

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for October 24, 2023, 5:00 p.m. To join the meeting, please navigate to the following weblink at, <https://webercountyutah.zoom.us/j/86823311811>, the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** Trevor Shuman (Chair), Jeff Barber, Jared Montgomery, Justin Torman, and Janet Wampler.

**Absent/Excused:** Jeff Burton (Vice Chair) and Dayson Johnson.

**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**

Vice Chair Burton conducted roll call and indicated Chair Shuman was excused.

#### **1. Minutes: August 1, 2023.**

Chair Shuman asked if there are any corrections to be made to the minutes as presented. No corrections were made, and Chair Shuman declared the minutes approved as presented.

#### **Petitions, Applications, and Public Hearings:**

##### **2. Administrative Items:**

**2.1 CUP 2023-06: Request for approval of a conditional use permit for a recreation lodge in the FV-3 (Forest Valley-3 acres) zone, located at 5597 E Hwy 39, Huntsville, UT, 84317. This proposal includes 6 sleeping rooms with onsite winter and summer amenities such as sledding, hiking, pickle ball courts, bike trails, and archery. Planner: Tammy Aydelotte**

Planner Aydelotte explained the applicant is requesting approval of a conditional use permit for a recreation lodge located in the FV-3 zone at 5597 East Highway 39. The single-family dwelling on the property was built in 1981. Ms. Aydelotte provided a summary of staff's analysis of the application to determine compliance with the General Plan and Zoning ordinance, conditional use standards, and design review. She reviewed the site plan for the property and indicated it includes indoor and outdoor amenities that will be accessible during all seasons. Staff recommends approval of this conditional use permit application subject to the applicant meeting the following condition of approval in addition to all conditions of County review agencies and the Ogden Valley Planning Commission. Planning conditions of approval:

1. The applicant shall obtain a valid Weber County Business License.
2. A conditional use permit shall be issued, conditioned upon meeting Weber Fire District, and Weber County Engineering's requirements for the access road, no later than June of 2024.
3. All other requirements shall be met prior to the conditional use permit being issued.
4. The applicant will obtain an access approval from UDOT.

This recommendation is based on the following findings:

1. The proposed use is allowed in the FV-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 potential detrimental effects can be accomplished.

Ms. Aydelotte concluded her report by providing detailed information about the parking recommendations for the project; applying bed and breakfast inn standards, as there are no parking standards for a recreation lodge, the parking requirement is one space per each rental sleeping (6) room in addition to the owner/host required two parking spaces. The required minimum number of spaces is 8. Applicant is proposing 12 parking spaces on site. Per Weber County LUC 108-8-7, all private parking facilities must be improved with a hard surface such as concrete or asphalt and must be sloped and graded to prevent drainage of storm

water onto adjacent properties. The setback requirements for bed and breakfast guest parking conform to the minimum setback requirements of the FV-3 zone (front/rear – 30 feet, side – 20 feet).

Commissioner Torman asked how the County will enforce the requirement for the road to be widened after the CUP is issued. Ms. Aydelotte stated that in this particular case, the applicant will need to apply for a business license and pass certain inspections; if the improvements are not completed by a date certain, the CUP can be revoked.

Commissioner Wampler asked about the parking ratio; she asked if the requirement is one parking spot for the bed and breakfast and one for the host. Ms. Aydelotte stated two parking spots are required for the host. Commissioner Wampler noted it is her understanding that the host is not required to stay on site, but if the host or another visitor is required to go to the site for any reason, it may be appropriate to require an additional parking spot. Ms. Aydelotte stated the applicant has proposed 10 to 12 parking spots, even though the minimum requirement is six parking spots. The Planning Commission can certainly require more parking spots. Commissioner Wampler expressed concern that the Commission may set a precedent since there are no standards for recreational lodges. Legal Counsel Erickson stated he would not be concerned about setting a legal precedent, but it makes sense to treat different applications in the same way. Commissioner Wampler stated she appreciates that this applicant is providing more spaces than required, but if the Commission only requires six parking spaces, a future applicant may ask for that same consideration. Planning Director Grover stated that different parking requirements could be imposed based upon unique conditions of a specific site; conditional use permits are considered on a case-by-case basis and any permit granted will run with the land and not be relevant for another property.

Commissioner Barker asked if the road is a private road, to which Ms. Aydelotte answered yes. Commissioner Barber asked if there will be a homeowner's association (HOA) and covenants, conditions, and restrictions (CCRs) for the project. Ms. Aydelotte stated the road is not a dedicated private road, but rather an access easement that is made of road base. There are five homes and seven or eight lots, and the owners of those properties currently use the access easement. She stated it is her understanding that the property owners all contribute to snow removal and other maintenance costs, but she deferred to the applicant to address that question in greater detail. Commissioner Barber asked if there are existing CCRs for those lots. Ms. Aydelotte answered no.

Commissioner Montgomery moved to approve application CUP 2023-06, conditional use permit for a recreation lodge in the FV3 (Forest Valley-3 acres) zone, located at 5597 E Hwy 39, Huntsville, UT, 84317, based on the findings and subject to the conditions listed in the staff report.

Commissioner Wampler offered a friendly amendment to increase the parking requirements for the CUP; she wished to require one parking spot per bedroom plus two for the host. She also asked to add a condition to require an enhanced treatment on-site unit as recommended by the Utah Geological Survey Study 165.

Commissioner Montgomery stated that the applicant is already providing more parking spaces than recommended by staff and the Health Department will regulate the septic system improvements to ensure they are operable; he respectfully declined Commissioner Wampler's friendly amendment.

Commissioner Torman seconded the motion. Commissioners Barber, Montgomery, Torman, Shuman, and Wampler all voted aye. (Motion carried on a vote of 5-0 vote).

**2.2 UVG052523 – Request for preliminary approval of Gateway Estates Phases 2-22, in the F-5(Forest 5 acres) and F-40 (Forest 40 acres) zones, located at approximately 748 E, Hwy 39, Huntsville, UT, 84317. This proposal includes both public and private roadways. Planner: Tammy Aydelotte**

Planner Aydelotte explained the applicant is requesting preliminary approval of Gateway Estates Subdivision Phases 2-22, consisting of 21 lots, in the F-5 and F-40 zones. The proposed subdivision and lot configuration are in conformance with the applicable zoning and subdivision requirements as required by the Uniform Land Use Code of Weber County (LUC). Dedication of a new County road is included with this proposal. The following is a brief synopsis of the review criteria and conformance with LUC. She provided a summary of staff's analysis of the application to determine compliance with the General Plan and Zoning ordinance; consideration of lot area, frontage/width and yard regulations; culinary water and sanitary sewage disposal; natural

hazards/wetlands; street standards; review agencies; and tax clearance. She concluded staff recommends preliminary approval of Gateway Estates Subdivision Phases 2-22, consisting of 21 lots, dedication of new public and private roads, located at approximately 748 E Hwy 39, Huntsville. This recommendation is subject to all review agency requirements prior to recording of the subdivision, and the following conditions:

1. An approved plan with Weber Fire District must be submitted prior to going before the Planning Commission for a recommendation of final approval.
2. An onsite wastewater disposal covenant shall be recorded with the final plat
3. A private well covenant shall be recorded with the final plat.
4. All required improvements shall be either installed, escrowed for, or a combination of both, prior to County Commission approval.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan
2. The proposed subdivision complies with applicable county ordinances

Commissioner Torman asked if the Commission has considered an application for this property in the past, but there were concerns about the steep grade of the property; it seems the applicant has addressed the grade with their road configuration. Ms. Aydelotte answered yes and stated that is correct; the plans show their road grade will not exceed 12 percent, but they will need to submit improvement plans as they are building the road to prove they can keep the grade under 12 percent. Chair Shuman added that there was an outstanding issue relating to applicant needing to secure approval from the Utah Department of Transportation (UDOT) for an access point to the property. Ms. Aydelotte stated that is correct; they have received approval from UDOT, and they have dedicated additional roadway along Highway 39 to the State.

Commissioner Wampler stated that when the Commission was discussing the Osprey Ranch project, there was a requirement for evacuation routes and break gates at points where the road transition from public to private. She asked if that has been considered for this project as well. Ms. Aydelotte answered no, those requirements are not included in the LUC for the number of roads and access points in the project. They have provided a second stub out of the project at the westernmost boundary.

Commissioner Barber asked if every home will need to have a fire suppression system, to which Ms. Aydelotte answered yes, that is being required by Weber Fire District.

Commissioner Torman moved to approve application UVG052523, request for preliminary approval of Gateway Estates Phases 2-22, in the F-5 (Forest 5 acres) and F-40 (Forest 40 acres) zones, located at approximately 748 E, Hwy 39, Huntsville, UT, 84317, based on the findings and subject to the conditions listed in the staff report. Commissioner Wampler seconded the motion. Commissioners Barber, Montgomery, Torman, Shuman, and Wampler all voted aye. (Motion carried on a 5-0 vote).

### **2.3 UVV071123: Consideration and action on a request for a recommendation of approval of the Village Nests Retreat at Powder Mountain, located at 5780 N Daybreak Ridge, Eden. Planner: Steve Burton**

Planner Burton explained this application was accepted for review on July 11, 2023. The proposal is a twenty-lot subdivision amending the original twenty lot subdivision called Village Nests East at Powder Mountain. The purpose for the amendment is to take in additional property and change the building envelopes to larger building lots. The proposal complies with the county land use code. On September 26, 2023 the Ogden Valley Planning Commission granted preliminary approval of the proposal. He provided a summary of staff's analysis of the application to determine compliance with the General Plan and Zoning ordinance; consideration of culinary water, secondary water, and sanitary sewage disposal; relation to adjoining street systems/Ogden Valley pathways; and review agencies. Staff recommends that the Planning Commission forward a recommendation for final approval of UVV071123. This recommendation for approval is subject to all review agency requirements, and the following conditions:

1. A no access line will be added along Daybreak Ridge for the double frontage lots.

This recommendation is 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.

Commissioner Torman stated that it seems that when staff presents applications for small lot subdivisions down in the Valley there is a requirement to provide trail connections, but he wondered if that is not a requirement for similar projects on the hillside. Mr. Burton stated that in this area, there is a master plan and development agreement that outlines the open space and trails to be provided; the master plan does not identify trails in this area, but the developer will be required to provide trails and open space in other areas. He noted that upwards of 877 acres of open space has been dedicated and it includes public access trails.

Commissioner Barber moved to approve application UVV071123, request for a recommendation of approval of the Village Nests Retreat at Powder Mountain, located at 5780 N Daybreak Ridge, Eden, based on the findings and subject to the conditions listed in the staff report. Commissioner Montgomery seconded the motion. Commissioners Barber, Montgomery, Torman, Shuman and Wampler all voted aye. (Motion carried on a 5-0 vote).

### **Petitions, Applications, and Public Hearings:**

#### **3. Legislative Items:**

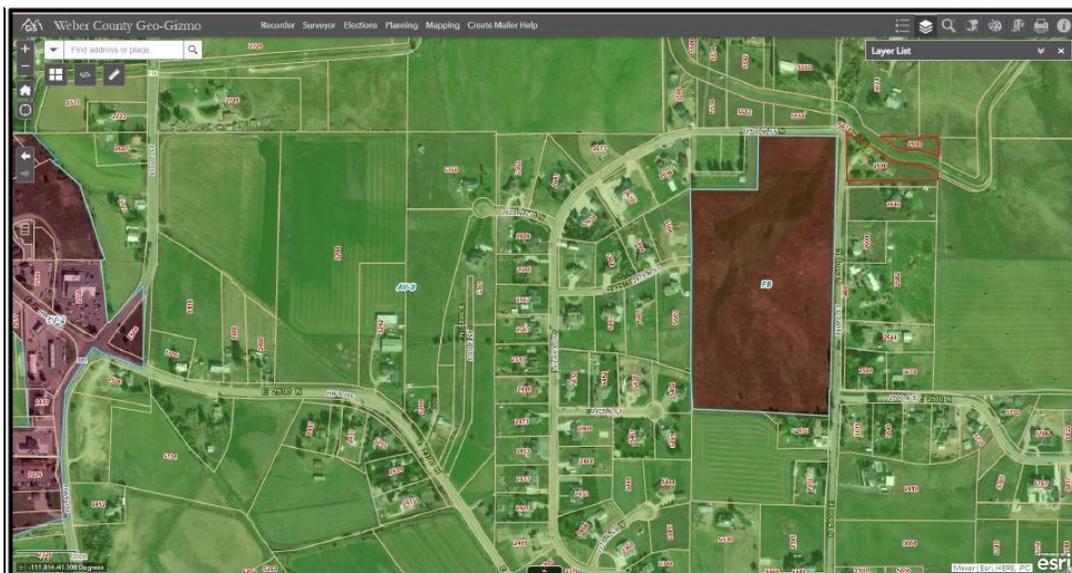
**3.1 ZMA2023-12 – PUBLIC HEARING** – Discussion and possible action on a request for approval of a zoning map amendment for 2.26 acres parcel of land located at 2690 N 5600 E, Eden, UT, changing the zoning from AV-3 (Agricultural) to FBZ (Form Based Zone). **Planner: Bill Cobabe.**

Legal Counsel Erickson stated he has been asked to talk about the adoption of the Street Regulating Plans, which can be used to rezone this property into the Form Based Zone; it is his understanding that some have questioned whether the Street Regulating Plan was properly adopted. He views his role of being an advisor to the Planning Commission on the matter of whether it would be appropriate for them to consider the Form Based Zone and the Street Regulating Plan that goes along with it. He stated that it is his opinion that the Planning Commission can consider the Form Based Zoning Ordinance and Street Regulating Plan to have been validly adopted and it is appropriate for them to consider this opinion when determining whether to act on the rezone application. He has a couple of reasons for feeling the adoption was valid; in October of 2021, there was a proposal to the Planning Commission to make a recommendation regarding the New Town Eden Village Area. The Planning Commission made a recommendation to the County Commission regarding that issue and State Law indicates that after the Legislative Body receives a recommendation from the Planning Commission on an ordinance change, they may adopt or reject the proposed land use regulation as proposed by the Planning Commission or after making any revision the Legislative Body feels appropriate. In this case, the Legislative Body did revise – perhaps somewhat significantly – the recommendation provided by the Planning Commission, and adopted it with those revisions. It is his opinion that was a valid exercise of their legislative authority. An opposing argument could be made, but he feels courts would give a lot of deference to what the Legislative Body did in this case, which was a zoning change for the Eden area. He does not view their changes as big enough to make the action invalid. Since that time, the same Form Based Code with accompanying maps has been in front of the Planning Commission and subsequently the County Commission. Therefore, there is an argument that even if the first action on the ordinance was invalid, it has since come to the Planning Commission and County Commission through the defined public. He would argue that any initial invalid action has been cured by subsequent actions on the same matter. The final reason he feels the action is valid is that there is a 30-day timeframe for people to challenge a legislative ordinance as long as proper notice of the public hearing on the proposed ordinance was given. He has been told that proper notice was given, and he is not aware of any legal challenge that happened during that 30-day period. He concluded he is not a judge, and his opinion is not a guarantee, but it is his legal opinion that the action would be upheld if the action were challenged.

Commissioner Wampler asked if the 30-day time limit is measured from the Planning Commission's action or the County Commission's action. Mr. Erickson stated it started following the County Commission's action on the ordinance since they are the body that has the authority to enact land use regulations. Commissioner Wampler asked when the County Commission voted on the ordinance, to which Mr. Erickson answered January of 2022. Commissioner Wampler noted Mr. Erickson indicated the same ordinance and map came before the Planning Commission at a later date, but she is not familiar with when that occurred. She was appointed to the Planning Commission in the summer of 2022 and ever since then, it has been presented to her as a map that has already been adopted. She has never voted on a recommendation regarding the ordinance and maps. Mr. Erickson stated that the amendments occurred in August of 2022 and May of 2023. Commissioner Wampler stated that those amendments were discussed in work sessions, but the Planning Commission never actually voted on them. Planning Director Grover stated that is

not accurate; they were voted on in a business meeting following a public hearing. Chair Shuman clarified that the staff is referencing the entire ordinance and accompanying maps, not an amendment specific to an individual property or area.

Planner Cobabe then explained on July 6, 2023 this application was accepted for review. On August 22, 2023, the applicant met with the Ogden Valley Planning Commission in work session. At that work session, the applicant heard from the Planning Commission regarding any concerns that they may have. This report contains an analysis of the proposal as it relates to the Weber County codes. The following images show the subject properties location and on existing zoning map.



He noted this application appears to meet the minimum requirements for a complete application. Section 102-5-6 of the Land Use Code provides direction regarding the duties of the Planning Commission when taking action on legislative items such as rezones: “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 Planning Commission and County Commission are encouraged to consider the following factors, among other factors they deem relevant.” He reviewed staff’s analysis of the relevant factors to consider regarding a rezone request, including compliance with the General Plan and Street Regulating Plan and the adequacy of facilities and services intended to serve the subject property. The property will need to transfer in development rights in order to subdivide or otherwise develop the property. Once this right is available, and due to the size of the lot, there will be a maximum of two lots on the property, one of which would contain the existing home. The property owner has

not submitted to the County a suggested or conceptual layout, but it a review of the Code demonstrates how this might be done. Options include:

1. Flag lot. A flag lot may be considered for this property. The requirements for having a flag lot are outlined in Section 1062-4.010 (e). These requirements note the minimum lot area, frontage, and access standards that must be adhered to.
2. A standard subdivision. Because the existing frontage of the lot is only about 270', the development of the property may require the dedication of additional right of way in order to allow for the total required frontage. The smaller lot – the parcel to the south of the main structure – is already about 30' wide and is used as an access for the property to the south. Dedication of this access – either as a public roadway or a private drive – may facilitate the access needed and frontage required.
3. The property owner may also decide not to pursue development at this time and wait until the properties in the area develop with their roadways and accesses. Coordination in these efforts could result in the necessary frontage/access requirements.

While still speculative, this analysis demonstrates that there are options for the developer should any of them be desirable. Staff recommends that the Planning Commission forward a positive recommendation of the requested zoning map amendment application, based on the following:

1. That the Future Land Use Map of the General Plan and Form-Based Zone Street Regulating Plan support the requested zone change.
2. The proposed zone change does not adversely impact the surrounding neighborhood, open spaces, or anticipated uses in the area.

Commissioner Wampler referenced the maps presented by Mr. Cobabe and asked why the four-way stop is shaded in red. Chair Shuman stated that area is actually zoned commercial and not Form Based. Mr. Cobabe stated that is correct. Commissioner Wampler then asked about changing the zoning of a property to Form Based when that property is outside of a Village area. The idea behind the Form Based strategy and transfer of development rights (TDR) is to transfer density from the Valley floor into the seven designated Village areas in order to create and protect open space. When density is transferred to a rural area that is not part of a Village, she is not sure how that honors the General Plan. Mr. Cobabe stated that the General Plan designates Village areas, which are identified on the General Plan Map; a quarter mile is considered to be a walking distance for the purposes of determining if an area is walkable. He reviewed the distance between the subject property and both the Old and New Town Eden Village areas, and they are both about three-quarters of a mile from the site. It is not likely that someone living on this property will walk to the grocery store and carry their groceries back, but a walk to the park is not a terrible distance. The Village centers were never meant to be prescriptive in terms of the distance from a certain location, but they were intended to be centered around which population density and TDRs will accumulate. The intent was not to build a wall around the Village areas and to keep everything beyond that wall rural. The intent was to blend and transition from higher to lower density and one-acre sized lots are still a very generous sized lot and could be compatible with the overall Village feeling as transition occurs from the middle of the Village to the more rural surrounding areas beyond it. Commissioner Wampler stated this application has awakened a concern in her; usually when the Planning Commission is talking about the Form Based Zone, they are usually discussing the Village areas and not creating density outside of the Village areas. She asked if the zoning designation can be confined to the seven Village areas. Mr. Cobabe stated that is certainly a possibility but would take a revision of the Street Regulating Plan. Chair Shuman stated that this application is more immediate and now is not the right time to set the boundaries for Form Based Zoning; however, he knows the Planning Commission has expressed that concern and it is something that could be considered in the future. Commissioner Wampler asked if the ordinance specifies that the Form Based Zone cannot be extended to properties past the 'bleed down' area of the Village. Mr. Cobabe stated that if there is a property that is not bordered or bounded by one of the streets in the Street Regulating Plan, the applicant would need to pursue a zone text change and Street Regulating Plan amendment before applying for the zoning. This application is only in front of the Planning Commission because it is on one of the streets that has been designated a rural-residential street in the Street Regulating Plan.

Commissioner Montgomery asked if there are any estate lot residential zoned properties on the map that is included in the staff report. Mr. Cobabe answered no; everything beyond the subject property is three-acre zoning, AV-3.

Commissioner Barber stated that he has asked several questions about this property, many of which are based upon the odd configuration. He asked if the waterway on the property is truly a canal. Mr. Cobabe answered yes, as far as he is aware.

Commissioner Barber stated that it is his understanding the canal cannot be spanned, but there is a small portion of property – a quarter of an acre – on the other side of the canal that is included in the total property size but can't be used because it cannot be accessed or made part of the construction of a second home. Mr. Cobabe stated Planning staff will work on a development agreement with the property to get some land on the north side of the property for the eventual extension of 2700 North, which will go into the northwest corner of the property and could provide additional frontage and avoid the flag lot situation. That would also take into account some of the left-over acreage on the northeast corner of the property. Commissioner Barber stated both of those possibilities are 'unknowns' and, for that reason, he is struggling with the timing of this application. He is unsure how two homes could be laid out on the property and that the existing home could not be expanded because of problems with the septic system. However, this application would result in two septic systems on the same property. In the future there may be a sewer line that the property owner could connect to, but that is not currently an option, and he is concerned about the timing of this matter. Planning Director Grover asked Mr. Cobabe to identify the location of the road and how 2700 North would interact with the subject property. Mr. Cobabe identified the location of the future 2700 North extension and noted that the details about that road would be determined at the subdivision application step of the process. With regard to the sewer services, there are a number of options ranging from doing nothing to something that is very expensive. If a solution can be imagined, it likely can be engineered and the question is whether the Health Department will accept/approve those options. Concern about those matters could be sufficient reason to recommend denial of the zone change at this time, but he assured the Commission that if the zoning is approved and the application moves to the subdivision application, the hurdles are much more exacting and specific and if the property owner is not able to find a way to solve the problems with the property, the answer to the subdivision application will be 'no'.

Chair Shuman stated that the current application before the Commission is a zone change application and the Commission is charged with determining if the proposal conforms with the General Plan; it is a legislative decision and subject to public opinion. He addressed Mr. Cobabe's mention of a development agreement and noted one of the reasons given for adopting a Form Based Zone ordinance was to avoid the need for development agreements for individual projects/properties. He asked why the County would be willing to consider a development agreement for this property. Mr. Cobabe stated he does not like to apply conditions to a legislative application; he feels conditions can be imposed on an administrative action. Chair Shuman stated that a development agreement is essentially a set of conditions being placed on a property. Mr. Cobabe stated that a development agreement is a mechanism for the County to achieve concessions and considerations from the applicant, and the same in return for the applicant. He reiterated conditions should be reserved for administrative items. Chair Shuman asked if it is fair to say that a development agreement is a condition of a rezone approval. Mr. Grover stated that would be fair to say; with the Form Based Code, the intent was to spell out certain conditions that would be imposed on a zoning applicant. For this particular property, the development agreement will address the road and providing for connectivity. Chair Shuman stated that he wants to avoid development agreements when possible. Mr. Grover stated if the Commission finds that this application meets the street regulating plan and the timing of the zone change is right, they can forward a positive recommendation.

Chair Shuman opened the public hearing at 6:13 p.m.

James Bird stated that he shares many of the concerns expressed by the Commission regarding the extension of the Form Based Code to this property; he referenced the Commission's meeting minutes of May 16, 2023, which was held in conjunction with a request for a zone change for "The Dog and Bone" from AV-3 to Form Based. He was surprised that the zone change application was for property outside of a Village area. He asked about this matter during the meeting and was told that the zoning designation would be available to any property in the Valley, not just the Village areas. Essentially, all properties were eligible for Form Based Zoning with some limitations. He also asked if "The Dog and Bone" could achieve the same result if they asked for FR-1 rather than Form Based Zoning and the answer was that the Form Based Zone gave the County more control over the architecture and the road, but he did not receive a question about why the applicant didn't pursue the other zone and he has the same question for this property. Why is the applicant requesting Form Based Zoning if their true intent is just to develop another lot. This project would be allowed in the FR-1 zone and his concern is that with the Form Based Zone, the allowances are broad. The ordinance for the Form Based Zone is 147 pages long while the FR-1 zoning ordinance is just four pages. The public cannot understand all of the regulations in the Form Based Zone, but they can understand the FR-1 zone. He would like to know if the property would be allowed to have short-term rentals; he does know that a TDR is allowed, and this could be used to transfer the development right to another property. He does not understand why the County is allowing these applications and he feels there must be some limit on the distance from a subject property to a Village area. A 147-page ordinance document is very difficult for the public to read and understand.

There were no additional persons appearing to be heard.

Commissioner Montgomery moved to close the public hearing. Commissioner Torman seconded the motion, all voted in favor.

Chair Shuman invited input from the applicant.

Seth Herway stated that he owns the property, which is a 2.26-acre parcel that he would like to subdivide into two parcels to allow an additional building to be built. He stated that "The Dog and Bone" property is also Form Based, and they are pursuing one-acre lots as well. He understands there are several issues he must still address regarding sewer and connectivity, and he will work on those issues. He noted the main reason for pursuing this Zone is because he did not want to pour a significant amount of money into the existing home and is choosing instead to build a new home on the additional lot and preserve the current home for family. He feels the zoning application is reasonable based upon the surrounding properties and the Street Regulating Plan. He does feel like his property is part of the Eden Village.

Chair Shuman recognized an additional member of the public participating electronically. The individual asked if the Commission was taking public input on all agenda items, or just the property at 260- N. 5600 E. Chair Shuman stated that at this time the Commission is only taking input on this application.

Commissioner Wampler then stated she is also uneasy about the timing of this application; the staff report indicated there is no urgency associated with the application as there are no immediate plans to build on the property. However, from the applicant's statement, she believes he does want to move forward with construction fairly soon and she asked which statement is true. Mr. Herway stated that he would like to pursue construction on the property and in speaking with Planning staff, he was told this was the first step in the process. If the zoning application is approved, he will begin working on the unresolved issues that have been raised tonight. Commissioner Wampler addressed Mr. Bird's public comments and asked if zoning to the FR-1 zone would give Mr. Herway an additional development right, rather than needing to transfer another right into the property. Mr. Cobabe answered yes; there would be an entitlement that would carry forward to any future development. The purpose of the Form Based Zone is to not create any additional density in the Valley and the idea is to keep the rights as they currently are. Commissioner Wampler stated approval of the Form Based Zone application would essentially take a development right from another area rather than creating a new one. Mr. Cobabe stated that is correct. Mr. Grover added that zoning the property FR-1 could be considered 'spot zoning' because there is no other property around the subject property that is zoned FR-1.

Brief discussion among the Commission centered on the benefits of the Form Based Zone relative to maintaining or reducing current density of the Valley. Chair Shuman advised Mr. Bird to speak with Planning staff regarding the reason the Form Based Zone ordinance is 147 pages long, compared to much shorter ordinances.

Commissioner Barber stated he still has concerns about the timing of the application, one of them being that this is a very unique lot that is bisected by government owned property. It is nothing like the "Dog and Bone" property across the street, which is a 20-acre blank slate. The unique nature of this property means that it would be challenging to develop in a meaningful way. Commissioner Wampler stated that before hearing from the applicant, she was also concerned about the timing, especially given the number of unanswered questions. However, when she heard from the applicant that he is interested in moving forward as soon as possible, with the knowledge that the subdivision will not be approved if he is unable to address the outstanding issues, she feels the rezone can be approved. She reiterated, however, that she is still concerned that the property is on the 'fringe' of the Village area that is subject to Form Based Zoning.

Commissioner Montgomery moved to forward a positive recommendation to the County Commission to approve application ZMA2023-12, request for approval of a zoning map amendment for a 2.26 acres parcel of land located at 2690 N 5600 E, Eden, UT, changing the zoning from AV-3 (Agricultural) to FBZ (Form Based Zone, based on the findings that the rezone conforms to the General Plan and the Street Regulating Plan. Commissioner Torman seconded the motion. Commissioners Montgomery, Torman, Shuman, and Wampler all voted aye. Commissioner Barber voted nay. (Motion carried on a 4-1 vote)

#### **4. Public comments for items not on the agenda.**

Paul Joyce stated he lives in Huntsville, and he spoke about water availability; he has spent a significant amount of time learning about the acquisition of and the differences between water shares and rights. He spent a significant amount of time with the Planning Commission two years ago helping to rewrite a section of the Land Use Code, 106-4-2, which specifically addresses requirements for culinary and secondary water in subdivisions. He engaged in a five-year lawsuit with a developer about water, which was based upon his believe that the Planning Commission and the County Commission did not interpret the Code as it was intended, and his participation on the taskforce two years ago was a result of that experience. He has continued to follow these meetings since the Code was rewritten and he continues to see grave mistakes being made, over and over again. He stated that during tonight's pre-meeting, Chair Shuman indicated that the Planning Commissioners are not experts, and they are leaning on the expertise of Planning staff for recommendations, however Planning staff is still getting wrong. For this reason, he implored the Commission to read Section 106-4-2 of the Land Use Code, which should take no longer than 10 minutes. It will help them to do a better job at approving subdivisions based upon water requirements.

Trina White stated she lives in Huntsville, and she addressed the application on tonight's agenda dealing with a year-round resort operation, application CUP2023-06. She noted that Ms. Aydelotte reported the Health Department imposes sewer/septic requirements based upon the number of sleeping rooms rather than the number of people in a household. She stated the property could host a large number of people on a daily basis as they are utilizing the recreational amenities, and this is regardless of the number of sleeping rooms. She asked how the sewer and water services will be regulated in that scenario.

Mr. Grover advised that Ms. White contact Ms. Aydelotte to discuss that concern. Ms. Aydelotte noted that there are a couple of tools the County relies upon for enforcement of conditions of a CUP; the County relies on the Health Department relative to septic capacity and the sections of State Code they use to impose requirements based upon sleeping rooms and sleeping capacity. The property owner will also be required to obtain a business license, which will be very specific in terms of the number of individuals that are allowed to stay as part of a party at the site, and the duration of those stays. She added she is willing to talk with Ms. White about the issue in more detail following this meeting.

#### **5. Remarks from Planning Commissioners.**

Commissioner Barber stated that since being appointed to the Planning Commission, he has suggested several times that the General Plan needs to be updated for a range of reasons; he keeps getting told no. One reason for not pursuing the update is that the County Commission does not want to spend money on the project. The County just spent half a million dollars on signs in the Valley that are – in his opinion – out of proportion and out of sync with the General Plan. If they were to ask the residents in the Valley if they would like a more 'dialed in' General Plan, or two large signs a few hundred yards from the market, both saying where the market is, the answer would be clear. The County wasted a half a million dollars and he does not think too many people in the Valley will agree that was the right thing to do with their taxpayer money, though no one has been specific about the source of the funding. He stated that the General Plan calls for transfer of development rights (TDRs) to not come from unbuildable land, yet they can at this time. The reality is that not all TDRs have the same value and the people who wrote the General Plan knew that, yet the zoning ordinances that have been enacted do not reflect that. He reiterated that the County needs to spent money on updating the General Plan to be truly functional and not fantasy based. He then stated that at the last meeting, which was held in the Ogden Valley, there were problems. He walked into the room and knew it was going to be too small and the sound was going to be bad. If he knew that, the County staff should have known it too and they proceeded anyway. He feels that meetings should be held in the Valley more frequently. He also discussed missed opportunities during that meeting. The Planning staff made a presentation, but it did not cover some of the fundamental issues that are concerning to the Valley residents right now. For example, there is a lot of confusion about the Street Regulating Plan and that would have been a great opportunity to explain it to those that were motivated to attend the meeting. He also feels it was a missed opportunity to not let people ask questions during the general section of the meeting. It would have been helpful in learning what is on the minds of the people who live in the Valley. He feels these matters are important; he is on the Commission for no other reason than to be an advocate for the community and he feels the community is often left out of the equation.

Chair Shuman stated that about a month ago there was some concern about damage to trails and pathways in the Valley caused by developers; he asked Planning staff to speak to the division of the County that is responsible to monitor those types of things. Planning Director Grover stated that staff is working on that matter.

#### **6. Planning Director Report:**

Planning Director Grover reported on changes to the meeting scheduled for the remainder of the calendar year. He added he will also relay the Commission's feedback to the County Commission.

**7. Remarks from Legal Counsel:**

There were no remarks from Legal Counsel.

**Adjourn to Work Session at 6:47 p.m.**

**WS1 ZTA2023-06 – Discussion on proposed changes to the street tree ordinance (Section 106-4-2.080) and a proposed list of approved street trees. Planner: Bill Cobabe**

Planner Cobabe presented a proposed ordinance updating the County's Land Use Code governing street trees. The ordinance extensively modifies Section 106-4-23080, which currently reads: "Street trees shall be planted by the applicant when so required by the planning commission." Staff is also proposing to add a new Section to Chapter 108-7-7, indicating how trees in the public right of way should be maintained. The proposed ordinance has two parts: one is the proposed amendments to the Code, while the other is a proposed list of approved trees, plants, and ground covers that meet local requirements and conditions. The proposed approved vegetation list is to be adopted as a resolution rather than an ordinance for ease of adaptation/modification in the future.

Mr. Cobabe facilitated a review of the proposed ordinance document, which led to high level discussion of the history of the requirement for street trees in the Ogden Valley; the party that is responsible for maintaining and watering the trees; and whether the recommended street trees are considered to be drought tolerant. Mr. Cobabe invited the Commission to email him with any concerns or suggested edits to the ordinance before it is presented to the body at an upcoming meeting for consideration of forwarding a recommendation to the County Commission.

**Meeting Adjourned: The meeting adjourned at 6:58 p.m.**

**Respectfully Submitted,**

     *Cassie Brown*

**Weber County Planning Commission**

