

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for April 25, 2023. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/85022018870>, the time of the meeting, commencing at 5:00 p.m.

Ogden Valley Planning Commissioners Present: Trevor Shuman, Chair, Jeff Barber, Jeff Burton, Dayson Johnson, and Justin Torman.

Absent/Excused: Commissioners Jared Montgomery and Janet Wampler .

Staff Present: Rick Grover, Planning Director; Charlie Ewert, Principal Planner; Steve Burton, Planner; Felix Lleverino, Planner; Tammy Aydelotte, Planner; Bill Cobabe, Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

- Pledge of Allegiance
- Roll Call:

Chair Shuman conducted roll call and indicated - **ROLL CALL WAS NOT CAPTURED ON THE AUDIO RECORDING.**

1. Minutes: February 28, 2023. – MINUTE APPROVAL WAS NOT CAPTURED ON THE AUDIO RECORDING.

2. Administrative Items:

2.1 UVO032123 - Request for preliminary approval of Osprey Ranch Subdivision Phase 2, consisting of 30 lots. This proposal also includes dedication of new County right-of-way throughout this development. Planner: Tammy Aydelotte

Planner Aydelotte provided a brief history of approvals relating to the subject property, dating back to October of 2022; this subdivision plat request consists of 30 lots, ranging in sizes from 4.138 acres to 26.855 acres. Lot sizes and widths vary but all meet the minimum lot standards for the FV-3 zone of 3 acres in area and 150 feet in width. This proposal consists of approximately 275 acres, public roads, common areas, and paved trails within the dedicated right-of-way, throughout the development. She summarized staff's evaluation of the request, including compliance with the General Plan and zoning regulations; lot area, frontage/width, and yard regulations; culinary water, irrigation water, and sanitary sewer disposal; relation to adjoining street systems/Ogden Valley pathways; natural hazards/wetlands/stream corridors; and compliance with the requirements of review agencies. She concluded staff recommends that the Planning Commission grant preliminary approval of Osprey Ranch Subdivision Phase 2, based on all review agency requirements and on the following conditions that will need to be met before the Planning Commission considers recommending approval of the final plat:

1. The owner needs to provide a slope analysis, and to show which lots are impacted by 25% slopes or greater so that a buildable area may be defined on lots impacted by 25% slopes or greater.
2. An access to adjacent property to the east of lot 43 shall be provided and shown on the plat between lot 43 and 46.
3. An emergency egress access shall be provided to adjacent properties on the common area above lot 39 and along a portion of the strip of Common Area E that runs adjacent to the main public street in this subdivision.
4. Streams and their associated setbacks will need to be shown on the final subdivision plat.
5. The proposal will need to demonstrate compliance with all other final subdivision plat requirements.

The recommendation is also based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan.
2. With the recommended conditions, the proposed subdivision complies with the applicable County ordinances.
3. The proposed subdivision will not be detrimental to the public health, safety, or welfare.
4. The proposed subdivision will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.

Chair Shuman inquired as to the requirement for a dedication of property for a road on the northern end of the property. Ms. Aydelotte stated that the County is requesting a 33-foot dedication of property in that area, but she identified an adjacent parcel of property that is not part of the proposed subdivision and indicated that when it develops, the County will also require the other half of the road width for the road along the southern boundary. The Commission discussed the characteristics of the adjacent parcel and the timing of development of that property, with concerns expressed about the potential for the road to never be built

and connectivity will not be achieved. Planning Director Grover stated that if it becomes absolutely necessary, the County can exercise the authority to require sufficient property to be dedicated to develop the road. The County uses good planning principles that help to inform when infrastructure is needed; the County could require the dedication at this time and enter into a deferral agreement with the property owner to allow the improvements to be deferred to a date when the determination is made that the road is needed. The County does not want to be in the business of building road infrastructure and also does not want to exercise eminent domain to acquire the property to build the road.

The Commission and staff reviewed plat maps for the subject property and surrounding properties to understand the zoning designations that have been assigned to different properties and lot sizes; Commissioner Burton noted Osprey will have 30 lots in 275 acres and neighborhood connectivity does not seem as important given the size of those lots and the distance between them. Mr. Grover stated that is a judgement call the Commission has the authority to make; staff has simply provided recommendations relating to connectivity, but the Commission can vary from those recommendations. Ms. Aydelotte stated there are many topographical challenges with the subject property, but staff has worked with the developer to address those challenges while still ensuring adequate connectivity.

Chair Shuman invited input from the applicant.

John Lewis thanked Planning staff for working with him and for their fair analysis of the application; he is proud to be developing just 60 units on 600 acres of land. The only outstanding comment he still has relates to connections; there are 30 lots in this phase of the project with seven connections and he feels that is too much and is a burden. He is willing to dedicate the 33 feet of land on the north side of the land for a future road, but the neighboring property owner is not happy with that requirement. However, it may be that his property will be sold at some point in the future and the new owner will develop it and a road will be needed. The connection he is most concerned with is the road between lots 46 and 43; there are already two connections in that area and the grade of the land is very steep and splitting two lots to provide the additional connection is an undue burden. He asked if the County would consider a pioneering agreement to use the existing access points when they are needed in the future. The Commission and Mr. Lewis reviewed Google Earth images of the property to understand the location of existing and future access points and challenging topography, with Mr. Lewis noting that he believes that the required access between lots 46 and 43 rises to the level of a property taking and that seems unreasonable to him. He added there are seven other access points to his property, and he feels that is more than adequate connectivity throughout the project.

Staff and the Commission then engaged in high level discussion regarding options for ensuring that future access points will be developed in the future when needed; Commissioner Burton asked why staff is recommending placing a requirement on a future subdivision to install additional roads. Ms. Aydelotte stated that the property fronts a major connector road and staff feels the development to the east should be entitled to connect to it when it develops. Commissioner Burton reiterated Mr. Lewis's point that the topography is very steep and building the road will be difficult. Ms. Aydelotte stated it may be that there is an alternative access point and that is yet to be determined.

Commissioner Johnson asked if Engineering has reviewed this application, to which Ms. Aydelotte answered no; typically, staff prefers an Engineering review before presenting the application to the Planning Commission, but in this case, they did not have time to review the application. She noted that this is also a preliminary approval and Engineering will perform a thorough review before any recommendation is made on final approval. Mr. Grover added that the Commission could include language in their motion to indicate that condition of approval number two will be reviewed by Engineering and could be removed if they deem it unnecessary to require the connection. Commissioner Burton stated contour maps as well as a recommendation from Engineering would be helpful to the Commission when they consider final approval of this application.

The Commission, staff, and Mr. Lewis engaged in brief philosophical discussion and debate regarding the reasonableness of requiring a certain number of access points for the subject property and whether those requirements could be defined as a property taking.

Chair Shuman invited questions or comments from the Commissioner. There were no additional questions or comments.

Commissioner Burton moved to approve application UVO032123, request for preliminary approval of Osprey Ranch Subdivision Phase 2, consisting of 30 lots. This proposal also includes dedication of new County right-of-way throughout this development, based upon the findings and subject to the conditions listed in the staff report, with the clarification that condition number two will be reviewed by the County Engineering Division and may be removed if the determination is made that the access is

unnecessary or cannot be built due to the topography of the area, and with an additional condition that the property owner be required to provide a 33-foot property dedication for the construction of a future road. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, and Shuman all voted aye. (Motion carried 6-0).

3. Legislative Items:

3.1 ZTA2022-07: A public hearing to consider county-initiated text amendments that will affect the Ogden Valley Planning Area, but are intended to help implement the new General Plan for the Western Weber Planning Area. Proposed amendments include lot development standards, streets and right-of-way standards, subdivision standards, and access standards. Planner: Charlie Ewert

Planner Ewert explained the purpose of these ordinance amendments is intended to help the Western Weber Planning Area implement their new general plan. However, a number of the changes will also affect development requirements in the Ogden Valley Planning Area. Staff has carefully considered each change within the context of the Ogden Valley General Plan, as well as development management in the Ogden Valley generally, to ensure the changes do not run contrary to planning in the Valley. In their review of the proposal, the Planning Commission should do the same. Both the Ogden Valley Planning Commission and the Western Weber Planning Commission have independently reviewed the proposal during recent work sessions and helped shape the final proposal. He then provided a detailed overview of the proposed ordinance amendments, which were identified in a document entitled Exhibit A in the meeting packet; he omitted parts of the proposed changes that have no effect on the Ogden Valley Planning Area. He concluded staff recommends that the Planning Commission consider the text included as Exhibit A and offer staff feedback for additional consideration, if any. Alternatively, when/if the Planning Commission is comfortable with the proposal, a positive recommendation should be passed to the County Commission.

Discussion among the Commission and staff centered on involvement of the Visit Ogden tourism bureau on the Dark Sky Committee; good planning principles relating to future street connectivity; streetscape design goals; the perceived tendency of 'over-planning' the Ogden Valley; flag lot standards and their applicability to both the Ogden Valley and Western Weber Planning Areas; changes to the approval authority for various types of applications;

Commissioner Shuman moved to open the public hearing. Commissioner Johnson seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Jan Fullmer stated she has reviewed the entire Exhibit A document and she feels there is too much information for the average Ogden Valley resident to digest and understand. She added that the next item on the agenda deals with changes to the form based zone and she asked if changes to the zone will apply to Western Weber County. She then noted that she sends notices to a distribution list of residents who live in the Ogden Valley and when she sent the notice for the Commission's last work session meeting, there was a great deal of confusion about whether the changes to the Western Weber General Plan would apply to the Ogden Valley. She advised the Commission to be patient if they get questions about those issues tonight.

Chair Shuman provided an explanation of the reason that land use codes are shared between the Ogden Valley and Western Weber Planning Areas.

Kirk Lampert encouraged the Commission to vote against doubling the size of larger lots for the purposes of securing approval of a flag lot and to be reasonable about shared lanes; these uses are not problematic in the Ogden Valley area. He then noted that many people are concerned about the preservation of open space, but it is important to note that the majority of open space in the Valley is farm or ranch land. It is very time consuming and expensive for the landowners to maintain these lands and the County needs to loosen its restrictions that are preventing these landowners from developing lots for their heirs, many of which would need to be approved as flag lots. The majority of the Ogden Valley was downzoned in 1998 and every farmer and ranch owner lost two-thirds of their wealth as a result and it is a 'bitter pill' to see applications for village uses move through the process so quickly, but when it comes to larger tracts of land, the application process is much more difficult.

There were no additional persons appearing to be heard.

Commissioner Barber moved to close the public hearing. Commissioner Johnson seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Mr. Ewert addressed Ms. Fullmer's question regarding the form-based zoning item on the agenda and whether changes to that zone will apply to the Ogden Valley; the answer to this question depends on the final action taken by the County Commission and it may be that each change will be considered on a case-by-case basis.

Commissioner Burton agreed that the Exhibit A document is very long and technical; he asked if the text could be simplified, and a statement be included to specify the changes that apply only to the Ogden Valley Planning Area. Mr. Ewert stated he attempted to do that in his staff report and within the Exhibit A document itself. This led to general discussion among the group regarding the potential for certain provisions in the code to be misinterpreted relating to their application to the Ogden Valley Planning Area. Mr. Ewert stated the County Commission is anxious to get these land use amendments implemented because of the immense development pressure in the Western Weber Planning Area; if the Planning Commission is not prepared to vote on this matter tonight, the County Commission may choose to take action without a recommendation and attempt to address only those items that relate to Western Weber.

Commissioner Barber moved to forward a positive recommendation to the County Commission for application ZTA2022-07, County-initiated text amendments that will affect the Ogden Valley Planning Area, but are intended to help implement the new General Plan for the Western Weber Planning Area. Proposed amendments include lot development standards, streets and right-of way standards, subdivision standards, and access standards. Recommendation is based on the findings and subject to the conditions listed in the staff report.

Commissioner Burton offered a friendly amendment to remove language from Section 102-5 requiring an applicant to provide a street connectivity plan for not just the project, but for how streets could be configured for the area generally; and an amendment to section 106-2-4 dealing with flag lots to change the lot area requirement to three-acres. Commissioner Barber stated that he accepts the friendly amendment relating to flag lots and noted that Mr. Ewert conceded to that in discussion of the matter, but with respect to section 102-5, he does not see a problem with asking an applicant to provide an opinion regarding street configuration around the development area. Mr. Ewert added that he will change the language regarding lot area for flag lots to state 'three-acres, or the minimum lot size required by the zone'.

Commissioner Barber restated the motion. Commissioner Johnson seconded the motion. Commissioners Barber, Johnson, Montgomery, Torman, and Shuman all voted aye. Commissioner Burton voted nay. (Motion carried 5-1).

Commissioner Burton stated his opposing vote is based upon his concern with the language in Section 102-5 requiring an applicant to provide a street connectivity plan for the area surrounding the project.

3.2 ZTA2022-06: A public hearing to consider county-initiated text amendments of the Form Based zone. Amendments pertain to development standards, pathway connectivity, street design, transferable development rights, and workforce housing provisions. Planner: Charlie Ewert

Planner Ewert explained the Western Weber Planning Area has a new general plan. The plan calls for the use of the Form-Based zone in certain areas. Currently, the County's Form-Based zone has street regulating plans that pertain only to the Ogden Valley. In order to assist the Western Weber Planning Area in executing their desires, the County's Form-Based zone needs to be updated to provide a street regulating plan for a new "West Weber Village" area. This ordinance amendment was initiated by the County for this purpose. Because the County's Form-Based zone applies to the Ogden Valley, any amendment thereto may affect village-area planning. For this reason, the Ogden Valley Planning Commission has been asked to review the changes desired by the Western Weber Planning Commission to verify consistency with the Ogden Valley General Plan as well as with development desires generally. While reviewing the proposed changes, the Ogden Valley Planning Commission noted a number of changes that they would like to see implemented in the Form-Based zone as well. These changes primarily relate to allowed building height, transferable development rights, and workforce housing requirements. Other changes requested by the Ogden Valley Planning Commission are clerical or administrative in nature. He then provided an overview of the form based zone text, which was entitled Exhibit A contains the revised draft proposal of the FB zone that was created through this effort. The Western Weber Planning Commission has already forwarded a positive recommendation to the County Commission for the proposal. Staff recommends that the Planning Commission consider the text included as Exhibit A and offer staff feedback for additional consideration, if any. Alternatively, when/if the Planning Commission is comfortable with the proposal, a positive recommendation should be passed to the County Commission.

Discussion among the Commission and Mr. Ewert centered on the manner in which building heights and setbacks are measured in the form based zone; maximum building heights/stories; appropriate building orientation; whether the overriding goal of the form based zone is to increase density; the relationship between historical existing uses and new development; parking accommodations; market driven development; transportation planning and the need to build roads that are wide enough to accommodate large/wide vehicles; transfer of development rights (TDR) allowances and banking development rights and proper accounting/record keeping of development rights that have been used on a parcel by parcel basis; and a developer's desire to achieve a certain density to offset infrastructure costs.

Commissioner Johnson moved to open the public hearing. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Jan Fullmer stated she has read the entire form based code document in detail and she is concerned about the sections relating to transfer of development rights (TDR) actions; Section 104-22-11 identifies the areas in which TDRs are not permitted, and she supports prohibiting TDRs from wetland properties because they truly are not buildable lands. She then stated that the two areas that the form based zone will most likely be applied are Old Town Eden, which is historic and mostly builtout, and New Town Eden. She stated she has seen some plans for where the main road to New Town Eden will be built, but that is likely to be changed because of the large storage units that have been built in the area. There have been discussions about relocating the road and also the walking path that was intended to run along it, but she has not seen that in any of the maps that are included in the form based zone document. These things need to be addressed before the zone is defined. She indicated the Nordic Valley area should not be focused on at this time because it will have its own unique zoning designation. She concluded by offering a hypothetical situation for the Commission to consider pertaining to TDRs; she is very concerned about how development rights will be recorded to ensure that the rights for individual properties are not exceeded. She added that it is important to consider the culture of the Ogden Valley and it is her feeling that short term rentals (STRs) do not contribute to the character of the area whatsoever. She stressed the need for a balance of land uses and noted that the number of STRs has increased dramatically. She provided the Commission with a newspaper article from March 30 that was written by a real estate professional, the headline of which was "10 reasons short term rentals destroy communities" and noted she could not have worded the article any better. She also cited data provided by the Weber County Planning Division about the number of illegal STRs that are being operated in the County; there are more than 550 and the majority of them are in the Ogden Valley in zones where STRs are not allowed. She also provided a spreadsheet that includes an itemized listing of the areas in which STRs are allowed and the number of STRs that presently exist. She asked that the Commission restrict STRs until the County can develop regulations to control them and limit the impact they have on surrounding properties.

Jim Bird stated that there is so much information being presented in these meetings and it is difficult for residents to follow it; he doubts that the Commission is able to follow it as well given the wide variety of topics that are being discussed. He cited past conversations of the Commission regarding STRs and noted that many developers are now purchasing properties under the name of an LLC and using one room for business purposes in order to meet the definition of owner-occupancy and then rent the other rooms as STRs. He agreed with Ms. Fullmer's recommendation to restrict STRs and not make any decisions about STRs within the Old Town and New Town Eden Village areas. He also added he would like to know if one village area can transfer their development rights to another village area.

Hannah (last name inaudible) stated she lives in Eden and noted last week there was a discussion about the need to increase the size of water pipes in Eden to accommodate increased growth and provide proper fire protection. She is concerned about building heights and the ability of the fire department to respond to a fire on upper levels of a tall building. She suggested that buildings be no taller than 35 feet unless it is possible to ensure that fire trucks can pump water that high to extinguish a fire.

Kirk Lampert referred to information provided by Mr. Ewert regarding TDRs; having participated in the development of General Plans for the Ogden Valley since the late 1980s, he can speak to the specificity of the language regarding TDRs. The reason that language was so specific was to guide Planning Commissions who do not have the same corporate history or knowledge of TDR actions in the Valley. However, much of that corporate history has been lost; now is the time for deliberation, but not to relitigate the General Plan. While there are always different ways to interpret the General Plan, certain things like building on steep slopes has never been allowed so to consider transferring development rights from those areas to the Valley floor does not make sense. The same is true for wetlands or stream corridors and transferring development rights from those areas also does not make sense. He advised the Commission and Planning staff to use common sense and follow appropriate planning guidelines. He also commented on maximum building heights; the Village areas are very small and two stories should be the maximum height. He asked the Commission to honor the historical maximum height of 35 feet. He also spoke against the

concept of banking development rights; banking would allow people to acquire development rights and sit on them for a period of time before selling them in the future for a profit. This was never the intent of the General Plan and that is why the statement 'no banking' was included in the document. Additionally, something very important has been removed from the General Plan; it was always envisioned that TDRs would always be used for commercial purposes. Resort areas have agreed to use one TDR for every 5,000 square feet of commercial space. During the COVID-19 pandemic, that provision was removed from the General Plan and there is now no requirement for there to be a correlation between commercial uses and TDRs and he feels this is a mistake.

Richard Schneider stated he was one of the first commercial developers in Eden and after having performed a first reading of the document before the Commission tonight, he feels it is very complicated and should be tabled because it needs a lot of work.

Seth Waddoups stated that with TDRs, the goal is to bring density to areas where density is more appropriate, but it also seems there is language in the Plan that allows developers in certain residential areas to pursue a TDR action to increase density in those areas. This is a very complicated issue and he suggested the Commission table it to take time to understand it better.

There were no additional persons appearing to be heard.

Commissioner Barber moved to close the public hearing. Commissioner Johnson seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Commissioner Johnson asked Mr. Ewert to clarify areas that have been designated as sending areas and areas that have been designated as receiving areas. Mr. Ewert stated that transfers would be permitted from one form-based area to another form-based area; this would include one Village that is zoned form based to another Village that is also zoned form based. There is no plan in place for the Liberty area, so there is no ability to achieve form-based zoning in Liberty; even though the map identifies Liberty as a future Village, someone would not be able to transfer into or out of the area due to the lack of form-based zoning.

Chair Shuman stated that one decision staff has asked the Commission for is whether to maintain the current Nordic Valley Area Plan in the document or include a new, staff proposed street regulating plan. Mr. Ewert stated that is correct. Chair Shuman stated that in past discussions of that issue, the Commission has indicated they would like the street regulating plan to be considered independent of the form-based zone, but it has again been included in the document that has been presented to the Commission for consideration. Additionally, there is a need to clarify the definition of the term 'banking' as it relates to TDRs. Finally, the Commission needs to make a decision on maximum building heights in the form-based zone. Mr. Ewert stated that is correct.

Commission discussion centered on text changes to the form-based zone document since the Commission's last review of the document and any conflicts that exist between the zone document and the General Plan, after which Chair Shuman advised the Commission to make individual motions for each of the three outstanding items for which staff is seeking direction.

Commissioner Barber moved to accept staff's proposed Nordic Valley Area Plan, with the understanding that it can be adjusted based upon development proposals. Commissioner Johnson seconded the motion.

Chair Shuman stated he is hesitant to accept the Plan, still requiring developers of other areas to create their own plans. He called for a vote. Commissioners Barber, Burton, Johnson, and Torman all voted aye. Chair Shuman voted nay. (Motion carried 4-1).

Commissioner discussion then centered on maximum building heights/setbacks in the form-based zone.

Commissioner Torman moved to accept staff's recommendation of a 35 foot maximum height, or two stories, and 30-foot setbacks.

Chair Shuman offered a friendly amendment to define the point from which the setback will be measured. Commissioner Torman asked for advice from Mr. Ewert. Mr. Ewert stated that staff recommendations the measurement be taken from the back of the sidewalk, or the edge of the right-of-way. Mr. Grover suggested that the text indicate that the measurement will be taken from the edge of the right-of-way. Commissioner Torman accepted the friendly amendment and Mr. Grover's suggestion.

Commissioner Montgomery seconded the motion. Commissioners Barber, Burton, Johnson, and Torman all voted aye. Chair Shuman voted nay. (Motion carried 4-1).

Commissioner Burton moved to table consideration of the term ‘banking’ and defining the sending and receiving areas for transfer of development rights (TDRs). Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Chair Shuman then referenced the language in the document relating to workforce housing; the language has been adjusted several times over the course of the Commission’s discussion of this document and he asked Mr. Ewert to clarify the intent of the language as it is currently written. Mr. Ewert stated that the intent is to communicate that workforce housing will not be required for large lot developments, rural residential, or estate lot subdivisions with lots that are 20,000 square feet or greater. Additionally, workforce housing can only be placed within the multi-family, vehicle oriented commercial, mixed-use commercial, and government/institutional developments. Commissioner Burton stated this means that workforce housing will be required in the more dense areas of the Valley. Mr. Ewert stated that is correct.

Commissioner Montgomery moved to approve the language pertaining to workforce housing as written. Commissioner Torman seconded the motion.

Commissioner Burton asked if the requirement for workforce housing will be removed for large lot subdivisions. Chair Shuman answered yes. He called for a vote on the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, and Shuman all voted aye. (Motion carried 6-0).

Commissioner Montgomery moved to forward a positive recommendation to the County Commission for application ZTA2022-06, County-initiated text amendments of the Form Based zone. Amendments pertain to development standards, pathway connectivity, street design, transferable development rights, and workforce housing provisions, based on the findings and subject to the conditions listed in the staff report, with a reference to the previous motions made to do the following:

- Accept staff’s proposed amendment of the Nordic Valley Area Plan, based on the findings in the staff report;
- Accept building heights listed in the staff report with the change that setback of measured from the back edge of the right-of-way, based on the findings that there was insufficient clarity regarding the manner in which the measurement would be performed and that the change is consistent with the General Plan;
- Tabling any changes to TDR regulations and the definition of banking, based upon the finding that there is insufficient clarity on those matters;
- The language relating to workforce housing is accepted as written.

Commissioner Torman seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

3.3 ZMA 2023-06: A public hearing to consider a proposal to rezone 22.94 acres from AV-3 to the Form Based (FB) zone. Applicant is Dog & Bone, LLC, property located at 2700 N 5600 E, Eden. Planner: Steve Burton

Planner Burton explained on January 19, 2023 the applicant submitted a request to rezone 22.94 acres from the AV-3 zone to the FB (Form-Based) Zone. The property is located in an area of Eden that is included in the Street Regulating plan for the Old Town Eden Area found in the Form Based zoning ordinance. The street regulating plan shows this property with a potential of lots as small as one-acre on this property. The applicant’s request is to rezone to the FB zone, so that the street regulating plan will apply, and allow them to plat one-acre lots on the property. The 22.94 acres in the AV-3 zone allows the applicant seven development rights. The applicant is proposing to transfer eight development rights from Sunnyfield farm, (also shown on the Old Town Eden Street regulating plan) to the 22.94-acre parcel, so that a total of 15 one-acre lots can be platted. He presented images of the subject property on the existing zoning map as well as the proposed zoning map; he also discussed existing conditions of the property, after which he summarized staff’s analysis of the zoning application, including consideration of the following:

- Compliance with the Ogden Valley General Plan;
- Implications of the Form Based Zone;
- Street types;

- Transfer of density; and
- Workforce housing;

In reviewing a proposed rezone, the Planning Commission and County Commission may consider, but shall not be limited to considering the following (Sec 102-5-6(b)(3):

- a. Whether the proposed amendment is consistent with goals, objectives, and policies of the County's general plan.
- b. Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.
- c. The extent to which the proposed amendment may adversely affect adjacent property.
- d. 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.
- e. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.
- f. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.

Mr. Burton concluded staff recommends that the Planning Commission consider the proposed rezone from AV-3 to the FB (Form Based) zone as proposed, and offer the applicant feedback for additional consideration, if any. If the Planning Commission is comfortable with the proposal, a positive recommendation can be passed to the County Commission. He then noted that the applicant is present and has asked for the opportunity to make a presentation regarding their application.

Commissioner Torman inquired as to the current zoning designation of the property; Mr. Burton stated it is classified as rural residential.

Chair Shuman invited input from the applicant.

Shaun Clegg stated he is representing Dog & Bone, LLC and Sunnyfield, LLC and he is a resident of the Eden Acres subdivision, which is adjacent to the subject property. The intent of this application is to preserve the land at Sunnyfield Farm, and they are requesting a transfer of development rights to the 22.93-acre parcel that sits adjacent to the Eden Acres subdivision. This land would be an extension of an existing subdivision with one-acre lots and there will be 15 development rights with which to create 1.5 acre lots. He noted he understands that he is not at the subdivision approval stage at this point; rather, he is only requesting approval of the TRD action. Once he moves to the subdivision approval stage, he will be prepared to address mitigation of stormwater run-off. Currently, the storm water is unmitigated and is flowing towards his and his neighbors' properties. He will also address the layout of the lots and streets within the project area and surrounding properties. He then played a two-minute video that highlights the intent to save Sunnyfield Farm and preserve the view corridors for those that live around it.

Commission discussion centered on the issues that should be considered at this stage of the application process; Mr. Burton reiterated that specific design issues should not be considered, and the main focus tonight should be density and harmony with surrounding properties. Commissioner Burton added that the staff report recommends consideration of the adequacy of facilities and services intended to serve the subject property. Mr. Burton stated that does not necessarily need to be considered at the zoning stage, but the Commission can consider it at this time. There are subdivision standards that will require the County and developer to consider the improvements in the area and there may be a requirement to rebuild or improve existing facilities.

Commissioner Barber inquired as to waste treatment facilities in the vicinity of the subject property. Mr. Burton stated there are no sewer facilities and all lots would be served by a septic system.

Chair Shuman stated he feels the proposal is harmonious with the General Plan.

Commissioner Burton moved to open the public hearing. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Kirk Lampert stated he sent an email to the Commission with his comments about this application; he understands the nobility of moving development rights from one area to another in the vein of preserving treasured open space, but it is necessary for the Commission to physically visit the subject property to understand its condition and the difficulties in draining storm water and sewage from the area. This is not the time to consider the rezone because water cannot be drained to a nearby irrigation ditch. He stated that the TDR that is being proposed will result in increased density or clustering in other areas and the property upon which the new units would be built is not buildable at this time. He stated this is a 'no-brainer' decision for the Commission.

Jan Fullmer stated she does not live near the subject property, but she has been collecting data from the Weber/Morgan Health Department regarding approval of septic systems in the Ogden Valley; in 1997 and 1998 there was a change to the regulations regarding wells and septic systems for properties of a certain size. The applicant is proposing 15 homes on 22 acres and each of them would have their own septic system. There is a drainage issue in the area and specifically on the subject property. The property owner has received a commitment for culinary water from Eden Waterworks. She does agree that the Sunnyfield Farm property is a prime example of the type of property from which development rights should be transferred because it will help to preserve beautiful open space, but the property to which the rights are being transferred should not be developed at this time due to difficulty in serving the property. She has an email from someone from the Weber/Morgan Health Department who is looking into the relationship between the number of septic systems in the Valley and the amount of nitrate in the Pineview Reservoir; the nitrates are not coming from fertilizers, but rather from human waste from septic systems; the Health Department is considering changing the minimum lot size for septic systems from three acres to six acres.

Rich Love stated he lives across the street from the subject property, and he echoed the concerns that have been expressed about the septic system. He asked how long the current owner has owned the property and noted that when they bought it, it was already zoned for three acre lots. They took the chance that they would be denied a zone change for the property. The three-acre lot zoning would still comply with current septic regulations, and he suggested the current zoning be maintained. The TDR action is concerning; there must be better areas in the community to transfer development rights to. He asked why someone would be allowed to transfer rights to a property that is not really buildable. He loves Sunnyfield Farm and wants it to be maintained and be successful, but he is concerned about the consequences of the development proposal that has been presented to the Commission tonight.

Jackie Elget stated she lives in Eden Acres, basically next door to the subject property. She spoke to the fact that the property has always been wet, even in dry years. The property is good open space or can be home to grazing cattle, but it should not be developed for residential units. She stated that when she built her home, it was not disclosed to her that it is in a flood area, but she soon learned it was in a flood area after experiencing flooding. There are many people that live down stream that have also experienced flooding and that will only worsen if this property is developed.

Mike White stated he lives across the street from the subject property, and he is very familiar with the amount of water that flows on it; right now, it is totally saturated. The subdivision next to the property has at-grade septic systems because of the high water table and if homes are built on the property, it will be necessary to redirect the water that flows there, which would probably flood his home. He added that the Sunnyfield Farms property was his grandfather's and there are talks of redirecting the road across the property that his family stands to inherit. There are five siblings trying to decide how to divide the property and running the road across it will only make that more difficult. The most concerning is the water flow and the County needs to carefully consider that matter before making a decision.

Doug Arnell stated he is building a home on the street across from the field and he asked that the Commission uphold the current zoning of the property; the current owner purchased the property with an understanding of development rights, and they should not be allowed to change the zoning now. They can develop three acre lots rather than 1.5 acre lots; they bought a property and should live with what it was zoned when they bought it. He wants the applicant and Sunnyfield Farms to succeed as well, but the 'rules should not be changed in the middle of the game'.

Seth Waddoups stated he lives in the southwest corner of the property adjacent to the subject property. He is also concerned about the water drainage; the flows are record breaking this year, but even in drought years there has been water on the property. His concern is the difficulty in redirecting the water and stressing the system and the impact that this will have on other properties. He does like the idea of preserving open space through TDR actions, but only if the receiving property can be responsibly developed.

There were no additional persons appearing to be heard.

Commissioner Johnson moved to close the public hearing. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Commission discussion centered on the feedback provided during the public hearing and the ability of the developer and an engineer to mitigate the drainage and septic issues on the property. Commissioner Johnson asked Planning Director Grover to address the County's authority to deny a zoning change based upon concerns relating to septic if the Health Department is willing to grant septic permits. Mr. Grover stated that the Health Department has that authority, and the County relies upon their authority. The communication of those approvals would be required at the time of the subdivision application. Commissioner Burton noted that the zoning can be changed at this time, and then the developer will begin working to secure approval from other review agencies and service providers, as well as determining if certain issues on the property can be mitigated. Mr. Grover agreed, but noted that the Commission can also recommend denial of the zone change if they are too concerned about the issues that have been raised. This led to high level discussion among the Commission regarding whether the six criteria in the staff report can be met.

Commissioner Torman asked if some of the concerns could be addressed using a development agreement rather than approving a zone change. Mr. Burton stated that the FV-3 zone is so specific that staff typically does not feel a development agreement is needed for projects that are built within that zoning; however, if the Commission wants to limit the density or address other issues, a development agreement could be considered. Chair Shuman stated that he does not believe a development agreement is needed because he does not feel that the density should be reduced; the density that has been proposed is harmonious with surrounding developments and the only issues to be addressed are the environmental conditions of the property. Mr. Grover agreed. Mr. Burton then briefly discussed the types of uses that would be permitted in the requesting zoning designation; workforce housing would not be required and the type of development that would be permitted could be classified as large-lot residential. Assignment of the form-based zoning designation would still limit development rights to those that were assigned to the property before the zone change occurred if it is not possible to mitigate issues on the property.

Commissioner Burton moved to forward a positive recommendation to the County Commission for application ZMA 2023-06, a proposal to rezone 22.94 acres from AV-3 to the Form Based (FB) zone; applicant is Dog & Bone, LLC, property located at 2700 N 5600 E, Eden. The recommendation is based upon the following findings:

- The proposed amendment is consistent with goals, objectives, and policies of the County's general plan.
- The proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.
- All issues relating to water drainage, sewer drainage, transportation, and other engineering issues will be addressed in detail at the subdivision application stage of the project.

Chair Shuman offered a friendly amendment to include an additional finding:

- Motion is also based upon the condition that final approval of the zone change will be based upon the recommendations provided by the Planning Commission relating to changes to the form-based zone ordinance.

Commissioner Burton accepted the friendly amendment.

Legal Counsel Erickson asked if it is the intent of the Commission to condition this recommendation upon the County Commission adopting the Planning Commission's recommendations relating to the form-based zone ordinance, specifically the portion relating to workforce housing. Commissioner Burton stated that the Planning Commission recommended that workforce housing not be required on developments greater than 10-acres in size and he wants that regulation to be applied to the zone change application. Mr. Erickson asked if the Commission's recommendation regarding the zoning application would change if the County Commission does not accept the Planning Commission's recommendation regarding the workforce housing language in the form-based zone ordinance. Commissioner Burton answered yes; if the Commission does not accept the recommendation regarding workforce housing, he would recommend denial of the zone change application.

Commissioner Burton amended his motion to add an additional finding:

- From the public testimony and the discussion of the Commission, there is concern about situations that could arise if workforce housing were required in the subdivision to be built on the subject property.

Commissioner Burton stated he would like to stress that the Commission's recommendation that workforce housing not be required on developments larger than 10 acres should be applied to this property, even if it is not included in the form-based zone ordinance. Mr. Erickson stated that could be accomplished with a development agreement if the County Commission does not approve the Planning Commission's recommendation regarding the form-based zone. Mr. Grover agreed.

Chair Shuman called for a vote on the current motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted nay. (Motion failed 5-0).

Commissioner Burton moved to forward a positive recommendation to the County Commission for application ZMA 2023-06, a proposal to rezone 22.94 acres from AV-3 to the Form Based (FB) zone; applicant is Dog & Bone, LLC, property located at 2700 N 5600 E, Eden. The recommendation is based upon the following findings:

- The proposed amendment is consistent with goals, objectives, and policies of the County's general plan.
- The proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.
- All issues relating to water drainage, sewer drainage, transportation, and other engineering issues will be addressed in detail at the subdivision application stage of the project.
- There are concerns regarding any requirement to include workforce housing in the project and the Planning Commission recommends that requirement not be imposed or that a development agreement be negotiated to eliminate any workforce housing requirement.

Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

3.4 ZMA 2023-05: A public hearing to consider a proposal to rezone 2.7 acres from AV-3 and CV-2 to the Form Based (FB) zone. Applicant is ZBF Investments LLC and ZW Investments. Property located at 5461 E 2300 N, Eden. Planner: Steve Burton

Planner Burton explained on February 3, 2023 the applicant submitted a request to rezone 2.7 acres from the AV-3 and CV-2 zone to the FB (Form Based) Zone. The property is located in an area of Eden that is included in the Street Regulating plan for the Old Town Eden Area found in the Form Based zoning ordinance. The street regulating plan shows this property with a potential of mixed-use commercial and multi-family residential on the property. The applicant's request is to rezone to the FB zone, so that the street regulating plan and FB zoning will apply, and allow them to build mixed-use commercial buildings with street front commercial retail on the first floor, and a variety of uses, including a possibility of residential apartments above and behind. Out of the 2.7 acres, there are two parcels in the AV-3 zone that each contain one grandfathered development right, for a total of two existing development rights on the project as a whole. The applicant is proposing to transfer development rights from the AV-3 zone on the valley floor to the 2.7 acres before constructing more than two apartments above the commercial street front floor of the first building. He presented an area map to orient the Commission to the location of the subject property and the current uses of surrounding properties after which he summarized staff's analysis of the application to determine compliance with the land use code (LUC); consistency with the Ogden Valley General Plan; compliance with the form-based zone; street types, description, and purpose; lot development standards; transfer of density; and workforce housing. In reviewing a proposed rezone, the Planning Commission and County Commission may consider, but shall not be limited to considering the following:

- a. Whether the proposed amendment is consistent with goals, objectives, and policies of the County's general plan.
- b. Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.
- c. The extent to which the proposed amendment may adversely affect adjacent property.
- d. 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.
- e. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.
- f. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.

Mr. Burton concluded staff recommends that the Planning Commission consider the proposed rezone from AV-3 and CV-2 to the FB (Form Based) zone as proposed, and offer the applicant feedback for additional consideration, if any. If the Planning Commission is comfortable with the proposal, a positive recommendation can be passed to the County Commission.

Commissioner Torman stated that the staff report mentions maximum building heights could be 50 feet, but that is not in line with the Planning Commission's recommendation earlier this evening regarding maximum building heights in the form-based zone. Mr. Burton stated that is correct and he acknowledged that the maximum building height would be 40 feet.

Commissioner Barber inquired as to the total number of residential units that will be included in the project at buildout. Mr. Burton answered no. Commissioner Barker asked if there is a parking plan for the project. Mr. Burton referred to a rendering included in his staff report that includes some parking area; however, parking requirements will be different if the requested zoning is approved.

Discussion among the Commission and staff centered on historical discussions of the development of the Old Town Eden Village area and whether this proposed development aligns with the County's vision for the area; this included a focus on the different uses included in the development plan and increased traffic associated with the new uses.

Commissioner Burton moved to open the public hearing. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

A resident, name inaudible, discussed current traffic hazards in the area of the subject property that have contributed to vehicular accidents resulting in injuries and possibly deaths. He then asked if current residents have the opportunity to be compensated for the adverse impact this development will have on them or their properties. He stated that many who currently live in the area may choose to move and live elsewhere.

Jan Fullmer asked for a point of clarification; the staff report indicates four parcels are involved in this application, but the letter from Eden Waterworks only specifies a commitment for one parcel. Chair Shuman stated that the letter from Eden Waterworks does not answer definitive questions about the development potential; rather, the letter is an alert to Eden Waterworks regarding the application and the potential zone change. Ms. Fullmer stated the letter states "Eden Waterworks will serve culinary water to the property as stated above." She reiterated there are four parcels listed in the application.

A resident, name inaudible, stated she lives near the subject property, and she is concerned about the inclusion of apartments on the second floor of the project; this will lead to a parking issue because there is not enough space, and the building is very big compared to the size of the lot. Additionally, there will be a business that will attract more traffic to the area. She asked if apartments are really needed on the second floor given that thousands of units have been approved in the Valley in the past year. She disagreed that eight more apartments are needed after recent approval of Osprey Ranch, Nordic Valley, and other projects in the Wolf Creek area that include apartments. It seems that it is not clear what should be done in Old Town Eden, and she asked if apartments are really appropriate for the area at this time.

There were no additional persons appearing to be heard.

Commissioner Burton moved to close the public hearing. Commissioner Torman seconded the motion. Commissioners Barber, Burton, Johnson, Torman, and Shuman all voted aye. (Motion carried 5-0).

Chair Shuman invited input from the applicant.

Lance Froerer stated he is present on behalf of the developer, and it is their intent to build something that is in line with the vision for Old Town Eden; the plans include eight apartment units on the lot and professional space on the main floor. He stated that Mr. Burton did a good job presenting the merits of the application and he expressed a willingness to answer any questions the Commission has.

Commissioner Barber asked if professional space includes plans for a restaurant. Mr. Froerer stated it will primarily be office space and the drive through would most likely be used for a drink shop rather than a full-service restaurant. He added the pricing of the apartments will be based upon market rates and any design requirements imposed on the project.

Commissioner Burton stated that he feels the application conforms with the planning of the area over the last several years.

Commissioner Johnson moved to forward a positive recommendation to the County Commission for application ZMA 2023-05, a proposal to rezone 2.7 acres from AV-3 and CV-2 to the Form Based (FB) zone. Applicant is ZBF Investments LLC and ZW

Investments. Property located at 5461 E 2300 N, Eden. The recommendation is based upon the findings listed in the staff report as well as the additional findings:

- The Planning Commission refers to their action on file number ZTA2022-06 and strongly recommends that the proposed setbacks and workforce housing adjustments be applied to this application.
- The maximum building height should be 35-feet.

Commissioner Burton stated that the staff report does not include recommended findings, but it does list items that could be considered as findings. He recommended the following findings be included:

- The proposed amendment is consistent with goals, objectives, and policies of the County's general plan.
- The proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.

Commissioner Johnson stated he will accept those recommendations as a friendly amendment to his motion. He added that the Commission is not aware of the extent to which the proposed amendment may adversely affect adjacent property and that matter should be addressed at the subdivision application phase of the project. The same is true for the timing of the evaluation of the following:

- a. 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.
- b. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.
- c. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.

Chair Shuman stated he is concerned about building heights and setbacks; he offered a friendly amendment to the motion to indicate that if the County Commission does not accept the Planning Commission's recommendations regarding building heights and setbacks, the Planning Commission does not recommend approval of ZMA 2023-05.

Commissioner Johnson accepted the friendly amendment. Commissioner Barber seconded the motion.

There was brief discussion among the Commission regarding historical planning efforts pertaining to Old Town Eden, after which Chair Shuman called for a vote. Commissioners Barber, Burton, Johnson, Montgomery, and Torman, all voted aye. Chair Shuman voted nay. (Motion carried 5-1).

4. Public Comment for Items not on the Agenda.

There were no public comments.

5. Remarks from Planning Commissioners:

There were no additional remarks from Planning Commissioners.

6. Planning Director Report:

Planning Director Grover provided a brief review of the Commission's meeting agenda as well as information about forthcoming agenda items.

7. Remarks from Legal Counsel:

There were no additional remarks from Legal Counsel.

Chair Shuman then announced that the two work session items included on the agenda, ZTA2023-02 and ZTA2023-03, would be tabled and heard during the June 2 work session meeting.

**Meeting Adjourned: The meeting adjourned at 10:47 p.m.
Respectfully Submitted,**

Weber County Planning Commission