissioners Jeff Burton and Ron Lackey

**Staff Present:** Charlie Ewert, Principal Planner; Scott Perkes, Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

* **Pledge of Allegiance**
* **Roll Call:**

Chair Lewis asked if anyone had any ex parte communication or conflict of interest to declare. He noted that the applicant for item 2.3 on the agenda indicated that he believed the Chair had a conflict of interest. He stated he believes it is important to revisit conditions that result in a conflict of interest. He stated that he does not own a number of nightly rental units, but he does own a management company. He did, at one point, consider buying the property being considered with the agenda item, but that does not create a conflict because he does not stand to benefit financially as a result of any decisions made regarding the property. He does have an opinion about development of the property, however, and out of an abundance of caution, he will recuse himself from voting on that item.

1. **Approval of Minutes for September 28 and October 5, 2021.**

Commissioner Howell moved to approve the minutes of the September 28 and October 5, 2021 meetings as presented. Commissioner Torman seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

1. **Petitions, Applications, and Public Hearings – Administrative items.**

**2.1 CUP 2021-17: Consideration and action on a conditional use request to install a public utility substation at 7582 E 900 S,**

**Huntsville, UT, 84317, in the FV-3 zone. *Presenter Tammy Aydelotte.***

A staff memo from Planner Aydelotte explained the applicant is requesting approval of a conditional use permit to install a new public utility substation for the purposes of expanding a fiber network in Ogden Valley. Public utility substations are permitted as a conditional use in the FV-3 zone. This proposal consists of 192 square foot equipment shed, containing an HVAC system, NGF & Rapid fiber termination panel system, equipment racks, a generator, and additional equipment used for maintenance of local infrastructure. The shed exterior will consist of a brown stucco material, with a height of 10'1". Access to this shed will be from a shared drive on the adjacent (east) parcel. Conditional use permits should be approved as long as any harmful impacts are mitigated. The LUC already specifies certain standards necessary for mitigation of harmful impact to which the proposal must adhere. The proposed application, with reasonable conditions, is able to meet these standards. He discussed staff's evaluation of the request, noting that it is in conformance with the Ogden Valley Mater Plan and is a permitted land use in the FV-3 zone. He summarized the conditional use review process, noting the proposed structure meets the Weber County Land Use Code (LUC) section 108 chapter 2.

The Planning Division recommends approval of file# CUP 2021-17. This recommendation for approval is subject to all review agency requirements, and subject to the following conditions:

1. Landscaping shall be installed or escrowed for prior to final approval of the structure.
2. Per the UDOT shared/cross access easement, the ingress/egress shall be improved to follow design standards in LUC
3. 108-7-29, and be approved by Planning, Engineering, and Weber Fire District.
4. The architectural standards outlined in LUC 108-2-4 shall be met, with this application.
5. Any exterior lighting shall comply with LUC 108-16 (Outdoor Lighting).

This recommendation is based on the following findings:

1. The proposed use conforms to the South East Planning Area Master Plan.
2. The proposed use will not be detrimental to public health, safety, or welfare.
3. The proposed use complies with applicable County ordinances.
4. The proposed use, if conditions are imposed, will not deteriorate the environment or create an unsightly improvement so as to negatively impact surrounding properties and uses.

Ms. Aydelotte reviewed the staff memo.

Commissioner Francis asked if it is reasonable to require the applicant to keep the property and the building free of nuisances, such as graffiti. Ms. Aydelotte stated that upon approval of the CUP, the applicant is responsible for ensuring the structure and uses of the property are compliant with the LUC and if a nuisance arose, the County’s Code Enforcement Division would become involved and take enforcement action to ensure that the nuisances are mitigated. Commissioner Francis asked if the LUC addresses graffiti. Planning Director Grover answered yes; it is encompassed within architectural standards, but the Commission could include a condition of approval referencing graffiti. Legal Counsel Erickson added that one of the conditional use standards in the LUC requires cleanup and beautification of the site as the use evolves, or mitigation of aesthetic and nuisance defects.

Chair Lewis invited public input.

Jack Walkenhurst stated he is representing the applicant and is willing to answer any questions the Commission may have. He addressed Commissioner Francis’s comment about graffiti and stated that while there have not been graffiti issues in the past, Allwest Communications will ensure that any graffiti placed on the building will be removed and the present condition of the building restored.

Lisa (no last name given) referenced enforcement of the zoning of the property; enforcement is problematic, and the County currently does not take enforcement action when nuisances in violation of zoning are reported. She is not sure how residents are to have any assurance that the promise of enforcement has any merit.

There were no additional persons appearing to be heard.

Commissioner Francis moved to approve CUP 2021-17, conditional use request to install a public utility substation at 7582 E. 900 S., Huntsville, UT 84317, in the FV-3 zone, based on the findings and subject to the conditions listed in the staff report, with the additional condition that the applicant keep the building free of graffiti or any other nuisance that would detract from the aesthetics of the building in accordance with LUC108-4-5(C)(4)(c).

Chair Lewis asked if the motion may create some inconsistencies in terms of other CUP approvals the Commission has granted in the past; the County’s LUC already has regulations ensuring that property owners must maintain upkeep of the building and he wondered if it is really necessary to include an additional motion referencing the requirement to keep a building free of graffiti. Mr. Grover stated that upon approval of the architecture of the building to be constructed on the property, the County will have the ability to take enforcement action if there is any nuisance on the property. However, the additional condition on the CUP will give the County the ability to revoke the CUP if the property owner does not comply with the condition regarding graffiti.

Commissioner Howell seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

**2.2 CUP2021-19 - Consideration and/or action on a conditional use permit for short-term rental use at 3563 N Lakeview Court, Eden, UT 84310, The Village at Wolf Creek 1st Amendment, Lot 80. *Presenter Felix Lleverino.***

A staff memo from Planner Lleverino explained the applicant is requesting approval of a conditional use permit for short-term use in a residential dwelling located in the FR- 3 zone. The proposed use will occur within an existing dwelling that is a 1700 sq. ft., 3-bedroom, 4 bathrooms residence. As such, there is no design review required. The applicant has submitted a project narrative detailing their intended use of their property as a short-term rental property. This narrative also indicates that Lindsay Wilson, who is the managing member of JL Wilson Holdings LLC, will address issues that may arise from noise, security, parking, and garage use. The applicant has also submitted a parking exhibit. This application is being processed for an administrative review through the Ogden Valley Planning Commission as directed by the approval procedures outlined in LUC §108-4-3. This section of code indicates that a review of a conditional use permit application is intended to verify compliance with applicable ordinances and provide appropriate and reasonable mitigation of anticipated detrimental effects. He reported that as a conditional use, this use is allowed in the FR-3 Zone. With the establishment of appropriate conditions as determined by the Planning Commission, this operation will not negatively impact any of the goals and policies of the General Plan. The subject property is located within the Forest Residential (FR-3) Zone. The purpose of the FR-3 Zone can be further described in LUC §104-17-1 as follows: "The purpose in establishing the Forest Residential, FR-3 zone is to provide for medium density residential uses of apartment clusters or condo-tels adjacent to and in conjunction with major recreational resorts, recreation areas and facilities in the mountain areas of Weber County on the basis that such medium density multiple-family housing is an integral and normal part of a recreational resort complex catering to the needs of both tourists and permanent homeownership. This zone is intended to be used in mountain locations in areas associated with major recreational resorts." The FR-3 Zone allows for a "nightly rental" as a conditional use. For comparison purposes, the FR-3 Zone also allows similar conditional uses such as condo-tels, group dwellings, lockout sleeping rooms, multi-family dwellings, timeshare buildings, and recreational lodges. A review process and use standards have been outlined in LUC §108-4 to ensure compliance with the applicable ordinances and to mitigate anticipated detrimental effects, and Mr. Lleverino reviewed the conditional use standards. Staff offers the following analysis following review of the application against conditional use standards:

1. Standards relating to safety for persons and property.
   * Apart from the Fire Marshal's review and conditions, the operation of a short-term rental is not anticipated to cause safety hazards to persons or property.
2. Standards relating to infrastructure, amenities, and services.
   * The parking infrastructure for visitors includes one parking space in the garage, one parking space in the driveway. The managing member, Lindsay Wilson, is available at any time to enforce the parking requirements.
3. Standards relating to the environment.
   * Staff does not anticipate any detrimental effects on the natural features of the site or surrounding areas.
4. Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the General Plan.
   * The current FR-3 zoning anticipates short-term rental use and the area has been developed for resort and lodging purposes. As such, staff does not anticipate the proposed use to be detrimental to the characteristics of the area. The zoning is consistent with the General Plan.
5. Standards relating to performance (bonds, agreements).
   * There is an existing dwelling, with a sufficient parking area. No performance bonds or agreements are necessary for the proposed use.
   * Standards generally (economy, other applicable LUC standards).
   * The proposed use is not anticipated to have detrimental effects on the local economy.
   * Before issuance of a conditional use permit, the applicant will need to apply for, and be issued with, a business license.
6. Voluntary contributions providing satisfactory compliance with applicable standards.
   * There are no voluntary contributions that are offered with this request.

Based on the staff analysis above and the findings listed below, staff recommends approval of this conditional use application. This recommendation is subject to the applicant meeting the conditions of approval listed below and any other conditions required by reviewing agencies and the Planning Commission:

1. There is a ten-person limit in non-sprinklered dwelling units. A fire-extinguisher shall be left in plain sight. Carbon monoxide and smoke detectors are required and must be kept in good working order.
2. A business license shall be obtained before the issuance of this conditional use permit.
3. The dwelling's attached garage shall be made available to the guests. Visitor parking is limited to the one-car garage and the one-car driveway.

The following findings are the basis for the staff's recommendation:

1. The proposed use is allowed in the FR-3 Zone and meets the appropriate site development standards.
2. The criteria for issuance of a conditional use permit have been met because mitigation of reasonably anticipated detrimental effects can be accomplished.

Mr. Lleverino reviewed his staff memo and presented an aerial image to orient the Commission to the location of the subject property.

Commissioner Howell asked if on-street parking is prohibited in this project. Mr. Lleverino answered yes and noted that the Commission approved a previous requirement to post ‘no-parking’ signs.

Chair Lewis invited public input.

James Defenderfer asked what the current zoning of the project is and whether this application coincides with the ongoing discussions of allowing short-term and long-term rentals in Wolf Creek. He added he has heard that there is a maximum occupancy regulation of 10 individuals in a 1,200 square foot unit and that seems unsafe to him.

Tim Bird stated he wished to remind the Commission that there is a problem with short-term rentals in the Ogden Valley; the management of the use has been ineffective as there are 1,249 short term rentals operating in the 84310 zip code. However, only 43 short term rentals have active business licenses; nine currently have problems that need to be resolved, including missing information or permit. Four are awaiting conditional use permits, and 15 are in violation because they do not have permits or are operating in a zone that does not allow short term rentals. He stated that during one meeting, the County Commission acknowledged that there is not an adequate short term rental management plan for Ogden Valley and the Commission should not act to accept or approve additional short-term rentals until there is an adequate policy in place.

Jan Fulmer echoed the comments made by Mr. Bird and Mr. Defenderfer; she agreed that the maximum occupancy per unit is unreasonable as that many people cannot fit in two cars, though there are only two parking spaces at each unit. For previously approved short-term rentals, there are too many vehicles and renters are parking in areas that they are not allowed. She stated that there is no effective enforcement and even though the owner of this unit has indicated that he is always available to respond to situations that may arise, she wants to know if he has hired someone local who can physically respond and address problems. She reiterated Mr. Bird’s comments about the County Commission’s April 19 work session meeting; they indicated their intention was never to increase short term rentals. And even though the zoning of the subject property allows for short term rentals, there is no effective enforcement in place to respond to violations of the CUP. She asked the Commission to wait to take action on this application until there is some policy in place that can be relied upon to enforce short term rental regulations.

Lee Shooshman stated his family owns a condominium directly across the parking lot from the subject property; their unit is larger than the subject property and he believes that having 12 people in the unit at one time will greatly tax the resources in the area. Secondly, parking is already very tight, and the amount of parking is adequate for two cars per site at most, and that is considering one car is parked in the garage. He stated that the garage spaces are very small and cannot accommodate a truck. He agreed with those that spoke before him about the lack of enforcement to address the regulations that are being imposed on this property and he asked the Commission to consider very carefully the expansion of short-term rental permits in this area. He is saying this to his own financial detriment as he may like to use his property as a short-term rental in the future but does not think that it can accommodate 12 people at one time.

Kay (no last name given) stated she has been following the short-term rental discussion in this area and nationally for the last 18 months. She relayed a story about a short-term rental being illegally operated in Bountiful and accommodating up to 25 people at a tie; the County that oversees the area indicated they would take enforcement action, but she can still find the property on the VRBO website and rent it if she desires. She stated enforcement is non-existent and it would be irresponsible management on the part of the County to allow any additional short-term rentals until enforcement is addressed. Other communities have placed a moratorium on the short-term rental use and the Ogden Valley will essentially be ‘sticking its head in the sand’ if a similar action is not taken here.

There were no additional persons appearing to be heard.

Commissioner Howell stated that if a unit does not have a fire suppression system, there can be no more than 10 people staying in the unit at the same time.

Commissioner Francis referenced a previous CUP application for a short-term rental that was denied based on health and safety concerns; the applicant appealed the denial to the Board of Adjustments (BOA), who overturned the denial and indicated there was not a health and safety issue. She asked staff to provide additional information about that decision. Planning Director Grover stated the BOA did overturn the decision based upon input from the Fire Department, who indicated that the road system was safe, and the unit met their requirements. Commissioner Francis asked if a decision of denial could be based upon a lack of enforcement ability on the County’s part. Mr. Grover answered no and indicated that is not part of the County’s CUP standards. The County Commission has tasked staff with investigating enforcement options and associated costs, but until additional regulations or policies are put in place, the Commission can only consider current LUC and CUP standards when acting upon this application. Commissioner Francis asked if the Commission could deny based upon a health and safety concern related to the lack of 24-hour surveillance of the property, to which Mr. Grover answered no; however, the Commission could place additional requirements on the CUP if the Commission finds that 24-hour surveillance is warranted, but there are no CUP standards that requires that. Commissioner Francis asked if the Commission could require that the property owner hire a property management or security company that can ensure that conditions placed on the unit are met. Mr. Grover stated that such an individual would not have the authority to enforce County ordinances, but they could enforce the conditions of the CUP. He emphasized that the County is working on an updated CUP and enforcement ordinance for short term rentals, but at present the Commission can only take actions that are in accordance with the current ordinance.

Chair Lewis stated that the Commission is in a difficult position in terms of considering applications for short term rentals; the Commission understands the problems associated with the land use but can only take actions that are allowed by current ordinances. Additionally, a previous denial was overturned by the BOA. He stated that he feels he can speak for the entire Commission in encouraging the County to accelerate efforts to update the LUC and CUP standards for short term rentals and pursue improved enforcement mechanisms, including third-party enforcement. Until that is done, this Commission cannot deny applications that conform with current ordinances and regulations. The Commission engaged in high-level discussion regarding the CUP standards for which they are responsible for evaluating compliance, ultimately concluding that the application should be approved as recommended by staff. Mr. Grover noted that the reason that the Commission has seen an increase in applications for short term rentals is that the County has been taking enforcement action against short term rentals that are operating without proper permits; some that have been notified that they are operating illegally have initiated the CUP application process.

Commissioner Howell moved to approve CUP 2021-19, conditional use permit for short-term rental use at 3563 N. Lakeview Court, Eden, UT 84310, The Village at Wolf Creek 1st Amendment, lot 80, based on the findings and subject to the conditions listed in the staff report. Commissioner Torman seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

**2.3 UVB050721: Consideration and action on a request for preliminary approval of The Basin Subdivision located at approximately 947 E Old Snow Basin Road, and an application for alternative access. *Presenter Steve Burton.***

Chair Lewis emphasized that this item is simply preliminary approval of the subdivision plat for the Basin Subdivision; he anticipates public input regarding the future use of the land once it is subdivided, but the Commission should only consider the subdivision plat. He noted he is recusing himself from discussion and/or action on this application as he mentioned earlier in the meeting.

A staff memo from Planner Burton This property was previously proposed to be rezoned from CVR-1 to FR-3. The County Commission agreed to rezone the property on the condition that no short-term rentals would be allowed. The applicant, after considering the Commission's condition, has chosen to not be rezoned and has not signed the rezoning development agreement. The property remains CVR-1 and this proposal is to subdivide 12 lots for residential purposes. There are also proposed to be one lot for commercial purposes, as required by the CVR-1 zone, and a lot for recreational amenities. Under the CVR-1 zone, single-family dwelling units require a minimum of 7,500 square feet of overall net developable area per building. On the proposed preliminary plat, each lot, including the recreational lot and the commercial lot, are shown to be approximately 7,500 square feet. The developer has provided a 'will-serve' letter from Lakeview Water Corporation and Mountain Sewer Corporation for water and sewer service. Both letters acknowledge 12 residential units and 1 commercial unit that is limited in its water allowance. The following is an analysis of the project compared to the County Land Use Code. The Ogden Valley General Plan Commercial and Village area map shows this property as part of a mixed-use village area. The existing CVR-1 zoning requires mixed-use development, with ten percent of the project as commercial. The total project area is 144,146 square feet and the commercial lot is approximately 14,700 square feet. The subject property is located in the Commercial Valley Resort (CVR-1) Zone. The purpose and intent of the CVR-1 zone is identified in the LUC §104-11-1 as: “The purpose of this zone is to provide locations in the Ogden Valley and at major recreation resort areas, where service facilities and goods normally required by the public in the pursuit of general recreation activities can be obtained. In this role, even though the area is primarily commercial in nature, it should be compatible with the general surrounding natural environment. To this end, the general sitting and architectural design of buildings and structures, the layout of parking areas and landscaping shall be subject to review and recommendations by the public agencies, design review and approval by the planning commission to ensure that the natural environment is preserved to the greatest possible extent.” The minimum lot size in the CVR-1 zone for "condominium rental apartment or other lodging use that provides nightly or longer lodging" is 7,500 square feet and the minimum lot width for the overall project is 150 feet. All lots within the subdivision meet this minimum zoning requirement. The project width is 430 feet.

The applicant has requested an alternative access; all lots in this subdivision are proposed to have access by a shared private right of way. The county land use code, Section 108-7-31 states the following regarding private rights of way: "Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is subject to the applicant demonstrating compliance with the following criteria and conditions: (3) Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions."

The applicant has included a narrative as Exhibit B, explaining why they feel it is not practical to extend a public street through this development. Their reasoning is that The Basin Subdivision is surrounded by existing platted subdivisions, with no opportunities for future public street connections. When the access was originally proposed, the narrative referenced 13 lots, the proposal is now for 12 lots, a common area, and a commercial lot. If approved, the alternative access will be a 20-foot wide, hard surfaced right-of-way that will run through the front of each lot. Each lot owner will own a portion of the private right of way and will be required to maintain their portion. An HOA could also be formed to maintain the private right of way. The private right of way will need to be built to the standards outlined in 108-7-29(a) prior to any building permits being issued.

Culinary Water, Sanitary Sewer, and Secondary Water: The applicant has provided a will-serve letter from Lakeview Water, who will provide culinary and secondary water to the lots. The applicant has also provided a will-serve letter from Mountain Sewer who will provide the sanitary sewer services. The applicant will be required to provide a final approval letter from the water and sewer provider, prior to the recording of the subdivision.

Parking: Each lot in this subdivision will have a two or three-car garage with a full-size driveway (total of 4 spaces per dwelling). Due to the narrow private rights-of-way, the applicant has also provided a spot for 17 standard parking spaces for guest parking, if needed. 11 parking spaces are shown adjacent to the commercial lot for the future commercial use.

Sensitive lands: The property is located within a geologic hazards area. The applicant has submitted a geotechnical engineering and geologic study that was prepared by CMT Engineering Laboratories. The development of the site must follow the recommendations that are listed in the report.

Review Agencies: The Weber County Engineering Division, the Weber County Surveyor's Office and Weber Fire District have reviewed the proposal. Prior to the subdivision being released for Mylar, all review agencies comments will need to be addressed.

Staff recommends preliminary approval of The Basin Subdivision and the alternative access. This recommendation for approval is subject to all applicable review agency requirements and the following conditions:

1. The alternative access shall be constructed in conformance with the design standards in 108-7-29(a) prior to the issuance of land use permits or building permits.
2. An alternative access covenant, where the developer agrees to pay for a proportionate amount of the cost of a public street, will be required to be recorded with the final subdivision plat.
3. The applicant will be required to provide a final approval letter from the water and sewer provider, prior to the recording of the subdivision.
4. Common Areas will need to be labeled properly on the final subdivision plat, and CC&Rs will need to be provided that explain how common areas will be maintained.

This recommendation is based on the following findings:

1. The proposed subdivision amendment conforms to the Ogden Valley General Plan.
2. The proposed subdivision amendment complies with all previous approvals and the applicable County ordinances.
3. The applicant has demonstrated that extending a public road to this property is impractical or unfeasible.

Mr. Burton reviewed his staff report, noting that just tonight he determined that the alternative access request is not necessary as the preliminary plat meets width requirements for the zone.

Commissioner Francis referenced the fourth condition of approval relating to common areas; she asked what is considered to be common area. Mr. Burton stated that parcel A is common area and will be used for parking and lot 13 will include an amenity for the project, such as a pickleball court. Mr. Grover added that lot 14 will need to be converted to a commercial use on the final subdivision plat. Mr. Burton stated that is correct. There are several reviewed the Planning staff will perform as the application continues to move through the process and that issue will be addressed.

Commissioner Howell asked if there is a detention basin on the property. Mr. Burton stated that is not identified on the plat; if water detention is shown to be a problem as the application moves forward, that will be addressed prior to final plat being considered.

Mr. Burton then discussed permitted commercial uses that could be located on lot 14; the majority of the project will be residential as required by the zoning ordinance.

Commissioner Francis invited input from the applicant.

Todd Meyers, CW Land, stated that the zoning designation for this property requires that 10 percent of the project area be commercial; there are four different options for this commercial development, and all require conditional use permits. He plans to discuss these uses further with the Commission in their next work session. He reiterated Mr. Burton’s explanation of a previous desire to change the zoning of the property to FR-3; both zoning designations allowed short term rentals, but he preferred the other zone because it did not require commercial use. He stated there is one typographical error in the staff report in the section discussing the alternative access request; it indicates the access would only be 20 feet wide, but it will actually be 26 feet and that is identified on the plat. He then stated he has read and consents to the conditions of approval listed in the staff report.

Commissioner Francis invited public input.

Kevin Irwin stated that the road to the west exits onto land that is not held in CW Land’s ownership; this means that the 14 units will have just one access road in and out. The 40-foot-wide parcel is owned by The Chalets, and it is not paved. Second, in looking at the plat, it appears that lot 14 is the same size as the rest of the lots, which means it is not technically 10 percent of the project area. The property is 3.22 acres, meaning the commercial area must be at least 14,000 square feet. Finally, CW Land wants to locate short term rental units on the property, and they are trying to work around the City’s zoning ordinances.

Jim Bird stated that it he has been following this property since February and it appears that it is being broken up into smaller and smaller sections. The current question is one of access to the property; the Weber Fire District has not offered support for the CUP or the alternative access; what they did approve was an access for single-family residences. CW Land changed the narrative for the project one day after the Fire Marshall granted approval and the use was converted to recreational lodges. The will-serve letter very clearly identifies 12 single-family units and that no more than 60 water supplies should be made available. He has asked the Planning staff for the definition of recreational lodges and if the will-serve letter is applicable to this use. Staff told him that the lodges will be constructed as single-family dwellings, but their objective is to build units that the owner can live in and rent out. He stated this logic is problematic; the developer is calling the units single-family homes in order to secure will-serve letters, but they are building recreational lodges. This is not transparent. Additionally, there is only a ¾ inch line serving the units, which is not adequate for the number of people that could be there. He refocused on the access to the site and indicated that Old Snow Basin Road cannot handle the current number of vehicles in the case of an emergency; yet, this proposal will result in the construction of 12 additional homes that will use a road that cannot handle current traffic levels. The roads need to be fixed before more development is allowed. The development includes 109 parking stalls. His request is that the property be accessed using Highway 39 rather than Old Snow Basin Road; Highway 39 is maintained by the Utah Department of Transportation (UDOT). He then stated that he has been told by the Planning Division that CW Land could build something worse than what has been proposed; Mr. Meyers has written a letter indicating that he could build up to 20 units on the property. He asked why the County and application have taken that attitude relative to development in the Valley.

Ian Heuton stated that he owns a unit near the subject property; he indicated that he has served in a Planning Commission capacity in the past and he understands the challenges the Commission is facing. He has serious concerns about the project, and he understands the importance of only discussing the application before the body tonight, but that is difficult when the public has the knowledge of the next step in the subdivision process. The issue is that the intent of the builder is to circumvent regulations on short term rentals in the Ogden Valley; they have threatened to build something ‘worse’, but they really do not want to do that. They have created a subdivision plat that makes it look as if the property will contain single family residential lots, but they are really commercial lots because the intent is to operate a large-scale vacation rental project with a great deal of traffic, especially on the weekend. His concern is that it is a mistake to approve the preliminary plat without acknowledging what will happen next. The County needs policies in place for managing short term rentals or whatever other type of use that may appear on this property or others like it. His recommendation would be to deny the preliminary plat until such policies and regulations are in place. He stated the will serve letters were obtained using a classic ‘bait and switch’ move; the developer communicated an intent to construct normal residential use on the property, but there will be a huge spike on the weekends that will overload the systems in place. This is not 12 single residential units, but rather they will be commercial uses. The application process is cut up in a way that enables an inappropriate use of the property and has an incredibly negative impact for the people who live in the valley. He questions why Weber County is bending over backwards for a developer from Davis County when it should, instead, be looking out for the interests of the people who live in the Ogden Valley.

Commissioner Torman stated it is his understanding that once preliminary plat approval is granted, the applicant must address the issues of water and sewer provision, and access to the site. Mr. Grover stated that is correct; before the application can move to final approval, the applicant will need to address all conditions of approval and provide proof that the service providers have capacity to serve the property. He agreed that the preliminary input from service providers does reference single family use, but the County will likely want to reach out to the service providers to determine if there is capacity for recreational lodges and the commercial use. He noted that for the preliminary plat approval, the Commission should consider whether the plat meets the requirements of the zone. Commissioner Torman stated the action tonight will communicate that the Commission is comfortable with the proposed layout of the subdivision and give the developer the ability to pursue approvals from other entities that will serve the project. Mr. Grover stated that is correct; if significant changes are made to the preliminary plat, the Commission could require them to resubmit for preliminary approval. And, before the project can move to final approval, the applicant will need to address the conditions for the conditional uses for commercial development on the property.

Gwendolyn Smith stated that if the commercial lot that has been set aside does represent 10 percent of the project area, she would suggest a condition of approval requiring construction of the commercial use as part of the first 25 percent of the development. She stated that a similar project was approved across the street from the subject property, but that developer built all residential units first and has yet to begin working on the commercial component; therefore, the area is left without a service that was promised in the project. The intent of this zoning designation is to provide services for the new people moving to these areas. She referenced previous discussions of the County’s intent to update its short-term rental regulations and improve enforcement capabilities; she asked that the Commission wait on moving forward with this application until those things are accomplished. Otherwise, the development may be approved and be held to comply with regulations that are approved at a later date. She added she feels it appropriate for the County to determine if there is adequate water capacity for the project before even granting preliminary approval.

Lee Shooshman reiterated many of the points made by those who spoke before him. He asked for a response from staff about the will serve letter based upon the entity’s understanding that the project will be single-family in nature.

Andy DeJordan stated he lives in the Edgewater Beach project, and he echoed the comments made by those who spoke before him; he invited the Commissioners to visit the project he lives in as he does not know how it was ever approved and deemed compliant with the General Plan. He personally believes that this type of application is a disgrace to the Valley and anyone who would be part of that approval, including the applicant, has their ‘head in the sand’; the project is not consistent with the General Plan. He stated he is moving to Trapper’s Crossing soon, but he suggested that the Commission visit his property to gain a clear understanding of what is being proposed; he likened this current proposal to ‘Edgewater Beach on steroids’.

Glade McCombs stated he is building a home in Edgewater Chalets. CW Land’s model is to build high density projects and it would be wise for the Commission to ask them what their ultimate intent is for the project. The ultimate intent is to build short term rentals on the property, though the Commission has already placed limits on that use. He encouraged denial of the preliminary plat.

Shane Dunleavy stated he is a resident of Liberty and owns property close to the subject property; his question is in regard to the will-serve letters, which indicate capacity for 12 parcels. However, the preliminary plat identifies 14 parcels and he asked if there is an additional commercial connection or irrigation water for the common areas.

Dan Wright stated he lives on Old Snow Basin Road, and he asked the Commission to take into consideration the access to the property; the access identified is very dangerous and he asked the Commission to consider the project from the viewpoint of their own family travelling on that road.

There were no additional persons appearing to be heard.

Mr. Grover asked Mr. Burton to address the comments about the commercial requirement for the project area, adequacy of will-serve letters for the project, and any dialogue he has had with the Engineering Department regarding safe access to the property. Mr. Burton first stated that the Planning Division is not advocating for this applicant or his project; however, they are a property owner and have paid a fee to the County for this application and the Planning Division is obligated to evaluate that application and present it to the Commission. The application would not be before the Commission tonight if staff did not feel that it met the requirements for preliminary plat approval. The request for approval of short-term rentals will come before the Commission at a future date as part of a conditional use permit application, as that is a requirement of the zoning. He addressed the comment that the commercial lot is not 10 percent of the total project area; he zoomed in on lot 14 on the plat and indicated it is 14,765 square feet, which meets the 10 percent requirement for the overall boundary. Regarding access, the maximum number of lots that can be accessed off a terminal street is 14 homes; there is no differentiation between residential and commercial lots in a project area. Commissioner Francis asked if turning lanes should be required. Mr. Burton stated the County’s ordinances do not outright require turning lanes, but the Engineering Division is trained in road safety standards, and they have asked for a traffic impact study for the project to determine if a turning lane is needed. He noted that if the access is from a State Road, a turning lane could only be required by UDOT. He then stated that CW Land is not proposing to access the common area in The Chalets project as mentioned by one of the individuals who provided input. He stated the Fire District does review these types of applications and will need to give their consent before the application can move to final approval; they will also evaluate the conditional use permit application and provide input. They have not officially reviewed the application or provided their recommendations but will do so before final approval is considered.

Commissioner Shuman asked Mr. Burton to restate the action before the Commission tonight and whether there are any grounds for denial of the application. Mr. Burton stated that the County’s subdivision ordinance states that a preliminary approval application must be granted by the Planning Commission before a subdivision can move to final approval; this is the first step a property owner takes when subdividing their land. Commissioner Howell stated the preliminary nature of the approval is vital; there are so many other things that the applicant will need to do before they can do anything with the property. Mr. Burton agreed; he then noted that if the Commission finds that the plat does not meet the County’s preliminary subdivision approval requirements, they could deny it, but in that situation, he recommends tabling. Unless the Commission can find that the plat does not comply with the County’s subdivision ordinance, denial is not an option.

Mr. Grover asked Mr. Burton to discuss the will serve letters and reference to single family lots versus recreational lodges. Mr. Burton stated the will-serve letter references 12 residences, which is what is being proposed. He stated he understands that someone brought up a concern that a short-term rental is not a residence, but he disagrees with that. A short-term rental use can happen in a single-family dwelling if the owner can secure a conditional use permit. The will-serve letter is also for a commercial office use and irrigation of the common area. He stated the subject of recreational lodges should be discussed when the Commission is dealing with the conditional use phase of the project, and discussions of that matter will commence during the December 7 work session meeting.

Commissioner Howell stated it is important to clearly state that this not a rezone application and the Commission has not approved a zone change with limitations on short term rentals on the site. Mr. Burton stated that is correct; this was an application that was considered in the past, but the County Commission would not approve the zone change unless the developer would agree to not pursue short term rentals on the property. The owner declined to sign the agreement and the property was not rezoned.

Commissioner Francis asked if conditions can be placed on the timing of the commercial development on the site. Mr. Burton stated that is not required by the CV-1 zoning ordinance, but if the developer volunteered to agree to that type of condition, the Commission could consider it.

Commissioner Francis stated that she closed the public input period, but another online meeting participant had their hand raised and she did not give him an opportunity to speak. She reopened the public input period to give him the opportunity to address the Commission.

Eric Householder stated that he did not have any input to provide.

Commissioner Francis closed the public input period.

Legal Counsel Erickson referenced Commissioner Shuman’s question about the matter before the Commission tonight; he noted that Mr. Burton provided an answer, but Mr. Erickson clarified that the LUC provides requirements for preliminary approval of a plat presented to the Commission; the Code states that ‘after applicable staff and agency reviews, the preliminary plat and phasing plan shall be presented to the land use authority. The land use authority shall review the preliminary plan to verify compliance with applicable ordinances. After determining compliance with applicable ordinances or determining compliance after adding conditions of approval to ensure compliance with local laws, the land use authority shall approve the preliminary plan or plat.’ Before the Commission tonight is determining if the plat meets the requirements of the LUC and staff’s recommendation is based upon that same evaluation.

Commissioner Shuman asked if an appropriate condition of approval would be requiring a traffic impact study for Old Snow Basin Road. Mr. Erickson answered yes and reiterated Mr. Burton’s mention of the Engineering Department also recommending an impact study.

Commissioner Francis stated the applicant has indicated that the development of the commercial parcel has not been determined and she asked if the Commission should table this application until that matter has been addressed. Mr. Burton stated the developer will need to secure a conditional use permit for certain land uses on the commercial parcel, but the number of lots will be the same. The Commission could approve the preliminary plat with the condition that the development of the commercial parcel be clearly defined at final approval, but that the same number of lots be included on the plat.

Mr. Grover stated his recommendation to the Commission would be to only consider what is before them tonight; they have not received any documentation of a condominium plat for any portion of the property. If the developer wishes to pursue a condominium plat for any or all of the subject property, he should present that so it is clear and concise prior to preliminary approval being voted upon. Commissioner Shuman stated that was the reason for his earlier question; if the applicant makes a change to the plat, the Commission should have the authority to require them to resubmit their preliminary plat application. Mr. Grover stated that the Planning Director typically has the authority to determine whether there is a significant change to something that has received approval from the Commission; in his mind, adjusting the plat to include a condominium use on the project would be a significant change that would require the applicant to resubmit for preliminary approval. Mr. Meyers stated that he only made a reference to a condominium use earlier in the meeting in the event that he desires to preserve that option for the future. However, that is not his preferred option, and he wants to proceed with the plat as it has been presented.

Commissioner Howell moved to approve UVB050721, preliminary approval of The Basin Subdivision located at approximately

947 E Old Snow Basin Road, and an application for alternative access, zoned CVR-1, based on the findings and subject to the conditions listed in the staff report, and an additional condition to perform a traffic study for the project. Commissioner Torman seconded the motion.

Commissioner Shuman asked for clarification on the width of the alternative access.

Commissioner Howell stated that he needs to add to his motion that lot 12 is the common area. Mr. Burton stated lot 13 is the common area and lot 14 is the commercial lot. Mr. Meyers stated there are two common areas; the main common area is lot 13, which is stated in the notes for the application. He then addressed the question about the alternative access; if there were to be an alternative access, it would be a minimum of 20 feet wide, but maximum width would be 30 feet. If the Fire Department does require the alternative access, it will be 26 feet.

Commissioner Francis called for a vote on the motion. Commissioners Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 4-0). Commissioner Lewis abstained from voting.

1. **Petitions, Applications, and Public Hearings – Legislative items.**

**3.1 ZMA 2021-05- Public Hearing to consider and take action on a rezone request from F-40 to FR-3 on 37 acres, property located at approx. 5793 North Powder Mountain Road, Eden. *Presenter Steve Burton.***

A staff memo from Planner Burton explained this is a legislative matter. When the Planning Commission is acting on a legislative matter, it is acting to make a recommendation to the Board of County Commissioners. There is wide discretion in making legislative decisions. Criteria for recommendations on a legislative matter suggest compatibility with the general plan, existing ordinances, and best practices. Examples of legislative actions are general plan, zoning map, and land use code amendments. This item is an applicant-driven request to amend the zoning map from F-40 to FR-3 on approximately 3 acres located south of the Powder Mountain Resort. The developer is proposing 6 buildings, with each building having 16 condominium units (96 units total}. Each building is proposed to be 4 stories with underground parking. The developer has submitted a concept site plan with a slope analysis and concept images of the building elevations. As stated in the application, the developer is proposing to purchase density rights within the Ogden Valley and to transfer the rights to this location. The developer has had discussions with the Planning Division regarding employee housing at Powder Mountain. If the Planning Commission and County Commission are willing, the developer would deed restrict one building (16 units) to be sold to employees at Powder Mountain or individuals that meet moderate income to assist in providing moderate income housing. The developer proposes that the 16 units do not need to be bought and transferred. This would mean the developer would be required to transfer 80 density rights from the valley floor and transfer them to this site.

The Ogden Valley General Plan states that the County will support the transfer of development rights from the valley floor to village or resort areas. If written into the development agreement, this proposal will transfer units from the valley floor to the subject parcel. Transferring units from the valley floor to an area adjacent to a ski resort is in compliance with TDR section of the general plan. The purpose and intent of the FR-3 zoning is listed in LUC 104-17-1 as follows: “The purpose in establishing the Forest Residential, FR-3 zone is to provide for medium density residential uses of apartment clusters or condo-tels adjacent to and in conjunction with major recreational resorts, recreation areas and facilities in the mountain areas of Weber County on the basis that such medium density multiple-family housing is an integral and normal part of a recreational resort complex catering to the needs of both tourists and permanent home ownership. This zone is intended to be used in mountain locations in areas associated with major recreational resorts.” Under the proposed FR-3 zoning, the developer will need to meet the following development standards: “Developments using a community or group wastewater disposal facility meeting the requirements of the state division of health code of wastewater disposal regulations: Multiple-family: 7,500 square feet of net developable area plus 2,000 square feet of net developable area for each dwelling unit in excess of two.”

The proposed concept plan does not show the future lot sizes. The developer will be required to show a concept plan that meets the lot size requirement of approximately 5 acres (35,500 square feet of net developable area x 6 = 4.8 acres) before the proposal goes to the County Commission for consideration. The concept plan shows the six buildings and the future private drive. An amended concept plan will need to show compliance with the building setbacks before the proposal goes before the County Commission. The maximum building height of the FR-3 zone is 35 feet. The developer will need to show, in revised building elevations, that the proposal will not exceed the 35-foot height limit, prior to a public hearing with the County Commission.

Parking and Snow Removal: The developer is proposing 16 underground parking stalls for each building as well as 16 exterior parking stalls per building that will be located around the site. The developer is also proposing to use an area on the east side of Powder Mountain Road as overflow parking. LUC 108-8-2 requires 1 ¾ parking spaces per unit. The developer is providing 2 spaces per unit. This requirement will be written into the development agreement that will be considered by the County Commission. The developer has not shown areas for snow removal, or a snow removal plan for this development. The developer will be required to provide a snow removal plan and to show areas for snow removal on a revised concept plan before a public hearing with the County Commission.

Building Architecture and Material: The staff memo included images to depict the proposed building architecture and building materials. The building materials are shown to incorporate wood siding with stone accents. The colors of the buildings will be muted earth tones. Gable and hip roof pitches are proposed. It is the staff recommendation that no shed roofs or stucco be permitted. These standards will be written into the development agreement that will be considered by the County Commission at a later date.

Water and Sewer Feasibility: The developer's plan for water and sewer is to connect to the Powder Mountain Water and Sewer Improvement District's infrastructure for both water and sewer service. The developer has had conversations with the District and a feasibility letter will be provided for 96 units prior to the public hearing with the County Commission.

UDOT Access: The developer has had a pre-application meeting with UDOT and understands that access permits may be required as the subdivision applications are submitted and processed.

Public Benefit: The developer has shown on the concept plan several trail easements that will be granted in favor of the county if the rezone is approved. There will be a trail easement along the east side of Powder Mountain Road and an easement through the north end of the property connecting to the Powder Mountain recreational property. The width of the easements will be specified in a development agreement to the County Commission.

Transferring Density: The developer is proposing to buy development rights from the valley floor and to transfer them to this location. Currently there is not a method that allows the transfer of rights to the FR-3 zone. There are a few options for the Planning Commission and County Commission to consider in regard to transferring density.

Option 1: The rezone can be approved, with a development agreement that states that "no units shall be platted until the developer can show that the units have been successfully bought and legally transferred from a sending area designated by the county, at such a time that the county ordinances allow for TDRs".

Option 2: If the Planning Commission and County Commission feel that the TDR ordinance needs to be in place prior to the rezone of this property, these bodies may choose to table or deny the rezone, until the county ordinances allow for the density to be transferred.

County Rezoning Procedure: The land use code lists the following as considerations when the Planning Commission makes a recommendation to the County Commission:

*“A decision to amend the zoning map is a matter committed to the legislative discretion of the County Commission and is not controlled by any one standard. However, in making an amendment, the County Commission and Planning Commission are encouraged to consider the following factors, among other factors they deem relevant:*

* 1. *Whether the proposed amendment is consistent with goals, objectives, and policies of the County's general plan.*
  2. *Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.*
  3. *The extent to which the proposed amendment may adversely affect adjacent property.*
  4. *The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, wastewater, and refuse collection.*
  5. *Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.*
  6. *Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.”*

Staff recommends the following options to the Planning Commission for a recommendation to the County Commission.

Option 1: The Planning Commission forward a positive recommendation to the County Commission of the proposed rezone from F-40 to FR-3, with a development agreement allowing 96 units, of which 80 units will be transferred and 16 will be restricted to employee housing or moderate-income housing. The development agreement will state that "no units shall be platted until the developer can show that the units have been successfully bought and legally transferred from a sending area designated by the county, at such a time that the county ordinances allow for TDRs". The following information must be provided prior to the County Commission considering this item:

1. The developer will be required to show a concept plan that meets the lot size requirement of 9,500 square feet of net developable area.
2. An amended concept plan will need to show compliance with the FR-3 zoning building setbacks.
3. The developer will need to show, in revised building elevations, that the proposal will not exceed the 35-foot height limit.
4. The developer will be required to provide a snow removal plan and to show areas for snow removal on a revised concept plan.
5. The developer will provide a feasibility letter from Powder Mountain Water and Sewer Improvement District for 96 units.

This recommendation may come with the following findings:

1. The use helps support the 2016 Ogden Valley General Plan by implementing transferrable development rights to resort areas.
2. The development will help provide more options for moderate income housing in the Ogden Valley.

Option 2: The Planning Commission may make a recommendation to the County Commission that the proposed rezoning be denied or tabled until the County ordinances allow for the proposed density to be transferred. This recommendation may come with the following findings:

1. There are currently no County ordinances that allow for the transfer of units to the proposed zone.

Mr. Burton reviewed his staff memo.

Commissioner Shuman asked if the Commission could ask for a traffic study prior to approving the rezone. Mr. Burton answered yes. Mr. Grover stated if the Commission is not comfortable forwarding a recommendation to the County Commission, they can table the application to ask for more detailed information, or deny the application based upon their comfort level.

Commissioner Howell stated that at present, the County’s ordinance does not allow for a transfer of development rights (TDRs) to achieve the proposed density of this development. Mr. Burton stated the ordinance does not explicitly allow a TDR, but it does allow the negotiation of a development agreement that could include a TDR.

Commissioner Francis asked Mr. Burton to identify the reasons that the application could be denied besides the lack of a TDR ordinance. Mr. Burton stated that the County’s ordinance indicates that the applicant should have a feasibility letter for water and sewer services. The County is in the process of removing that requirement from the ordinance (pending legislation), but technically that is still a requirement. He noted that staff believes the applicant will have the necessary feasibility letters within a week. Commissioner Francis asked if health and safety concerns could be a basis for denial. Mr. Burton stated the Commission would not need to site those reasons when recommending denial.

Chair Lewis invited input from the applicant.

Todd Strong referenced the portion of the property for which he has requested a zone change and stated the reason it is not the entire property is that only a portion is developable. He has performed extensive topographical studies on the property and of the 37-acre property, the small portion is all that can ever be developed. If the Commission would like him to work with his surveyor to identify a clear five-acre parcel with defined boundaries, he is willing to do that. He noted he has done a great deal of work on this project before getting to this point; he has met with the Utah Department of Transportation (UDOT), and they are comfortable with the proposal as they feel that the plan complies with sight triangle and safety requirements. He has met with Powder Mountain water and sewer and will cooperate with them to drill additional wells and improve water service in the area. They will issue a feasibility letter the next time their board meets. He has worked with County staff on this project and will incorporate Rocky Mountain West architectural styles on the buildings, similar to what is seen in Park City or Jackson Hole; there will be flat roofs to provide for roof-top outdoor spaces. He is trying to minimize the impact on the land, so he will include the majority of the parking below ground and a small overflow parking area above ground. He discussed trail improvements planned around the project area. He then noted that it was his understanding, after his discussions with staff, that the TDR ordinance was not required in order for him to secure the rezone. They informed him that the TDR could be accomplished through a development agreement because his project complies with the spirit of the TDR concept.

Chair Lewis asked if the Commission is required to hold the public hearing if they decide to table or continue this application to a future meeting. Legal Counsel Erickson stated the Commission should hold the public hearing; if they choose not to, they must communicate the date certain when the public hearing will be continued to. Chair Lewis asked the public to keep in mind that the Commission may be tabling this application for a future meeting. He noted that from his perspective as a resident of the Ogden Valley, it is a good idea to keep the density off the valley floor, but he is concerned about the density of this project and an additional 16-plex building is essentially 16 more roof ridges in on the mountain. He stated that a will-serve letter is very important, and he does not believe that Powder Mountain water and sewer can provide the additional connections that will be needed for this project. He stated that he understands Mr. Strong indicated he will drill additional wells, but that type of activity in this area will be very difficult and it is important that the Commission have some proof that water is available. He stated that he also does not feel the site plan is well enough designed. He would prefer that the County’s TDR ordinance be in place and that the applicant have will-serve letters for the project before the Commission considers an action; he would prefer tabling or denying the application.

Commissioner Francis asked if there is a history of avalanches on the portion of the subject property that is included in the rezone application. Mr. Strong stated that people have been skiing on the property for years and he is not aware of a history of avalanches. Mr. Grover added that one requirement of the development agreement would be to include an avalanche prevention plan.

Commissioner Shuman stated that he actually feels the plan is fairly solid and the requested density is appropriate for the property as it is located directly adjacent to a ski resort. He also feels that it accomplishes the desire of moving development off the Valley floor, but there are some concerns about the TDR concept. He is concerned that the project boundary is not clearly defined and for those reasons, tabling the application makes sense to him.

Chair Lewis opened the public hearing.

Gary Fulmer stated he lives in Eden, and he sees two positive aspects of the project; one is the definite need for employee housing for Powder Mountain. The resort brings people from overseas to work at the resort and they need somewhere near the resort to house them permanently. Second, the movement of units from the Valley floor is a positive aspect of the project, but there has been no clear explanation of how many units there will be. His greatest concern is the confusion about the portion of the property that will be rezoned; if the Commission decides to rezone, they should only support rezoning the five-acre portion of the property, but only after it is possible to trust and verify the commitments expressed by the applicant. He then stated that the overriding concern for him is the access to the property from the main Powder Mountain Road; it appears it is very near where the bus turnaround is and this is a dangerous area. He would like for the Commission to include a condition of approval that the applicant improve that area of the road or determine a safer place for the access.

Jamie Lythgoe stated she is very familiar with the property as it is owned by her aunt and uncle; originally, when Powder Mountain was sold, her family did not want to make the transition complicated. They did not include this parcel with the original sale because they did not want to include the ‘out parcels’, and they thought that someone would buy it later. She stated the property is in the area that is regularly bombed for avalanches by the people who do control work at Powder Mountain; there are some areas that are very steep near the roadway, but that is not near where the development would occur. She believes that the applicant will be required to add a turning lane for the project. She referenced the TDR ordinance and noted that it often happens that an ordinance is partially completed and placed on the ‘back burner’ until something comes along that is the catalyst for its completion. She feels this property is a perfect candidate for a receiving area for TDRs. It cannot be seen from the Valley floor since it is nestled in a gulley. She stated she feels it is appropriate to work through the TDR concept with a development agreement rather than waiting for the ordinance to be adopted. She stated the applicant is willing to work with Planning staff in terms of the recommended conditions of approval for the project.

Lynette Ridge stated she also thinks there are some good things about the project, including the transfer of density and the limited visibility of the project area, but she also has some concerns, and it feels as if the project is just not ready to move forward. There is some confusion about building heights and maybe it is necessary to fully complete the TDR ordinance to ensure that everything is thought of and there are no unintended consequences of rushing such an important issue. She feels that a traffic study should be conducted as she is very familiar with the area and is aware of points along the road that are very steep and dangerous. She also has a question about whether the property meets the requirement for 4.5 developable acres in order to receive the zoning the applicant is requesting; the developer has indicated the developable area is closer to 3.5 acres. There are too many conflicts that needs to be resolved before the Commission should consider approval of the rezone. Her biggest concern is the adequacy of water for increased development. There have been limitations placed on other types of development because of the lack of water and she can not see how it is possible to justify the increase in residential units in this area where all the water will run downstream.

Mark Schroetel stated he is the General Manager of Powder Mountain, and he lives in Eden. He agrees there are some positive aspects, the greatest being that it would be nice to have employee housing so close to the resort, but there are some major issues in terms of the availability of water. He stated he is also a Board Member of Powder Mountain Water Sewer District and there are two water sources that have been developed for development purposes, which supply water for roughly 150 ERUs, but the District itself does not have a water resource and it is using Powder Mountain’s water currently. This will become a problem in the future because Powder Mountain has spent a lot of money developing the water sources while the District has not. He is concerned that the District is giving away Powder Mountain’s water by indicating they will provide a will serve or feasibility letter. He asked the Commission to consider that issue.

Lisa Arbogast stated she lives in Eden, and she is extremely concerned; she heard the developer indicate he feels this proposal is in line with the General Plan for the Ogden Valley, but she disagrees. The General Plan clearly identifies the subject property as an area with a 40-acre minimum zoning requirement. The reasons for that are included in the General Plan. The idea that chipping away at the General Plan by indicating the project is small is incorrect; at one mention she heard there were 16 units in the project, but in another discussion a unit number of 96 was referenced. As a resident of the lower area of the Valley, discussions have always been aimed at clustering down low to leave the foothills as they are. There is not enough water to support current building in the Valley; some are in the middle of building a home and are unable to secure a water connection. Chair Lewis noted that no one can legally build a home without a will-serve letter, so there is no one building in the Valley without a will serve letter. Ms. Arbogast stated she has heard that there are homes that are partially built but cannot proceed further because they cannot get water connections. Chair Lewis asked Mr. Grover if there is any chance that is correct. Mr. Grover answered no. Ms. Arbogast stated the owner of the property has said he plans to drill wells to provide water to the project, but that is a huge concern because sinking wells higher on the hill will take the water from those in the Valley that need it. Everyone is monitoring their water use and to allow someone to place a greater demand on resources is inappropriate.

Lee Shushman stated he lives in Eden, and he echoed the comments from Ms. Arbogast and Mr. Schroetel; Eden Hills Water Company was party to a lawsuit relating to illegal water action and the State Watermaster has assured the Company that it will not allow development upstream to take any water if it impacts their water rights. He would support TDRs and high density in proper areas, but what is being done is basically transferring 96 water units from the Valley to the mountainside, but there is not enough water. He thinks water is the core issue upon which denial of this application should be denied.

James Defenderfer stated he lives in Eden on Powder Mountain Road and the biggest issue with this project is water; most of the reason that other big development projects have been stopped is because of the lack of water. He acknowledged the applicant’s mention of drilling a well but wondered if he has the water rights to proceed with drilling a well. If he were a member of the Planning Commission, he would not even entertain this project until the applicant can prove that they have sufficient water to support the project without taking from the Valley. He added that he does not like the loose definition of high density in the Valley versus Powder Mountain. Geographically, one could say that the Valley stops at Powder Mountain Road, but those travelling to any development on Powder Mountain will travel through the Valley to get there, so that is a density impact on other areas of the Valley.

Manuel Pierto stated he lives in Wolf Creek, and he agrees with many of the comments that have been made, but he wonders if there may be an opportunity to discuss including a number of moderate-income housing units as part of projects that may be more dense in nature. This may make that housing more attainable for employees who will live in the units. If the units are mostly occupied by employees, the traffic in the Valley will be reduced.

There were no additional persons appearing to be heard and the public hearing was closed.

Principal Planner Ewert stated he was originally working with Mr. Strong on his project, and he wished to provide some input regarding his thoughts about the project. Whether the Commission approves or tables the application is of no concern to staff, but he wanted to clarify the intent of the General Plan, which was the basis of staff’s recommendation for at least partial approval of the application. He noted that many people have not read the General Plan, but they speak as if they are familiar with its directives. He would recommend that anyone interested in this or other projects in the Valley obtain a copy of the General Plan and read through it. The ideal outcome of the TDR concept is to move them out of the Valley floor into the mountain. The General Plan is not a zoning plan, but it discusses policy outcomes that later become zoning. Anyone who is asking for resort-oriented development in the mountains is asking for a zone change and the General Plan states that as much density should be located in the mountains as possible to get it off the Valley floor, as long as density is not added to the Ogden Valley Planning Area. In other words, density points should be taken out of the Valley and hidden in the mountains. This is a way of preserving open and farmland on the Valley floor. It is very difficult to move density into the mountains, so for someone to pursue a project that is a one for one trade of density from the Valley to the mountain is unique. If the County lets this opportunity pass, the opportunity to move quite a few development units from the Valley floor will be lost. There is a bit of confusion about the number of units in the project; there are actually 16 buildings, and each has eight units. He and Mr. Strong performed project calculations together and if he wishes to pursue eight-plex’s, he will need to ensure that five acres can be identified for the project site. Staff does not want to see the entire 40-acre parcel zoned FR-3 and they only support changing the zoning for the minimum amount of land that is needed for the project. He stated that as he was originally talking to Mr. Strong about the project, his proposal was more modest and he was only asking for four or five buildings, but he encouraged him to ask for more in order to implement the General Plan, which calls for relocation of density from the Valley floor onto the mountain. He stated that if the Planning Commission is concerned about the number of dwellings or buildings, they can consider a lesser amount. He then addressed the concerns regarding water; a developer is unlikely to invest a lot of money to pursue development of property unless they know there is a political will for the project. Essentially, if the applicant does not have the support from the County to move forward, he will not spend a great deal of money on engineering or exploring the idea of buying and securing water rights for the project until they know if they have approval of the zoning. If they do secure the rezone, and are unable to secure water, the project will never receive a building permit. His suggestion is to consider a development agreement that grants the zoning for a defined number of years, during which they must secure water and sewer connections, develop a snow and avalanche control plan, and perform a traffic study. If those things are not done within the defined period of time – perhaps five years – the zoning of the property would revert back to the previous zoning. This would give the landowner the security they need to begin investing in the land, while protecting the County. He concluded by addressing the TDR concept; there is a notion that the County must have a TDR ordinance in order to approve a project with TDRs, but this is not true. If someone secures an up zone or downzone, they are essentially transacting a TDR. That is all the subject project is; the applicant is swapping density on the Valley floor for density on the mountain. If the applicant cannot execute the TDR within a timeframe defined in the development agreement, again the zoning would revert back to the previous zoning. He stated that one of the people who spoke during the public comment period indicated they felt the project was not very well thought out, and it is his hope that what he just explained to the Commission suggests otherwise. Staff has been working with this applicant for six months and this is a very well thought out plan. He feels that it is reasonable and has a likelihood of receiving approval from the County Commission if it moves forward to that step in the process. He stated that before the Commission makes a decision, he would suggest they talk with the applicant to see what he prefers. If tabling is an option, he suggests that the Commission hold a work session to discuss he project further.

Commissioner Shuman stated his understanding is that if five acres of property can be identified and the FR-3 zoning is granted, that Mr. Strong could build 23 units without a TDR. Mr. Burton stated he has not performed that calculation as five acres of property were not identified. Commissioner Shuman stated that the FR-3 zoning gives the property the ability to build one unit for every 7,500 square feet and if the Commission approved the zone change, there would be approximately 22 units added to the Valley. If the TDR were required, the result would be moving 67 units from the Valley floor. He stated that understands the concerns regarding water, but he has spoken with the water companies that serve the area and his understanding is that they have water rights, but no wells. It would be the developer’s responsibility to drill and pay for the wells to provide the actual water. He then noted that the majority of water usage is for landscaping, but most of the companies are trying to eliminate landscape watering. If the applicant is required to move between 60 and 96 units from the Valley floor, that could eliminate 96 three-acre lots that could be single family homes with a great deal of landscape. That means that this project could actually save a great deal of water that would otherwise be used on the Valley floor. Chair Lewis stated that may be true based upon calculations, but in reality, the water source must be moved further up the hill. Commissioner Shuman stated that is correct, but if the applicant can address that matter, it may be beneficial.

Commissioner Francis stated she understands that the General Plan recommends moving density from the Valley floor onto the mountain, but she is concerned about the amount of density that is designed for the areas along Powder Mountain Road, which is a very dangerous road where many accidents have occurred. She believes that the density could be moved to many other areas that do not have as many water issues or that have better transportation networks. She stated that area is at a tipping point in terms water availability, and she would be more supportive of development in other areas. She added that the units in this proposed project would be for recreational use and would not really be accessible to single families or employees working at the resort. Additionally, the people living or staying in the units will drive along the roads and have an impact on services and infrastructure in the Valley.

Mr. Burton echoed Mr. Ewert’s comments about the General Plan directives regarding this project; he feels that a work session for this application would have been more appropriate, but the applicant asked for a public hearing and action on his application.

Chair Lewis invited additional input from the applicant. Mr. Strong stated that density creep did not cross his mind in terms of the area surrounding this property; he has walked the property and there really are no other areas that can be developed. He is willing to enter into a development agreement that limits the number of units that can be developed. He reiterated that he has met with UDOT regarding the project and the ingress/egress point identified by them is the flattest part of the road and it is near the bus stop. Staff would like him to preserve or possibly enhance the bus stop area to improve its functionality. He then addressed water and sewer and noted that Powder Mountain Sewer and Water has not promised him water or sewer connections; rather, he will need to provide new water sources for the district. He does understand the concerns that have been expressed and the suggestion to delay and discuss the project in greater detail in a work session, but he does not want to wait until the TDR ordinance is developed as he believes that a development agreement can accomplish the same things that would be accomplished by the TDR ordinance.

Chair Lewis called for a motion.

Commissioner Shuman stated he is inclined to make a motion to recommend approval, but he is concerned that the project boundary is not clearly enough defined.

Commissioner Shuman moved to table ZMA 2021-05, rezone request from F-40 to FR-3 on 37 acres of property located at approximately 5793 North Powder Mountain Road, Eden, until the project boundary can be clearly identified.

Chair Lewis offered a friendly amendment for the motion; he stated that he thinks it is a good idea to give the applicant as much direction as possible regarding the items the Commission would like to see before considering approval; he heard concerns about the lack of a will serve letter for the project, concerns about building heights, traffic issues, and the TDR action.

Commission Shuman amended his motion to table ZMA 2021-05, rezone request from F-40 to FR-3 on 37 acres of property located at approximately 5793 North Powder Mountain Road, Eden, until the following are addressed:

* Revised site plan identifying the total project area and project boundary;
* Clarified building heights;
* Will-serve letter for water and sewer for the project;

Commissioner Torman seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

**3.2 ZMA 2021-07 - Public Hearing to consider and take action on a rezone request from AV-3 to CV-2 on 5 acres, property located at approx. 4708 E 2650 N, Eden, UT. *Presenter Steve Burton.***

A staff memo from Planner Burton explained this is a legislative matter. When the Planning Commission is acting on a legislative matter, it is acting to make a recommendation to the Board of County Commissioners. There is wide discretion in making legislative decisions. Criteria for recommendations on a legislative matter suggest compatibility with the general plan, existing ordinances, and best practices. Examples of legislative actions are general plan, zoning map, and land use code amendments. This item is an applicant-driven request to amend the zoning map from AV-3 to CV-2. This purpose of this application is to extend the CV-2 zoning to the eastern edge of parcel 22-040-0030 and to extend the CV-2 zoning slightly north on the same parcel. Parcel 22-040-0030 received a rezoning approval from AV-3 to CV- 2 on September 22, 2020. The purpose is also to amend the site plan and architectural standards required by the development agreement. This proposal also includes a request to amend the development agreement that was approved as part of the rezone in September of 2020. The proposed changes to the development agreement include removing the requirement for a dumpster, eliminating the provision for roofs to develop a natural patina over time, and allowing the sheer wall massing to be 100 feet instead of 25 feet. The proposal also eliminates page 20 of the development agreement, which specifies design and materials palette. The developer is also proposing to eliminate the requirement to use "five inch reclaimed solid wood wall paneling" on page 21 of the development agreement. The staff memo included a rendering of the developer’s desired architectural requirements, proposing to allow metal siding instead of wood. The developer is also proposing to eliminate the "fair share intersection improvements" section and to add language that requires the developer to pay the roadway impact fee as development occurs. Lastly, the proposed amendment includes a revised conceptual site plan, showing 188 total units compared to the original site plan that allowed for 100 units. The architectural standards that were written into the original development agreement were meant to provide an aesthetic to the surrounding area that masked the industrial nature and architecture of storage units. The building massing requirements and barn architecture with wood materials fits into the Eden Village described in the Ogden Valley General Plan. Planning staff recommends that all of the architectural requirements of the development agreement remain in place. Regarding the proposal to expand the zoning to the property boundary and amend the site plan, staff feels that these proposed changes should be approved, as long as the architectural requirements of the development agreement remain in place. Regarding the proposal to eliminate the "Fair Share of Intersection Improvements" section, it should be noted that the storage units may have a significant impact on this specific intersection, and that roadway impact fees apply to entire street systems, not necessarily this specific intersection. Staff feels that the "Fair Share of Intersection Improvements" should remain in the development agreement.

Regarding the proposal to remove the required dumpster from the development agreement, staff is comfortable with this proposal because there should be no need for a dumpster if users are loading, unloading, and storing personal items in the storage units.

County Rezoning Procedure: The applicant has submitted a complete application as outlined in the County's rezoning procedures in Sec 102-5. The land use code lists the following as considerations when the Planning Commission makes a recommendation to the County Commission:

*“A decision to amend the zoning map is a matter committed to the legislative discretion of the County Commission and is not controlled by any one standard. However, in making an amendment, the County Commission and Planning Commission are encouraged to consider the following factors, among other factors they deem relevant:*

1. *Whether the proposed amendment is consistent with goals, objectives, and policies of the County's general plan.*
2. *Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.*
3. *The extent to which the proposed amendment may adversely affect adjacent property.*
4. *The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, wastewater, and refuse collection.*
5. *Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.*
6. *Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.”*

Staff recommends that the Planning Commission forward a positive recommendation to the County Commission for the proposed rezone of approximately 5 acres located at approximately 4708 E 2650 N, Eden, from AV-3 to CV- 2, provided the architectural, massing, and material requirements listed in the original development agreement are not changed, and that the "fair share of intersection improvements" section remains unchanged in the development agreement. Additionally, staff recommends that the site plan be amended as proposed and added as part of the development agreement, provided the architectural requirements, including the requirement to have horizontal fines be broken every 25 feet, be implemented as specified on page 20 of the original development agreement. Staff recommends approval of the proposal to remove the requirement to provide a dumpster on site. This recommendation may come with the following findings:

1. The use helps support the 2016 Ogden Valley General Plan by providing for a market demand in a location outside an intended village area.
2. The use offers a design theme recommended by the 2016 Ogden Valley General Plan.
3. The proposal will offer an economic benefit to the community in a well-planned manner that offers relatively minimal community impacts in comparison to other economic development possibilities.
4. The impacts of the development on adjacent landowners are proposed to be appropriately minimized by use of natural and built buffers, vegetation, and architectural styling.
5. The development will enhance the overall health, safety, and welfare of the community.

Mr. Burton reviewed his staff memo and the applicant’s proposed revised site plan for the project.

Commissioner Howell stated that based upon the layout of the site and the identified access. It may be difficult for a larger vehicle or a truck pulling a trailer to safely access the site.

Commissioner Torman asked if there is an area for water detention on the site. Mr. Burton stated he is unsure there is a water detention on the site plan, but the applicant will be required to submit a design review application, which will be reviewed by the Engineering Division to determine the amount of hard surface, water runoff, and detention/retention requirements.

Commissioner Shuman inquired as to the dumpster requirements for the project. Mr. Burton stated that there was some concern that there may be a great deal of junk or garbage left on the site by people moving in and out of their storage units, so staff is requesting that there be a single dumpster on-site that is screened.

Chair Lewis invited input from the applicant.

Lance Anderson stated he is performing engineering for the applicant; he discussed other storage unit projects in the area and stated this is not the first application for this site. However, as he has reviewed the project and site constraints, the site plan has been amended to allow for greater functionality. He referenced staff’s recommendations regarding architecture for the project; he feels that the design meets the intent of the development agreement and adding wood to the buildings is not necessary or appropriate. Wood is not typically seen on storage buildings.

Commissioner Torman inquired as to the building materials used on the applicant’s other storage project in the Valley, to which Mr. Anderson answered it is masonry and metal. Wood is a challenging product, and it would be broken up a great deal along the walls of the buildings. Additionally, ongoing maintenance of the wood would be much more difficult than metal or masonry. He then addressed the topography of the property; the elevation varies throughout the property and there is a canal, beyond which there is a 10–15-foot drop. There are also a great deal of trees on the site, so the development will be well hidden and screened. He feels the architecture conforms with the existing development themes in the area. He then discussed traffic associated with the project and stated that storage unit projects typically do not have high traffic impacts and he feels the proportional share or impact will be addressed with the impact fees versus relocating the access to a nearby intersection. He added that storage units typically do not have dumpsters because the owners do not want people to be able to pull in and drop their junk there. If someone is not paying their storage fees or they abandon their unit, the items left behind will be removed and taken to the dump.

Commissioner Howell stated that using metal roofs will result in the snow sliding off and creating a snow removal issue in the project. Mr. Anderson stated that the roofs on the buildings will not have a steep pitch in an effort to keep snow on the roof.

Chair Lewis opened the public hearing. There were no persons appearing to be heard and the public hearing was closed.

Chair Lewis stated that staff recommends approval of the rezone, they are comfortable with the increase in units, but they did recommend that the project conform with architectural standards for the area.

Commissioner Shuman stated that he is concerned about allowing this project to deviate from those architecture standards when other property owners in close proximity to the subject property have adhered to those standards. He stated there are some metal materials that have the appearance of wood. Commissioner Francis agreed and stated that the Commission spent a great deal of time working on the architectural standards.

There was then a brief discussion about the proposal to expand the boundary to which the requested zoning would apply. Mr. Anderson stated that the zoning was assigned to the property previous to his ownership, but he has secured an accurate meets and bounds description for the property and is requesting that the zoning be assigned to that entire property. Chair Lewis stated he feels that is an accurate representation of past zoning decisions for this property.

There was then high-level discussion regarding the architecture standards included in the original development agreement for the property. Mr. Burton noted that the agreement allows for substitute material of similar visual quality as determined by the Planning Director. Mr. Grover recalled the discussions about the architecture standards for projects in this area and the great deal of public input the County received; he does not believe he can accept metal as a substitute for solid reclaimed wood as a building material on this project. He is concerned about allowing a building constructed entirely of metal; if there were a mix of rock and metal, or different colored metals, he may be more supportive, but he would want the Commission’s support for whatever decision he makes. Chair Lewis suggested that the Commission ask for a sample of the type of material the applicant would like to use as a substitute for the wood. Mr. Grover agreed and noted that materials, such as smart side, have the appearance of wood, but they are longer lasting and require minimal maintenance. Commissioner Shuman stated he feels the applicant has done a great job with their design and he does not think it is too far off from receiving support. This led to continued high level discussion of optional building materials that may be accepted as meeting the architectural standards; the applicant stressed the difficulty in obtaining reclaimed wood for this type of project and noted that meeting that requirement could be very costly. He also reiterated that the maintenance of wood is very difficult and costly over the long term.

Commissioner Shuman asked if the Commission could grant conditional approval and ask that the applicant come back with a sample of the building materials they would like to use on the project. Legal Counsel Erickson stated staff recommends granting the rezone of the property with all development requirements in-tact aside from the dumpster requirement and the site plan. Commissioner Shuman stated he wants to approve based upon the standards that have already been established but ask that the applicant come back with greater detail on their site plan and the building materials they would like to use. Mr. Burton stated if the Commission recommends approval of the site plan as proposed, the application will need to come back to the Planning Commission in the form of design review to compare the site plan with the requirements of the development agreement. Mr. Erickson added that the applicant could come back at any time and ask for an amendment to the development agreement, but that is already part of this application and staff has recommended against that type of amendment. Mr. Burton again reviewed the recommendation language in his staff report. Commissioner Shuman stated he would like to have a clear understanding of the exact amendments the Commission is considering.

Commissioner Shuman moved to forward a positive recommendation to the County Commission for ZMA 2021-07, rezone request from AV-3 to CV-2 on 5 acres, property located at approximately 4708 E. 2650 N., Eden, based on the findings and conditions listed in the staff report, with an additional amendment to the development agreement to change the approval authority of a building material change from the Planning Director to the Planning Commission, and inviting the developer to come before the County again to detail their requested amendments and to provide sample building materials. Commissioner Howell seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

Mr. Burton asked if the intent of the motion was to require the applicant to come before the Planning Commission to address development agreement amendments specific to impact fees and building materials. The Commission discussed the matter and determined they are comfortable with the application going directly to the County Commission and noted that body can perform the analysis regarding the development agreement amendments and building materials. Mr. Erickson suggested the Commission make a motion to that effect.

Commissioner Shuman made a motion to allow the applicant to take their application directly to the County Commission and to be prepared to respond to the conditions included in the Planning Commission’s motion. Commissioner Torman seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

**3.3 ZTA 2021-09- Public Hearing to consider and take action on a county driven request to amend the Stream Corridor Sensitive Lands Ordinance, to exempt certain lots from setback requirements.**

A staff memo from Planner Burton explained this is a legislative matter. When the Planning Commission is acting on a legislative matter, it is acting to make a recommendation to the Board of County Commissioners. There is wide discretion in making legislative decisions. Criteria for recommendations on a legislative matter suggest compatibility with the general plan, existing ordinances, and best practices. Examples of legislative actions are general plan, zoning map, and land use code amendments. The Weber County Stream Corridor ordinance was first approved and adopted as part of the Land Use Code on December 30, 2005. There are currently no exemptions to these regulations for lots that were legally platted prior to December 30, 2005. The proposed ordinance amendment will allow lots that were platted with building envelopes or buildable areas prior to January 1, 2006 to be exempt from the stream corridor setbacks listed in the ordinance. Over the past few years, the County has received several applications for dwellings or accessory buildings on lots that have 'buildable areas' due to rivers or streams (seasonal and year-round} adjacent to the lot. The owners of such lots have submitted site plans that show the improvements within the lot's buildable area, but the stream corridor regulations adopted after the recording of the subdivision are more restrictive than the buildable area. Under this proposed ordinance amendment, lots adjacent to streams or rivers that had designated buildable areas prior to the adoption of the stream corridor ordinance will be exempt from the stream and river corridor setback requirements. “Lots platted prior to January 1, 2006 with designated buildable areas, building envelopes, or river or stream corridor setbacks shown on the subdivision plat, are exempt from the setback requirements of this chapter.”

Staff recommends that the Planning Commission forward a positive recommendation to the County Commission for the proposed text amendment. This recommendation may come with the following findings:

1. The proposal will protect rivers and streams within the Ogden Valley while also allowing lot owners, whose lots were restricted by previous county stream and river setback requirements, to be able to develop their lots within the bounds of their buildable area or building envelope.
2. The proposal preserves private property rights on lots recognized previous county stream and river corridor requirements.

Mr. Burton reviewed his staff memo.

Commissioner Francis stated she is comfortable with this proposal so long as waterways will still be preserved.

Chair Lewis opened the public hearing.

Marth Crawford stated she lives in Huntsville, and she feels that adoption of this amendment will set a precedent whereby people can request a conditional use permit (CUP) to build closer to a river or stream. The current setbacks are really quite minimal, and she suggested that they be preserved. She encouraged the Commission to vote in opposition to the proposed amendment.

There were no additional persons appearing to be heard and the public hearing was closed.

Commissioner Shuman asked if this amendment will only apply to building lots on which a home has not been built and how many properties will be impacted by this amendment. Mr. Burton stated that it will apply to lots upon which a home has already been built; if there was a lot in a subdivision that was developed before the ordinance was put in place, they could have built a home, but may now like to add on to their home. This amendment will essentially expand the buildable area of lots on plats that acknowledge a stream and associated setback. He is unsure of the total number of properties that stand to be impacted by this ordinance.

Commissioner Francis stated that the amendment would also apply to properties upon which the owner wants to build an accessory dwelling unit (ADU). Mr. Burton stated that is correct as long as the lot legally existed before the ordinance was adopted and had a buildable envelope on it. He then presented a plat that would be impacted by the ordinance amendment to illustrate the manner in which the setback requirement would be adjusted if this ordinance is approved. Commissioner Francis acknowledged the need to provide protection to homeowners, but she is also concerned about providing protection for the streams and waterways. She discussed past flooding events and spoke to the need to preserve an appropriate setback from the streams to avoid future floods. Mr. Burton stated the issue is that the setback has been increased for some properties from 50 to 75 feet; the issue is not the high watermark for waterways.

Commissioner Shuman moved to forward a positive recommendation to the County Commission for ZTA 2021-09, amending the Stream Corridor Sensitive Lands Ordinance, to exempt certain lots from setback requirements, based on the findings and subject to the conditions listed in the staff report. Commissioner Howell seconded the motion. Commissioners Lewis, Francis, Howell, Shuman, and Torman all voted aye. (Motion carried 5-0).

1. **Public Comment for Items not on the Agenda**

There were no public comments.

1. **Remarks from Planning Commissioners**

There were no additional remarks from Planning Commissioners.

1. **Planning Director Report**

Mr. Grover had nothing additional to report.

1. **Remarks from Legal Counsel**

Mr. Erickson had nothing additional to report.

**Meeting Adjourned: The meeting adjourned at 9:14 p.m.**

**Respectfully Submitted,**

**Cassie Brown**

**Weber County Planning Commission**