

OGDEN VALLEY PLANNING COMMISSION

MEETING AGENDA

December 19, 2023

Pre-meeting 4:30/Regular Meeting 5:00



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

1. Minutes: 8-22-2023, 9-26-2023, 10-24-2023
2. Planning Calendar 2024

Petitions, Applications, and Public Hearings:

3. Administrative Items:

3.1 CUP 2023-14 - A request for approval of a conditional use permit for a conference/education center located at 6015 N 3100 E, Liberty. **Planner: Felix Lleverino**

Petitions, Applications, and Public Hearings:

4. Legislative Items:

4.1 ZDA 2022-02: Consideration of an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights. **Planner: Steve Burton**

4.2 ZTA 2023-11 and ZTA 2023-12 – PUBLIC HEARING – Discussion and possible action on portions Section 106 of the Weber County Land Use Code regarding subdivision approval procedures and requirements for financial guarantees for public improvements. **Planner: Bill Cobabe**

5. Public Comment for Items not on the Agenda:
6. Remarks from Planning Commissioners:
7. Planning Director Report:
8. Remarks from Legal Counsel

Adjourn

The regular meeting will be held in person at the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.

& Via Zoom Video Conferencing at <https://webercountyutah.zoom.us/j/84115804830> Meeting ID: 841 1580 4830

A Pre-Meeting will be held at 4:30 p.m. The agenda for the pre-meeting consists of discussion of the same items listed above, on the agenda for the meeting. No decisions are made in the pre-meeting, but it is an open public meeting.

In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8761

Meeting Procedures

Outline of Meeting Procedures:

- ❖ The Chair will call the meeting to order, read the opening meeting statement, and then introduce the item.
- ❖ The typical order is for consent items, old business, and then any new business.
- ❖ Please respect the right of other participants to see, hear, and fully participate in the proceedings. In this regard, anyone who becomes disruptive, or refuses to follow the outlined procedures, is subject to removal from the meeting.

Role of Staff:

- ❖ Staff will review the staff report, address the approval criteria, and give a recommendation on the application.
- ❖ The Staff recommendation is based on conformance to the general plan and meeting the ordinance approval criteria.

Role of the Applicant:

- ❖ The applicant will outline the nature of the request and present supporting evidence.
- ❖ The applicant will address any questions the Planning Commission may have.

Role of the Planning Commission:

- ❖ To judge applications based upon the ordinance criteria, not emotions.
- ❖ The Planning Commission's decision is based upon making findings consistent with the ordinance criteria.

Public Comment:

- ❖ The meeting will then be open for either public hearing or comment. Persons in support of and in opposition to the application or item for discussion will provide input and comments.
- ❖ The commission may impose time limits for comment to facilitate the business of the Planning Commission.

Planning Commission Action:

- ❖ The Chair will then close the agenda item from any further public comments. Staff is asked if they have further comments or recommendations.
- ❖ A Planning Commissioner makes a motion and second, then the Planning Commission deliberates the issue. The Planning Commission may ask questions for further clarification.
- ❖ The Chair then calls for a vote and announces the decision.

Commenting at Public Meetings and Public Hearings

Address the Decision Makers:

- ❖ When commenting please step to the podium and state your name and address.
- ❖ Please speak into the microphone as the proceedings are being recorded and will be transcribed to written minutes.
- ❖ All comments must be directed toward the matter at hand.
- ❖ All questions must be directed to the Planning Commission.
- ❖ The Planning Commission is grateful and appreciative when comments are pertinent, well organized, and directed specifically to the matter at hand.

Speak to the Point:

- ❖ Do your homework. Obtain the criteria upon which the Planning Commission will base their decision. Know the facts. Don't rely on hearsay and rumor.
- ❖ The application is available for review in the Planning Division office.
- ❖ Speak to the criteria outlined in the ordinances.
- ❖ Don't repeat information that has already been given. If you agree with previous comments, then state that you agree with that comment.
- ❖ Support your arguments with relevant facts and figures.
- ❖ Data should never be distorted to suit your argument; credibility and accuracy are important assets.
- ❖ State your position and your recommendations.

Handouts:

- ❖ Written statements should be accurate and either typed or neatly handwritten with enough copies (10) for the Planning Commission, Staff, and the recorder of the minutes.
- ❖ Handouts and pictures presented as part of the record will be left with the Planning Commission.

Remember Your Objective:

- ❖ Keep your emotions under control, be polite, and be respectful.
- ❖ It does not do your cause any good to anger, alienate, or antagonize the group you are standing in front of.

Minutes of the Work Session of the Ogden Valley Planning Commission for August 22, 2023. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/81117637141>, the time of the meeting, commencing at 5:00 p.m.

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

Absent/Excused: Trevor Shuman 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 and Commissioner Johnson were excused.

1. Minutes: June 27, 2023.

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

Petitions, Applications, and Public Hearings:

2. Legislative Items:

2.1 ZTA2023-03.1 A request for reconsideration of an amendment to the Form-Based zone to insert additional architectural styles, and enable various combinations of architectural styles within village areas. Planner: Charlie Ewert

Planner Ewert explained on May 23, 2023, the planning commission forwarded a negative recommendation to the county commission for a proposed text amendment to the Form Based Zone. The amendment proposal was twofold:

- Changing architectural standards and allowances within certain form-based village areas; and
- Changing the Eden area's street regulating plan.

The County Commission considered the Planning Commission's negative recommendation on June 12, 2023. At this time the County Commission requested that the two components of the proposal be divided into two separate items. The County Commission then remanded the proposed architectural standards back to the Planning Commission to see if the body would reconsider their recommendation specific to this item. He reviewed a document that included redline edits that were recommended by Commissioner Barber (sent to all Commissioners via email) and noted that the Commission can deliberate on the proposed edits, make additional edits, or make no changes and forward a recommendation to the County Commission. He concluded the public hearing for this item was already held on May 23, 2023 and no additional hearing is required for the Planning Commission to forward a new recommendation to the County Commission.

Vice Chair Burton asked if this matter is applicant driven or if it was initiated by the County. Mr. Ewert indicated it was originally applicant driven, but the text before the Commission tonight is different from what the applicant proposed.

Vice Chair Burton invited input from the applicant.

Eric Householder stated that he feels it is important for the Commission to go back and consider what he originally asked for; he was seeking to amend the Form Based zone and provide another architectural option for the New Eden area that would be consistent with the architecture of existing buildings. He would like to proceed with the design of the Eden Crossing project and that is why he is seeking these amendments.

Chair Shuman arrived at the meeting at 5:13 p.m.

Chair Shuman facilitated discussion among the Commission of the applicant's request as well as the text amendments recommended by Commissioner Barber. Commissioner Barber stated he is accepting of Mr. Householder's request for the new style to be added to the New Eden area; it is a well-accepted style in western mountain communities. He also supports the matrix that is included in the draft ordinance to provide guidance for the future, and it can be expanded to show the various ranges of architectural styles available to a developer who may pursue a project in the Valley in the future. Commissioner Burton stated that he does not feel it is the role of government to impose subjective views on a private landowner; he believes this type of ordinance stifles creativity and he does not view it as being 'rural' in nature. Creating a matrix with subjective architectural styles and allowing some designs while prohibiting others is not consistent with 'rural'; rural is not uniform. The main concern of government should be health, safety, and welfare and this matter does not fall into one of those categories. Chair Shuman stated that in this scenario, the Commission is considering architectural styles and would be imposed for a landowner seeking a certain zoning designation for his property. If a property owner wants to develop in a different fashion, they can pursue a different zone, but there should be a tradeoff for receiving the benefits of FB zoning. Commissioner Barber noted that if the land use authority does not impose some development standards and regulations, a community could potentially end up in chaos and he does not think that is what the residents of the Valley want. Commissioner Wampler expressed support for the matrix and agreed with Chair Shuman that a landowner must expect to abide by some type of regulation when seeking a zoning change for their property.

Commissioner Barber moved to forward a positive recommendation to the County Commission regarding application ZTA2023-03.1, amendment to the Form-Based zone to insert additional architectural styles, and enable various combinations of architectural styles within village areas, with adjustments to the matrix that were presented during the meeting. Commissioner Wampler seconded the motion. Commissioners Barber, Shuman, and Wampler all voted aye. Commissioners Montgomery, Torman, and Burton voted nay. (Motion failed on a 3-3 vote).

Commissioner Wampler asked that Commissioners Montgomery and Torman offer an explanation for their opposing votes given that they did not speak prior to the motion being made.

Commissioner Montgomery stated that his concerns are that the applicant is making decisions for other areas of the Valley and he would prefer to wait to see the outcome of the street regulating plan issue and then vote on an application for architectural changes. Commissioner Barber stated he believes the County Commission will approve the street regulating plan exactly how the applicant has requested. He watched the County Commission's work session where the issue was discussed, and the issue was presented to them much differently than it was presented to the Planning Commission, and he believes it will be approved. Now, the Planning Commission does have the opportunity to vote on architectural styles and make a recommendation to the County Commission.

Commissioner Torman stated that the reason for his opposing vote is that there is already a street regulating plan and design standards for New Town Eden and Old Town Eden; it seems they are changing all the time, however, and it is his observation that this proposed change is not appropriate at this time given there is no approved project for the location that the applicant is interested in.

Commissioner Wampler asked if it is correct that County staff 'hijacked' this application and broadened the applicant's requests. Mr. Ewert stated staff does not take responsibility for that, but the Planning Commission has asked for changes to the applicant's proposals.

The Commission then debated the merits of the application and proposed text amendments; Commissioner Wampler stated that since this applicant drive, she wondered if it would be more appropriate to table this item and invite the applicant to submit their final proposal for consideration. Planning Director Grover stated that is an option, but the street regulating plan must be finalized before final action can be taken on the rezone. Mr. Ewert stated that it is appropriate to change the zoning ordinance, if there is support for doing so, before the rezone application is filed by the applicant. Developers have the right to understand zoning regulations before pursuing a zone change.

Commissioner Barber stated he feels the application can stand on its own and he feels the proposals that have been made will offer any landowner with FB zoning on their property more flexibility and development options in the future. He feels the mountain alpine architectural style is appropriate for the Valley regardless of whether the applicant pursues it. Mr. Ewert added that if a landowner within the street regulating plan area were to decide to move forward with development of their property, the only architectural style they would be entitled to is Agrarian under the current ordinance; the proposed ordinance

amendments would give any landowner more options. Commissioner Burton asked why the 'old west' style is being removed. Commissioner Barber stated he suggested the removal of old west because there are no old west buildings in the New Town Eden area. He added that he hopes that Old Town Eden and New Town Eden never merge together because there would be bigger problems associated with density aside from what the architecture will look like. He concluded he does not believe that anyone would spend the money to build an old west style building in New Town Eden. This led to debate of the definition of different architectural styles included in the matrix and ongoing discussion of whether it is appropriate for the County to dictate the manner in which a landowner can develop his property.

Commissioner Torman moved to table application ZTA2023-03.1, amendment to the Form-Based zone to insert additional architectural styles, and enable various combinations of architectural styles within village areas, with the understanding that the proposed changes or other changes could be evaluated with a proposed project in an approved area of the current Form Based zone as written. Commissioner Montgomery seconded the motion.

Commissioner Montgomery asked if there are any other applicant's or landowners waiting on this decision. Mr. Ewert stated this is the only applicant.

Commissioner Wampler inquired as to the intent of Commissioner Torman's motion. Commissioner Torman stated that if an applicant had property in the form-based zone that meets the criteria of the matrix and they are asking for changes in design standards to fit their project, that would be an appropriate time to make changes. Commissioner Wampler asked if that means that the Commission wants to table this application until the landowner has secured form-based zoning for his property, to which Commissioner Torman answered yes; he does not believe someone who does not have form-based zoning on their property should be proposing an amendment to the zone. Commissioner Wampler stated that when she looked at the matrix in the draft ordinance, she was considering it independent of any individual property because she feels it can stand alone. However, she understands the concerns of other Commissioners regarding whether this is the proper procedure.

Legal Counsel Erickson asked if the motion includes a date for the Commission to consider the issue or if there is a triggering event that will initiate the Commission's reconsideration of the application. Commissioner Torman stated that the matter should be tabled until any property owner in the form-based zone brings some kind of request for the change to the architectural standards in the zone.

Commissioner Barber indicated he will vote no to table the application because he feels the applicant deserves an answer and he feels that procedural issues are not a valid reason for tabling. Commissioner Wampler asked if the application fee can be held so that the applicant is not required to pay a new fee when this matter is revisited. Commissioner Torman stated he feels strongly that the procedure is backwards; he is not trying to punish one person or applicant, but he feels the steps that have been taken are out of order. Commissioner Montgomery agreed. He is not saying that the recommended changes are inappropriate, but they should not be acted upon until the applicant has secured the zoning.

Commissioner Wampler asked if there is a requirement for someone who is applying for a code change to be impacted by that code. Mr. Ewert answered no; any individual can pay for an application for a code amendment even if the code amendment would not impact them personally or apply to their property. Commissioner Wampler asked if that means that there is no procedural issue at play. Mr. Ewert stated there is no written procedure or policy that is being violated by the Planning Commission's consideration of this application; there may be a perceived procedure problem, but this is a legislative matter so the Commission can take any action they choose to take.

Chair Shuman called for a vote on the motion to table the application. Commissioners Montgomery, Torman, and Burton all voted aye. Commissioners Barber, Shuman, and Wampler voted nay. (Motion failed on a 3-3 vote).

Chair Shuman discussed the option of converting the application to County-driven and holding a public hearing at the Planning Commission level; the group discussed whether they would be supportive of the application if it were labeled as County-driven rather than applicant driven. Commissioner Burton indicated he would support approval of the matrix in the document if all architectural styles were allowed in all village areas listed in the ordinance. Commissioner Barber indicated that he feels that would be contrary to the General Plan. The Commission debated these two different points of view.

Commissioner Burton moved to forward a positive recommendation to the County Commission regarding application ZTA2023-03.1, amendment to the Form-Based zone to insert additional architectural styles, and enable various combinations of

architectural styles within village areas, with the exception that Section 104-22-6.020(c) (the matrix) be changed to allow all architectural styles in all village areas. The motion died for lack of a second.

Chair Shuman asked that the Commission consider a motion to table the issue to allow for continued discussion in a work session meeting; the Commission should revisit the land use code that has been adopted thus far for the FB zone and determine what changes are appropriate for landowners in village areas. Commissioner Montgomery stated it would be key for him to understand the status of the street regulating plan. Chair Shuman asked if the Commission would like to table this application until after the County Commission's final action on the street regulating plan.

Commissioner Torman moved to table application ZTA2023-03.1, amendment to the Form-Based zone to insert additional architectural styles and enable various combinations of architectural styles within village areas, until the County Commission takes action on the street regulating plan. Commissioner Montgomery seconded the motion. Commissioners Burton, Montgomery, Torman, and Shuman all voted aye. Commissioners Barber, and Wampler voted nay. (Motion carried on a 4-2 vote).

3. Public Comment for Items not on the Agenda:

John Bingham, 3483 North Willow Brook Lane, stated there is an item that has been placed on an agenda twice now, but it has been pulled. It is a conditional use permit (CUP) application for an agritourism operation within a residential zone. He asked that the Commission consider holding a public hearing regarding the application because there has not been an opportunity for public input on this matter. There are many residents who want to provide their input on this matter

4. Remarks from Planning Commissioners:

Commissioner Burton asked for a response on the suggestion that the County encourage the Utah Department of Transportation (UDOT) to install a runaway truck ramp on Trapper's Loop. Planning Director Grover indicated the request has been forwarded to UDOT, but staff has not received a response from them. Commissioner Barber noted that he heard the Mayor of the town of Huntsville contacted the Governor directly and the Governor referred the matter to UDOT and UDOT indicated the cost would be \$5 million and the project is not imminent.

5. Planning Director Report:

Planning Director Grover provided the Commission with a report of recent actions of the County Commission; he also discussed the format of the upcoming meeting scheduled to be held in Ogden Valley on September 26. The agenda for the evening has not been finalized. He concluded by reminding the Commission of upcoming training opportunities.

6. Remarks from Legal Counsel:

There were no remarks from Legal Counsel.

Adjourn to Work Session.

WS1: A work session to discuss ZMA2023-12, an applicant-requested zoning map amendment to change the zoning for a property in the Ogden Valley located at 2690 N 5600 E from Agricultural (AV-3) to Form-Based Code (FB). Planner: Bill Cobabe

Planner Cobabe presented a map identifying the location and current zoning of a proposed zoning map amendment. The proposed zone change would be from the current zone Agricultural (AV-3) to the Form Based Code (FB). He reviewed the applicant's narrative from their application:

"We propose to rezone the property located at 2690 N 5600 E in Eden Utah, comprised of parcels 22-050-0025 and 22-050-0012, to form based zoning. This rezoning would allow a development right located in an open, natural, and scenic area of the Ogden Valley to be reallocated to a village area where the property exists. The referenced property is immediately next to a housing subdivision (Eden Acres) that consists of dozens of parcels of 1 acre lots and a parcel that was recently rezoned (April 2023 to transfer development from Sunnyfield Farms area to the subdivision/village area of the property in question) from AV3 to form based zoning. Rezoning the lot in question would be consistent with the recent rezoning of the parcel across the street from the

2690 N. 5600 E. and consistent with the Ogden Valley General Plan by maintaining the village nature of the housing in the immediate vicinity while eliminating development in more natural and scenic areas."

Mr. Cobabe noted the property to the west was recently rezoned from AV-3 to FB, and the Code does call for this area to be a part of the Form Based Code according to the street regulating plan. The street type calls for this area to be developed as a "Rural Residential" area, allowing for 40,000 square foot lots. Because the property in question is about 2.5 acres, this would allow for one additional dwelling unit to be permitted on the property if the land were to be subdivided, as well as the remaining anticipated uses allowed in the FB zone - Rural Residential areas.

The Commission discussed the nature of the area surrounding the subject property; the reasoning behind subdivision of properties and the potential to realign properties and clean-up problematic property lines; and staff's analysis of the application.

Chair Shuman invited input from the applicant.

Seth Herway indicated that he is seeking a zoning designation that has been assigned to other properties in close proximity to his; he would like to proceed with development of 44,000 square foot lots and he understands he must pursue a zoning change to handle that. He discussed efforts to address ground water issues on the property and noted that he will continue to study the area to determine what type of development can occur and if septic systems can be used on the property.

Commissioner Torman asked staff if they feel the property qualifies for FB village zoning, to which Mr. Ewert answered yes. Mr. Cobabe indicated that it was clearly anticipated that this area would develop as the applicant has represented this evening. Mr. Ewert indicated that if the Planning Commission is comfortable moving this item forward to a business meeting, staff will perform a thorough analysis of the application and determine if it complies with the zoning ordinance and General Plan. Mr. Cobabe agreed; the only question before the Commission is whether they feel the applicant can proceed with formally submitting his application to the County. The Commission indicated they would like some details about whether assigning the FB zone to a flag-lot property is in line with the intent of the FB village ordinance and the General Plan.

A neighbor of Mr. Herway stated that she is confused by the intent of the FB zone and how her neighbor's property could be developed if he is granted the zoning; she is concerned that approval of FB zoning for this property will allow the use to creep further into other undeveloped areas of her neighborhood. Chair Shuman advised the individual to attend the County Commission's meeting when they discuss and act on the street regulating plan. Mr. Ewert also referred to the General Plan directives for the area surrounding Mr. Herway's property. He also offered to visit with the individual to discuss the General Plan and zoning map for the area.

Discussion then shifted to the need to communicate with the public regarding actions that have been taken to create village areas, plans for transfers of development rights (TDRs), inform the public of the type of development that can occur in those areas, and how they may be personally impacted. Mr. Ewert indicated that staff is working on that type of information and plans to discuss these topics during the upcoming community meeting and town hall scheduled in the Valley on September 26.

WS2: A work session to continue the Planning Commission's review of proposed changes to the Agritourism ordinance, and the proposal to add agritourism as a conditional use in the S (shoreline) and F (Forest) zones. Planner: Charlie Ewert.

Principal Planner Ewert explained that in the Planning Commission's last work session, the group reviewed the proposed amendments to the Agritourism chapter of the land use code. The group also reviewed the Shoreline and Forest zones to determine whether agritourism should be allowed there. In that meeting the Planning Commission gave staff direction to make the following additional changes:

- Allow small uses such as educational classes on agritourism operations as small as three acres, but eliminate the allowance of more intense uses. These operations will retain the "Garden" designation. The following are uses that the planning commission may find desirable for these smallest of operations:
 - Children's camp
 - Rental garden or rental row(s)
 - Educational classes
 - Farm tours

- Fee fishing
- Change the acreage of “small” operations to no less than nine acres. Making this change also eliminates the intermediate designation of a “family operation.”

In addition to the above changes requested by the Planning Commission, staff is also proposing a use table that is re-alphabetized to accommodate all of the previously discussed proposed changes. This involves deleting the old use table in favor of inserting a reorganized table. Last, after a review of the Farmland Assessment Act, it appears one of the qualifiers of the current ordinance may be unnecessarily redundant. The Farmland Assessment Act is also attached. Mr. Ewert reviewed the newly proposed changes, which were highlighted in yellow. All other changes previously proposed remain unchanged and are no longer highlighted in the updated version.

The Planning Commission engaged in discussion about current activities occurring in the Valley that may be considered agritourism use, but for which the property owner or business operator has not obtained a permit. Mr. Ewert stated the County is only aware of three current agritourism uses in the Valley; minimum property size that would qualify for an agritourism use and the percentage of an agricultural property that must still be used for agricultural purposes; and the need to ensure that the County’s ordinance does not conflict with other agricultural laws. Mr. Ewert indicated he will use the feedback provided to make additional changes to the proposed ordinance.

Meeting Adjourned: The meeting adjourned at 8:51 p.m.
Respectfully Submitted,

Weber County Planning Commission

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for September 26, 2023, 5:00 p.m. (No Zoom link for this meeting.)

Ogden Valley Planning Commissioners Present: Jeff Burton (Vice Chair), Jeff Barber, Dayson Johnson, Jared Montgomery, Justin Torman, and Janet Wampler.

Absent/Excused: Trevor Shuman.

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: July 18, 2023.

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

Petitions, Applications, and Public Hearings:

2. Administrative Items:

2.1 UVV071123: Consideration and action on a request for preliminary 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. He summarized staff's analysis of the application to determine compliance with the General Plan and zoning ordinances; utility connections; the relation of the subject property to adjoining street systems and Ogden Valley pathways; and input from the review agencies. He concluded staff recommends preliminary approval of UVV071123. This recommendation for approval is subject to all review agency requirements. 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.

Vice Chair Burton invited input from the applicant. There was no input.

Commissioner Torman moved to approve application UVV071123, preliminary 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 Wampler seconded the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, and Wampler all voted aye. (Motion carried on a failed on a 6-0 vote).

2.2 CUP2023-12: Request for approval of a conditional use permit for the Osprey sewer lift station located at approximately 1900 N Highway 158, Eden. Planner: Tammy Aydelotte

Planner Aydelotte explained the applicant is requesting a conditional use permit for a sewer lift station for Osprey Ranch Subdivision, to service Osprey Ranch subdivision, a proposed 61-lot subdivision. This proposed lift station will provide sewer services to two phases of Osprey Ranch Subdivision (Phase 2 is currently under subdivision review), and will be owned, operated, and maintained by Wolf Creek Water and Sewer Improvement District. The lift station is considered a public utility substation.

The application is being processed as an administrative review due to the approval procedures in Uniform Land Use Code of Weber County, Utah (LUC) §108-1-2 which requires the planning commission to review and approve applications for conditional use permits and design reviews. She summarized staff's analysis of the application to determine compliance with the General Plan and zoning ordinances; conditional use review; design review; considerations relating to traffic safety and traffic congestion; landscaping; and buildings and site layout. She concluded Staff recommends approval of this conditional use application subject to the applicant meeting the review agency requirements and the following conditions:

1. Any outdoor lighting must meet the requirements of the Ogden Valley Outdoor Lighting Ordinance (108-16).
2. All architectural requirements shall be followed, and shown in the final engineered plans, prior to issuance of a building conditional use permit.

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.

Commissioner Wampler addressed common concerns from the public regarding lift stations, including noise generated by the stations, smells, and ground disturbance, such as vibrations. Ms. Aydelotte deferred to the applicant to address those concerns.

Vice Chair Burton invited input from the applicant.

Eric Householder stated that the design of the station incorporates noise reducing equipment; the generator will be enclosed inside of a building. He does not anticipate any odors from the lift station, but if odors are present in the future, he can use a scrubber to help with that issue. He then noted that he has not been made aware of any ground vibration issues. He then referenced renderings of the project and noted that he is proposing to use a metal roof on the building, which will be owned and operated by the Wolf Creek Water and Sewer District.

Commissioner Johnson acknowledged the fact that CMU is not a permitted building material. He received a call from the Wolf Creek Water and Sewer District, and they communicated that it is a preferred building material because it is easier to maintain than other materials. Ms. Aydelotte stated that the code does allow a CMU material with a tumbled or weathered look so that it looks like stone with regard to color and texture. She clarified that just smooth face cinderblock, or CMU, is not permitted.

Commissioner Johnson moved to approve application CUP2023-12, Conditional Use Permit for the Osprey sewer lift station located at approximately 1900 N. Highway 158, Eden, based on the findings and subject to the conditions listed in the staff report. Commissioner Torman seconded the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, and Wampler all voted aye. (Motion carried on a failed on a 6-0 vote).

2.3 CUP2023-11: Request for approval of a conditional use permit for the Brown sewer lift station located at approximately 5204 E Highway 166, Eden. Planner: Tammy Aydelotte

Planner Aydelotte explained the applicant is requesting a conditional use permit for a sewer lift station to service the future developments of Eden Crossing and Cobabe Ranch. This proposed lift station will be owned, operated, and maintained by Wolf Creek Water and Sewer Improvement District. The application is being processed as an administrative review due to the approval procedures in Uniform Land Use Code of Weber County, Utah (LUC) §108-1-2 which requires the Planning Commission to review and approve applications for conditional use permits and design reviews. She summarized staff's analysis of the application to determine compliance with the General Plan and zoning ordinances; conditional use review; design review; considerations relating to traffic safety and traffic congestion; landscaping; and buildings and site layout; and input from review agencies. She concluded staff recommends approval of this conditional use application subject to the applicant meeting the review agency requirements and the following conditions:

1. Any outdoor lighting must meet the requirements of the Ogden Valley Outdoor Lighting Ordinance (108-16).
2. All architectural requirements shall be followed, and shown in the final engineered plans, prior to issuance of a building conditional use permit.

This recommendation is based on the following findings:

1. The proposed use is allowed in the AV-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.

Commissioner Wampler asked that Ms. Aydelotte identify the location of the lift station on a map, which Ms. Aydelotte did. Commissioner Wampler asked if the applicant owns the lot next to the property where the station will be located, to which Ms. Aydelotte answered no. Commissioner Wampler asked how the site will be landscaped, to which Ms. Aydelotte answered hydroseed and a native grass mix, but not necessarily turf.

Commissioner Montgomery asked if the applicant will be required to install a fence around the site. Ms. Aydelotte stated fencing is typically not required, but it can be a recommended condition of approval.

Vice Chair Burton invited input from the applicant.

Commissioner Wampler asked why 60 percent of the overall site area of the Osprey lift station is being seeded, but just 22 percent at this site.

Eric Householder stated that the idea is to seed the area of the site that is being disturbed and there is less disturbance of this area than of the Osprey site.

Vice Chair Burton asked Mr. Householder if he has considered fencing or screening. Mr. Householder answered no and indicated he would defer to the Water and Sewer District on that issue as none of their other lift stations are screened.

Commissioner Wampler asked Mr. Householder if he has spoken with the owner of the abutting property to determine their feelings about the site. Mr. Householder answered no.

Vice Chair Burton asked if the pump unit will be located underground and be sealed, to which Mr. Householder answered yes. Minor venting to the outside is required. Vice Chair Burton asked what will be done to prevent odors from coming out of those vents. Mr. Householder stated that he is building lift stations that comply with the Water and Sewer District standards and those questions would be better answered by them.

Vice Chair Burton recognized a representative of the Wolf Creek Water and Sewer District and asked if they are comfortable answering the questions about this project. The representative stated that materials are collected and discharged by the pumps to the treatment plant. This station will be close to 20 feet deep and as long as the equipment is functioning properly, there will be no smell. There are three or four of these types of lift stations currently in operation and someone could stand right on top of them and not experience any smell. Vice Chair Burton asked what can be done to eliminate any smell if necessary. The representative stated that there are products that can be used to eliminate odors, but that has not been necessary thus far and the District has not received any complaints from residents living around the lift stations.

Commissioner Wampler asked the representative to address sound mitigation. The representative stated that the pumps are in the bottom of a 20-foot vault, and they are not heard when they are operating; generators that are required for back-up power sit inside of a building and the District has not heard complaints from residents who live near those facilities.

Discussion among the Commission and staff centered on the setbacks for the lift station to determine how far the buildings will be from structures on adjacent lots. Ms. Aydelotte stated that staff will be sure to determine that the structure complies with all setback requirements when the site plan application is received.

Commissioner Johnson moved to approve application CUP2023-11, Conditional Use Permit for the Brown sewer lift station located at approximately 5204 E. Highway 166, Eden, based on the findings and subject to the conditions listed in the staff report and also based upon the condition that any noise or smell noticed at the site will be addressed by the operating entity.

Commissioner Torman offered a friendly amendment to also require screening, such as a vegetation barrier or fence, around the site.

Commissioner Johnson stated he is open to screening that does not burden the operation. Planning Director Grover suggested that the condition be that Planning staff be allowed to work with the Wolf Creek Water and Sewer District staff to determine appropriate screening. Commissioners Johnson and Torman indicated they are comfortable with that language.

Commissioner Torman seconded the amended motion.

Commissioner Wampler addressed the public and explained that if an application meets the standards of the County's Land Use Code, or if conditions can be imposed to mitigate any problems with the use applied for, the Planning Commission must approve the Conditional Use Permit (CUP). What gives her pause is that she would have liked to have seen the applicant reach out to the neighboring property owners and discuss opportunities for addressing any concerns they may have had about this use being located next to their property. She is most concerned with the visual appearance of the building and that is why she is supportive of screening.

Vice Chair Burton called for a vote on the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, and Wampler all voted aye. (Motion carried on a failed on a 6-0 vote).

3. Training from Legal Counsel:

Legal Counsel Erickson provided the Commission with training regarding the duties and roles of the Planning Commission, County Commission, and County staff; and the differences between legislative and administrative applications.

Adjourn to Public Open House at 6:00 p.m.

Before separating and commencing the open house, Kirk Nigro of Rocky Mountain Power, used the aid of a PowerPoint presentation to discuss service expansion and equipment upgrades in the Ogden Valley intended to reduce the wildfire risk in the area. Mr. Nigro entertained questions from Commissioners and a few meeting attendees regarding changes in operations during the summer and winter seasons; increased staffing to be able to respond to needs of the Ogden Valley; funding for Rocky Mountain Power investments, which are largely subsidized by rate payers; and proceeding with projects that will place power infrastructure underground.

Planning Director Grover then used the aid of a PowerPoint presentation to discuss the Ogden Valley General Plan, which was approved in 2016, and the Valley's future buildout projections.

The break-out portion of the open house began at 6:50 p.m.

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

Weber County Planning Commission

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 guest parking conforms 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 FV-3 (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:

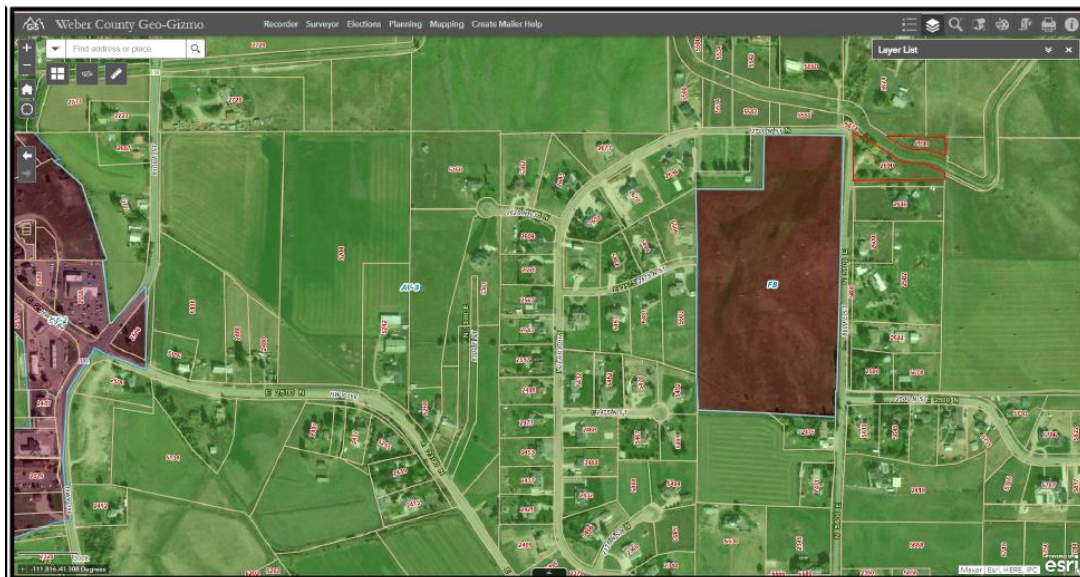
3. Legislative Items:

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 106-2-4.010 (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,

Weber County Planning Commission



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: File Number CUP 2023-14 - A request for approval of a conditional use permit for a conference/education center located at 6015 N 3100 E, Liberty.

Agenda Date: Tuesday, December 19, 2023

Applicant: Jason Cone, Owner

Property Information

Approximate Address: 6015 n 3100 E, Liberty, UT, 84310

Project Area: 5.67 acres

Zoning: Forest (F-5)

Existing Land Use: Residential

Proposed Land Use: Education Center

Parcel ID: 22-003-0024

Township, Range, Section: T7N, R1E, Section 6

Adjacent Land Use

North:	Forest	South:	Vacant/Agricultural
East:	Forest	West:	Forest

Staff Information

Report Presenter: Felix Lleverino
flleverino@co.weber.ut.us
801-399-8767

Report Reviewer: SB

Applicable Ordinances

- Weber County Land Use Code Title 101 Chapter 1 General Provisions, Section 7 Definitions
- Weber County Land Use Code Title 104 Chapter 9 (F-5 Zone)
- Weber County Land Use Code Title 108 Chapter 1 (Design Review)
- Weber County Land Use Code Title 108 Chapter 4 (Conditional Uses)
- Weber County Land Use Code Title 108 Chapter 8 (Parking and Loading Space, Vehicle Traffic and Access Regulation)
- Weber County Land Use Code Title 110 Chapter 2 (Ogden Valley Signs)

Summary and Background

The applicant is requesting approval of a conditional use permit for a conference/education center located in the F-5 zone at 6015 North 3100 East in Liberty, see Exhibit A for the site plan. This property has a main house and a 3-bedroom guest house. The guest house will be made available to visitors participating in stargazing and wildlife observation, please see Exhibit B for the owner's narrative.

Analysis

General Plan: As a conditional use, this operation is allowed in the F-5 Zone. With the establishment of appropriate conditions as determined by the Planning Commission, this operation will not negatively impact any of the goals and policies of the General Plan.

Zoning: The subject property is located within the Forest (F-5) Zone. The purpose of the F-5 Zone can be further described in LUC §104-9-1 as follows:

- The intent of the forest zones is to protect and preserve the natural environment of those areas of the county that are characterized by mountainous, forest or naturalistic land, and to permit development compatible to the preservation of these areas.*
- The objectives in establishing the forest zones are:*

1. *To promote the use of the land for forest, fish and wildlife and to facilitate the conservation of the natural resources, vegetation and attractions;*
2. *To reduce the hazards of flood and fire;*
3. *To prevent sanitation and pollution problems and protect the watershed;*
4. *To provide areas for private and public recreation and recreation resorts; and*
5. *To provide areas for homes, summer homes, and summer camp sites.*

A Conference/Education Center is defined by LUC §101-2-4-C as follows:

"The term "conference/education center" means a facility designed for the purpose of conducting meetings for consultation, exchange of information and/or discussion which results in enhanced personal, business and/or professional development. A conference/education center may provide office facilities and schedule a range of business related and/or leisure activities (e.g., training workshops, seminars, retreats and similar type meetings). Such a facility may serve meals and offer day use and/or overnight lodging facilities."

Conditional Use Review: A review process has been outlined in LUC §108-4-3 to ensure compliance with the applicable ordinances and to mitigate anticipated detrimental effects. Thus far, the applicant has received approval from the Weber Fire District, for the proposal.

The following is an analysis of the proposal reviewed against the conditional use standards:

- 1) Standards relating to safety for persons and property.

The proposal is not anticipated or expected to negatively impact this property, surrounding properties, or persons. The Weber Fire District has conditioned its approval on the following:

- (a) *Smoke and CO detectors must be properly installed and working.*
- (b) *The total occupancy load shall be kept at 10 or less including homeowners.*

- 2) Standards relating to infrastructure, amenities, and services.

The proposal is not anticipated or expected to negatively impact any existing infrastructure, amenities, or services in the area. A water well for culinary and secondary water is in place and fully functional. A septic system serves this property.

- 3) Standards relating to the environment.

The proposal is not anticipated or expected to negatively impact the environment.

- 4) Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the general plan.

The proposal is not anticipated to substantially impact the surrounding area. With the establishment of appropriate conditions as determined by the Planning Commission, this operation is not anticipated to negatively impact the surrounding areas or be at odds with any of the goals and policies of the General Plan.

- 5) Standards relating to performance

The Planning Division's condition of approval requires that the owner obtains a business license for each year of operation and that the operation remain lawful.

Requirements from the Fire District and the Weber-Morgan Health Department will ensure that the site remains safe.

- 6) Standards generally

The owner is responsible for keeping the operation free of nuisances such as noise, light, and traffic issues. The planning staff's conditions of approval will serve to mitigate potential issues.

- 7) Voluntary contributions providing satisfactory compliance with applicable standards

In the event that the planning commission identify issues not covered in this report, the applicant has the opportunity to volunteer solutions.

Parking and Loading Space, Vehicle Traffic and Access Regulations: Since the parking section does not specifically name regulations for a Conference/Education Center, the planning staff recommends using the standards from a bed and breakfast. The Weber County Code Section 108-8-4 states that a bed and breakfast establishment shall provide one space per rental sleeping room. Based on the minimum parking requirements for a bed and breakfast, the staff recommends that six parking spaces available and maintained are sufficient.

Design Review: In addition to the conditional use review, a design review is required for a Conference/Education Center. The following design review standards were considered and an analysis of the project against the design review standards is in the italicized text below each standard.

Sec 108-1-4 Considerations in the review of applications

- (a) Considerations relating to traffic safety and traffic congestion.

Traffic safety concerns are not anticipated with this proposal. Visitors will park in a designated area shown on the site plan. This property is accessed from a 12' wide 480' long private access road that joins with 3100 East Street. Parking on 3100 East Street and 3175 E Street is prohibited. The Fire Marshal and the County Engineering Department have approved this proposal.

- (b) Considerations relating to outdoor advertising.

Business signage will not be used for this proposal.

- (c) Considerations relating to landscaping.

The existing established vegetation covering this property is largely natural with a mix of wild grasses and wild shrubs and trees. No further landscaping is required to meet the minimum 20 percent site landscaping.

- (d) Considerations relating to buildings and site layout.

The existing dwelling and guest house are set at the base of a hill and surrounded by shrubs and trees. The home and the guest house are of a rambler ranch style.

- (e) Considerations relating to utility easements, drainage, and other engineering questions.

The engineering division has reviewed the project and does not have any concerns with drainage or other engineering questions.

- (f) Considerations relating to prior development concept plan approval associated with any rezoning agreement planned commercial or manufacturing rezoning, or planned residential unit development approval.

There are no prior development approvals or rezoning development agreements that apply to the subject property.

Staff Recommendation

Staff recommends approval of this conditional use permit application subject to the applicant meeting the following conditions of approval in addition to any conditions of the various reviewing agencies or the Ogden Valley Planning Commission.

Planning conditions of approval:

- 1) The owner shall obtain a Weber County Business License.
- 2) Any changes to the site or day-to-day operations, beyond what is presented in the applicant's submittal, shall be reviewed by the land use authority
- 3) The applicant shall provide written approval from the Weber-Morgan Health Department before issuance of a conditional use permit.
- 4) The site and all structures shall be kept and maintained for safety and good visual appearance
- 5) The proprietor or owner shall occupy the property.
- 6) Guest parking is maintained and accessible year-round
- 7) Parking on 3100 East Street and 3175 E Street is prohibited.

This recommendation is based on the following findings:

- 1) The proposed use is allowed in the F-5 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.

Exhibits

- A. Site plan
- B. Narrative
- C. Site Photos
- D. Indoor Photos

Map 1



Exhibit A

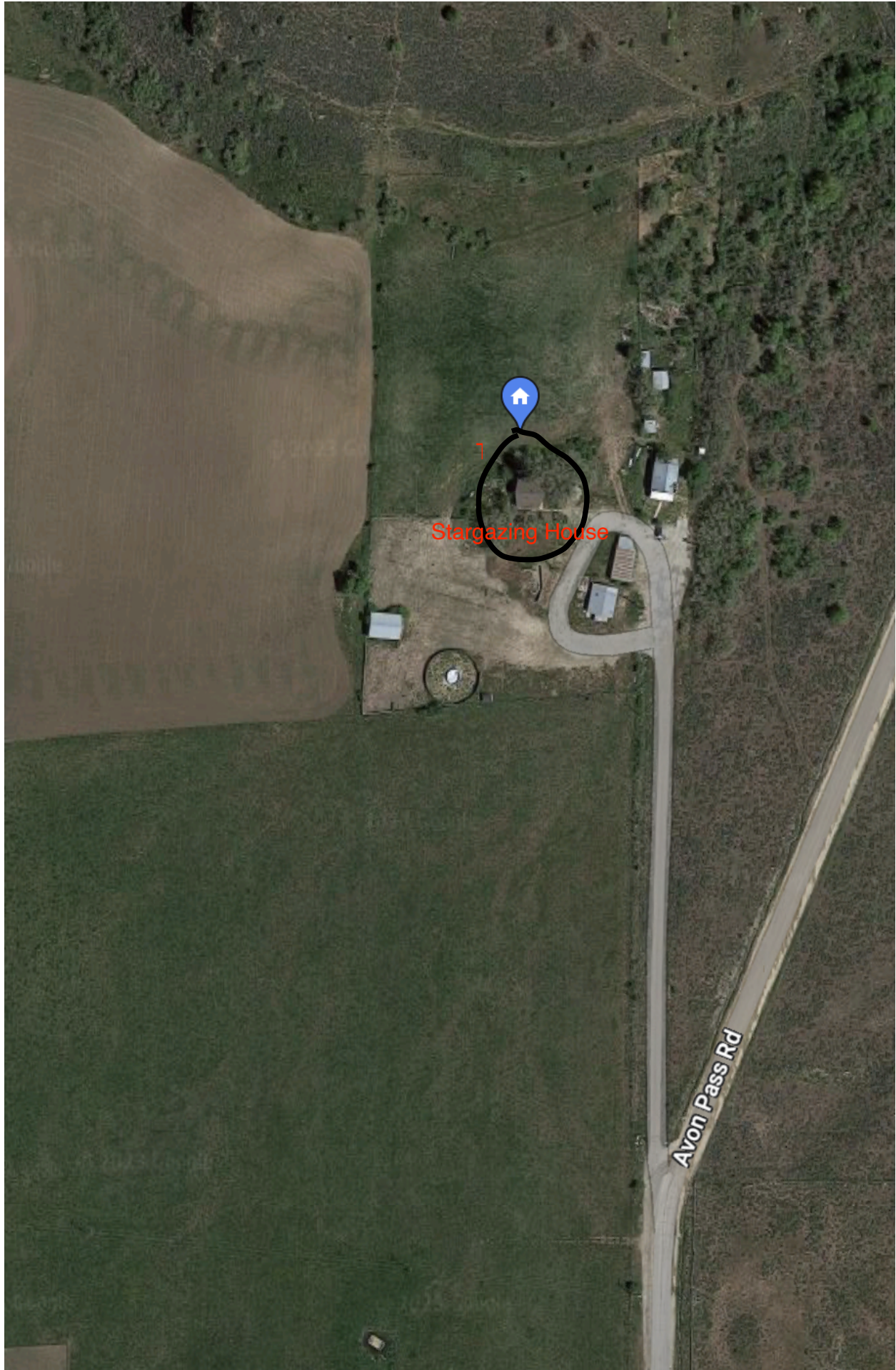


Exhibit A



Exhibit A



Exhibit B

Stargazing/Birdwatching Conference/ Education Center in Ogden Valley (Narrative)

I live on a 6-acre plot of farm land in Liberty, UT, surrounded by hundreds of acres of fields and near North Fork Park, which is a designated Dark Sky Zone, making it ideal for stargazing. It is also a hotbed of wildlife activity, including bird migration. I have a 3-bedroom guesthouse on my property that I would like to turn into an educational and experiential self-tour retreat where people can come to stargaze, view birds and other wildlife, and learn more about astronomy and different avian and animal species.

Upon arrival, guests would find educational materials (maps, posters, literature, astronomy and wildlife phone apps, websites, etc.), as well as a telescope and binoculars provided.

Guests would stay over for at least two nights to increase their chances of having clear night skies, as well as give them more opportunity to view birds and wildlife.

Lodging:

The lodging is a three bedroom, one full-bathroom house with a full kitchen, completely stocked with all cooking/dining equipment. It can house up to 6 people. It is up-to-date with fire extinguishers and smoke/CO2 detectors.

Parking:

Being that we are on a large property, there is plenty of parking for much more than 6 vehicles (which is the absolute max number of cars that 6 guests could potentially bring). Although in reality, we expect most guest groups to be smaller than 6, and their vehicle counts to be one or two.

Water/Wastewater:

Like everyone else in our area, we are on well water and septic tanks. Since I also live on the property with my family, it is in our highest interest to maintain the well and septic systems.

Outdoor Lighting Plan:

As is mandated in our area, there are no upward-facing lights outside on the property. There is a porch light (covered by a patio roof) and a downward-facing parking area light.

Location:

6015 N 3100 E, Liberty, UT 84310

The guest house is over a quarter-mile away from the nearest neighbor's residence, so there is no risk of bothering any neighbors.

Exhibit C



Exhibit C



Exhibit C



Exhibit C



Exhibit D



Exhibit D



Exhibit D





Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration of an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights.
Application Type:	Legislative
Agenda Date:	Tuesday, December 19, 2023
Applicant:	CW The Basin
File Number:	ZDA 2022-02

Property Information

Approximate Address:	947 E Old Snow Basin Rd
Zoning:	FR-3
Existing Land Use:	Vacant
Proposed Land Use:	Residential

Adjacent Land Use

North:	Residential	South:	Residential
East:	Residential	West:	Residential

Adjacent Land Use

Report Presenter:	Steve Burton sburton@webercountyutah.gov 801-399-8766
Report Reviewer:	RG, CE

Development History

On January 25, 2022, the CW Basin property was rezoned from CVR-1 to FR-3 through an ordinance and development agreement approved by the County Commission. The current development agreement restricts the use of the property to ten detached single family dwellings with short term rentals prohibited. Since the time the original development agreement was recorded, the property owner and a third party have discussed the possibility of transferring some of the development rights that would otherwise exist under the current FR-3 zoning, if the development agreement did not restrict the rights to ten. Under this proposal, the applicant proposes that the county acknowledge 54 development rights that can be transferred to a receiving area.

On September 27, 2022, the Ogden Valley Planning Commission tabled a decision on this item until such time that the county has implemented a TDR program. The TDR program currently exists by transferring development rights into MPD overlay zones and the Form-Based zones. The applicant has proposed to bring this back to the Planning Commission with this understanding.

Summary

The request is to specify in the development agreement that the owner has 54 development rights that the developer owns, that will be transferred to a third party. The third party has agreed to provide the county with the funds for the intersection improvements that are needed as a result of several recent developments. The 54 density rights are based off a density of 20 units per acre from the FR-3 zoning, which ended up totaling 64 units. Since the owner has already platted 10 units, they are requesting the ability to bank 54 units.

Recently, there have been public discussions about what the Utah State Code allows when it comes to transferable development rights. Section 17-27a-509.7 states the following:

- (1) A county may adopt an ordinance:
 - (a) designating sending zones and receiving zones within the unincorporated area of the county; and
 - (b) allowing the transfer of a transferable development right from a sending zone to a receiving zone.
- (2) A county may not allow the use of a transferable development right unless the county adopts an ordinance described in Subsection (1).

Currently the county's receiving zones are the areas zoned Master Planned Development Overlay and Form-Based zone. Sending zones are RE-15, RE-20, AV-3, F-5, FV-3, S-1, FR-1, FR-3, RMH-1-6, CVR-1, and FB.

Analysis

When legislative amendments such as development agreements, are proposed, the Planning Commission and County Commission should consider the goals and policies of the general plan as well as public benefits to such agreements.

When this property was rezoned from CVR-1 to FR-3 in early 2022, a finding was that the proposed area was designated as a village on the general plan village location map. The County Commission deemed the project to be a residential village, and the rezone from commercial to residential was approved. The County Commission restricted this portion of the village to only 10 detached single family dwellings. It is recommended that the Planning Commission and County Commission consider whether allowing a developer to bank their units, and not yet develop them, complies with the general plan.

The general plan states the following regarding TDRS.

Land Use Implementation 1.1.1: Weber County will support the transfer of existing development rights (TDRs) as the primary means to increase densities in suitable project areas while proportionately decreasing density in other areas. Incentives – such as reduced road cross sections and other cost-saving measures for master-planned developments – should be proposed to reduce development intensities and as the primary means to incentivize the purchase and transfer of development rights. Bonus density should be used sparingly, and only in the event minimal bonuses can be leveraged for significant and meaningful advancement of the goals and principles of this plan. Development rights include residential (e.g. townhouses, single family detached units, etc.) and non-residential development rights (e.g. hotel units, accessory dwelling units, retirement center units, etc.).

The legislative body may find that, by originally restricting the CW subdivision to 10 lots, the county effectively decreased density in this area. If the developer can get the county to acknowledge the 54 development rights, they may be able to transfer them to a suitable area such as the areas with form based zoning.

The legislative body may also find that, the 54 units should remain in this village area and can be sent to the parcel to the east, as that parcel is zoned appropriately for a residential village and is currently undeveloped. Several nearby residents originally opposed the rezone to FR-3, but stated they support a village conceptually. If this area is intended to be a residential village, then the development rights should not be sent outside of this village.

Summary of Planning Commission Considerations

In reviewing a proposed development agreement, the Planning Commission and County Commission may consider, but shall not be limited to considering, the following:

1. Whether the proposal advances the goals and policies of the Ogden Valley General Plan.

The Ogden Valley General Plan supports the transfer of development rights to village areas (Form based and certain MPD overlay zones). The Ogden Valley General Plan also states that “additional density should not be authorized in the Ogden Valley Planning area above that allowed by current zoning” (pg. 15). Given the current zoning of FR-3 through a development agreement, the current density of the property is 10 development rights.

The Ogden Valley General Plan also supports voluntary reductions in development rights (pg. 12) and the original rezone can be seen as a voluntary reduction in development rights.

2. Public impacts and benefits.

The owner has worked with an individual interested in purchasing the proposed 54 development rights. The public benefit to this transaction would be an upgraded intersection at Old Snowbasin Road and Highway 39, paid for by a third party, not the taxpayers.

3. Adequacy in the provision of all necessary public infrastructure and services.

If the county acknowledges the owner’s proposed 54 rights to be transferred, those units will need to be transferred to a different village area, because this current village area does not have the water, sewer, or street infrastructure to support the 54 rights.

4. Appropriateness and adequacy of environmental protection measures.

Staff does not feel that environmental protection measures are needed in denying or approving the proposal. If the county approves the proposed development agreement, the 54 development rights will need to be transferred to a village area. The county has already anticipated the location of village areas, and environmental protection measures should be implemented at a subdivision level within these village areas.

5. Protection and enhancements of the public health, welfare, and safety, beyond what is provided by the existing land use ordinances.

This proposal proposes no protections or enhancements to public health, welfare, and safety, beyond what is provided by the existing land use ordinances.

Staff recommendation

Staff recommends that the Planning Commission recommend denial of the proposed development agreement amendment, ZDA 2022-02. This recommendation is based on the following findings:

1. The original rezone and development agreement, restricting the development rights to 10, was the county acknowledging that no additional development rights existed to be transferred.

Model Motion

The model motions herein are only intended to help the planning commission provide clear and decisive motions for the record. Any specifics provided here are completely optional and voluntary. Some specifics, the inclusion of which may or may not be desired by the motioner, are listed to help the commission recall previous points of discussion that may help formulate a clear motion. Their inclusion here, or any omission of other previous points of discussion, are not intended to be interpreted as steering the final decision.

Motion for positive recommendation **as-is**:

I move that we approve File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights, property located at 947 E Old Snowbasin Road, Huntsville. **I do so with the following findings:**

Example findings:

- The proposal is supported by the General Plan.
- [_____ add any other desired findings here _____].

Motion to **table**:

I move that we **table** action on File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights, property located at 947 E Old Snowbasin Road, Huntsville **to [_____ state a date certain _____], so that:**

Examples of reasons to table:

- We have more time to review the proposal.
- Staff can get us more information on [_____ specify what is needed from staff _____].
- The applicant can get us more information on [_____ specify what is needed from the applicant _____].
- More public noticing or outreach has occurred.
- [_____ add any other desired reason here _____].

Motion to recommend **denial**:

I move that we deny File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights, property located at 947 E Old Snowbasin Road, Huntsville. **I do so with the following findings:**

Examples of findings for denial:

- The findings in the staff recommendation.
- The proposal is not adequately supported by the General Plan.
- The proposal is not supported by the general public.
- The proposal runs contrary to the health, safety, and welfare of the general public.
- The area is not yet ready for the proposed change to be implemented.
- [_____ add any other desired findings here _____].

Exhibits

Exhibit A – Proposed Draft Development Agreement

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

and

CW THE BASIN, LLC,

List of Attachments

Attachment A: Project Area Legal Description and Graphic Depiction

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DEVELOPMENT AGREEMENT

The Basin

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and CW The Basin, LLC ("Developer"), known together herein as the "Parties."

RECITALS

WHEREAS, The Project is currently zoned CVR-1 with a base density of 64 residential rights, and Developer desires to rezone the Project to the FR-3 zone, which carries an identical base density, consistent with the terms and provisions contained herein; and

WHEREAS, The Developer desires and intends to develop a residential subdivision (the "Project") in the unincorporated area of Weber County known as Huntsville. Key components of the Project include ~~thirteen~~ ten (10) detached single-family residential dwellings; and

WHEREAS, The Developer's objective is to develop ~~thirteen (13)~~ ten (10) single family lots that complement the character of the community and is financially successful; and

WHEREAS, The Developer desires to reserve the residual residential development rights, equaling 54 rights, for potential transfer to another receiving parcel(s) -should a land use mechanism allow for such transfer in the future; and

WHEREAS, The County's objective is to approve only development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners; and

~~WHEREAS, The Project is currently zoned CVR-1 and Developer desires to rezone the Project to the FR-3 zone consistent with the terms and provisions contained herein; and~~

WHEREAS, The Project will be located on land referred to herein as the "Project Site". The Project Site is as more specifically described in **Attachment A**: Project Area Legal Description and Graphic Depiction. A preliminary plan showing the general location and layout of the Project is contained in **Attachment B** Preliminary Plan-

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date, Expiration, Termination.

1.1. Effective Date. The Effective Date of this Agreement is the last date upon which it is signed by any of the Parties hereto.

1.2. Expiration. This Agreement shall be in full force and effect until (10) years from the Effective Date of this Agreement, at which point this Agreement shall expire. ~~After the expiration of this agreement, the development and use restrictions of Section 7 herein shall prevail as legislatively adopted land use restrictions. Typical legislative action shall be required to make changes~~

~~thereto.~~

1.3. Termination. This Agreement may be terminated by mutual written agreement of the Parties to this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:

1.3.1. The term of this Agreement expires;

1.3.2. The Project is abandoned or the use is discontinued, as provided for by Weber County Code Chapter 108-12; or

1.3.3. The Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 13 of this Agreement.

1.4. After the expiration or termination of this agreement, the development and use restrictions of Section 7 herein shall prevail as legislatively adopted land use restrictions. Typical legislative action shall be required to make changes thereto.

2. Definitions and Interpretation. For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision

2.1. Adjacent Property. "Adjacent Property" means that existing subdivision located to the South and West of the Project.

2.2. Agreement. "Agreement" means this Development Agreement between County and Developer, approved by the Board of County Commissioners, and executed by the undersigned.

2.3. Association. "Association" shall have the meaning given to such term in Utah Code Ann. §57-8a-102(2).

2.3-2.4. Base density. "Base Density" means the number of dwelling units allowed in an area as measured by dividing the applicable lot or parcel's gross area by the minimum lot area standard as defined by the applicable zoning classification.

2.4-2.5. County. "County" means Weber County, Utah.

2.5-2.6. Developer. "Developer" means CW The Basin, LLC, or its Assignees as provided in Section 11 of this Agreement.

2.6-2.7. Effective Date. "Effective Date" has the meaning set forth in Section 1 of this Agreement.

2.7-2.8. Force Majeure Event. "Force Majeure Event" means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution;

sabotage or vandalism; embargoes; and, actions of a governmental or judicial authority.

~~2.8-2.9.~~ **Parties.** "Parties" means the Developer and the County.

~~2.9-2.10.~~ **Project.** "Project" means The Basin subdivision as set forth in the Attachment B hereto.

~~2.10-2.11.~~ **Project Site.** "Project Site" means the land area on which the Project will actually be sited, as more specifically described in Attachment A: Project Area Legal Description and Graphic Depiction.

~~2.11-2.12.~~ **Routine and Uncontested.** "Routine and Uncontested" means simple and germane to the Project or Project Site, having very little chance of effect on the character of the area, and not anticipated to generate concern from the public.

~~2.12-2.13.~~ **Substantial Completion.** "Substantial Completion" means the Project is constructed, installed, and a valid business license has been obtained from the county.

~~2.13-2.14.~~ **Transferee.** A party to which the Project is transferred or assigned in part or in whole. "Assignee" shall also mean the same.

3. Omitted

4. Project Description.

Ten (10) ~~Thirteen (13)~~ detached single-family residential lots.

5. Project Location and Illustration.

The Project is as described herein, and illustrated in Attachment B.

6. Vesting.

6.1. To the maximum extent permitted under the laws of the County, the State of Utah, and the United States, the Parties hereto intend that this Agreement grants to Developer the right to develop and use the Project, as outlined in and subject to the requirements set forth in this Agreement, without modification or interference by the County (collectively, the "Vested Rights"). The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann.

~~6.1-6.2.~~ Both County and Developer agree that the Base Density of the Project Site, upon rezone to the Forests Residential Zone (FR-3), equals 64 residential development rights.

~~6.2-6.3.~~ Neither the County nor any department or agency of the County shall impose upon the Project (whether by initiative, or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each a "New Law") that reduces or impacts the development rights provided by this Agreement or the Vested Rights. Without limiting the generality of the foregoing, any New Law shall be deemed to conflict with this Agreement and / or the Vested Rights if it would accomplish any of the following results in a manner inconsistent with or more restrictive than applicable law, either by specific reference to the Project or as part of a general enactment that applies to or affects the Project: (i) change any land uses or

permitted uses of the Project; (ii) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement, and the applicable zoning ordinance are satisfied; or (iii) apply to the Project any New Law otherwise allowed by this Agreement that is not uniformly applied on a County-wide basis to all substantially similar types of development projects and project sites with similar zoning designations. Notwithstanding the foregoing, if Developer considers any New Law to be beneficial to the Project, this section does not require Developer to comply with the superseded ordinance, but rather in such cases, Developer may with County approval, which approval may not be unreasonably withheld, conditioned, or delayed, elect to request that the New Law apply to the Project.

~~6.3.6.4.~~ The Developer acknowledges that the County is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the County all of its police power that cannot be so limited. Notwithstanding the retained power of the County to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 17-27a-509.5 of the County Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. County of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under State or Federal laws.

~~6.4.6.5.~~ The parties mutually acknowledge that any use lawfully established under vested laws and this Agreement replaces and supersedes any previously approved development agreements pertaining to or recorded against the Project Site ~~party~~ and Project including.

7. Development and Use Restrictions.

7.1. **Use of Property.** The use of the Project shall be limited to ten (10) ~~thirteen (13)~~ detached single-family residential lots.

~~7.1.7.2.~~ **Use of Residual Development Rights.** The use of the residual 54 residential development rights may not be developed on the Project Site, but may be land banked on the Project Site by Developer for potential transfer to another receiving parcel(s) should a land use mechanism allow for such transfer in the future.

~~7.2.7.3.~~ **Short-Term Rentals.** Short-Term Rentals are expressly prohibited.

8. Amendments and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Developer and County (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

8.1. Project Facility Repair, Maintenance and Replacement. Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.

8.2. Authorized Changes, Enlargements, or Alterations. As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.

- 8.2.1. Changes Necessary to Comply with Other Laws.** Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval; provided that the changes are routine and uncontested and the application thereof does not materially affect the County's original intent, findings, or conditions on the Project in a manner that would have likely resulted in a different decision on this Agreement, as determined by the Planning Director.
- 8.2.2. De Minimis Changes.** Other de minimis changes requested by the Developer, which are reasonably consistent with the intent of this agreement and the FR-3 rezone, and are routine and uncontested.

9. OMITTED

10. OMITTED

11. General Provisions.

- 11.1. Assignability.** The rights and responsibilities of Developer under this Agreement may be assigned as provided herein.
- 11.1.1. Total Assignment of Project and Project Site.** The Developer, as the landowner of the Project Site at the time of the execution of this Agreement, may sell, convey, reassign, or transfer the Project Site or Project to another entity at any time, provided any division of land, if applicable, complies with County Laws.
- 11.2. Binding Effect.** This Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Site, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- 11.3. Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.
- 11.4. Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 11.5. Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.
- 11.6. Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 11.7. Force Majeure Event.** A Force Majeure Event shall be promptly addressed by Developer. County agrees to offer a reasonable period for Developer to cure the effect of the event given

the extent of the effect on the Project and the Developer's ability to redress the effect.

12. Notices.

12.1. Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.

12.2. Addresses. Notices shall be given to the Parties at their addresses set forth as follows:

If to the County:

Weber County Commission
2380 Washington Blvd, Ste #360
Ogden, UT 84401

With copies to:

Weber County Attorney
2380 Washington BLVD, Ste. #230
Ogden, UT 84401

Weber County Planning Director
2380 Washington BLVD, Ste. #240
Ogden, UT 84401

If to Developer:

CW The Basin, LLC
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

12.3. Notice Effect. Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any Party at any time by Notice to the other Party may designate a different address or person to which such notice or communication shall be given.

13. Default and Remedies.

13.1. Failure to Perform Period. No Party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

13.2. Remedies. The Developer's failure to comply with this agreement constitutes a violation of the Land Use Code of Weber County, and is subject to the enforcement provisions and remedies

thereof. In addition, the County may withhold any permits from the Project.

13.3. Dispute Resolution Process.

13.3.1. Conference. In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Developer shall send Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.

13.3.2. Mediation. If this Conference process does not resolve the dispute within the 7-day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

14. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

SIGNATORIES

“County”

Weber County, a body corporate and politic of the State of Utah

By: _____

Scott K. Jenkins
Chair, Weber County Commission

DATE: _____

ATTEST: _____

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

“Developer”
CW The Basin, LLC

By: _____

Print Name: _____

Title: _____

DATE: _____

Developer Acknowledgment

State of Utah)
)ss.

County of Davis)

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

My Commission Expires:

Notary Public, residing in

Attachment A

Project Area Legal Description and Graphic Depiction

PART OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

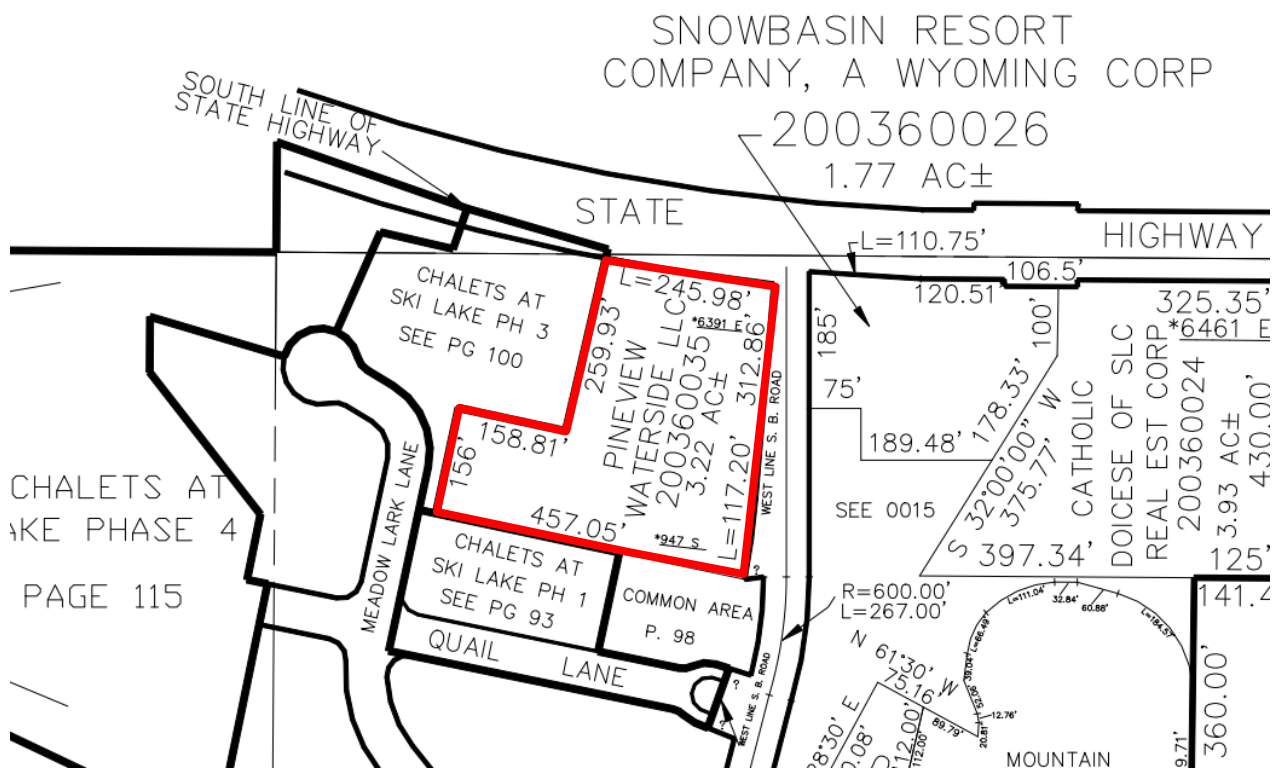
BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF STATE HIGHWAY 39, SAID POINT BEING S89°36'46"E 477.61 FEET AND S00°23'14"W 2.34 FEET FROM THE FOUND MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE ALONG SAID SOUTHERLY LINE, A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1959.86 FEET, AN ARC LENGTH OF 254.84 FEET, A DELTA ANGLE OF 07°27'01", A CHORD BEARING OF S80°41'48"E, AND A CHORD LENGTH OF 254.66 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF OLD SNOW BASIN ROAD; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING TWO (2) COURSES: (1) S04°48'23"W 313.97 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 1134.18 FEET, AN ARC LENGTH OF 117.20 FEET, A DELTA ANGLE OF 05°55'15", A CHORD BEARING OF S07°46'00"W, AND A CHORD LENGTH OF 117.15 FEET TO THE NORTH LINE OF CHALETS AT SKI LAKE PHASE 1; THENCE ALONG SAID NORTH LINE THE FOLLOWING TWO (2) COURSES: (1) N77°56'06"W 194.61 FEET; (2) N77°56'13"W 271.39 FEET TO THE EAST LINE OF CHALETS AT SKI LAKE PHASE 3; THENCE ALONG SAID EAST LINE THE FOLLOWING THREE (3) COURSES: (1) N12°03'47"E 156.02 FEET; (2) S77°56'13"E 158.81 FEET; (3) N13°01'42"E 260.03 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 39 AND TO THE POINT OF BEGINNING.

And also including half of the street right-of-way immediately adjacent to the legal description

CONTAINING 144,146 SQUARE FEET OR 3.309 ACRES MORE OR LESS.

Attachment A (Cont.)

Project Area Legal Description and Graphic Depiction





Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

APPLICATION INFORMATION

Agenda Item: ZTA 2023-11 and ZTA 2023-12. A public hearing to consider a County-initiated ordinance amendment to Title 106, Subdivisions, providing for changes relative to administrative land use authority, subdivision application review and approval procedures, and financial guarantees required for public improvements.

Agenda Date: Tuesday, December 19, 2023

Applicant: Planning Division

File Numbers: ZTA 2023-11 and ZTA 2023-12

STAFF INFORMATION

Report Presenter: Bill Cobabe
bcobabe@webercountyutah.gov
801-399-8772

Report Reviewer: CE

Applicable Ordinances

Utah State Code Section 17-27a-503 – Zoning District or Land Use Regulation Amendments
Weber County Code Section 102-2-4 – Powers and Duties of the Planning Commission
Weber County Code Title 106 - Subdivisions

Legislative Decisions

This is a legislative matter. When the Planning Commission is acting on a legislative matter, it is acting to make a recommendation to the Board of County Commissioners. There is wide discretion in making legislative decisions. Criteria for recommendations on a legislative matter suggest compatibility with the general plan, existing ordinances, and best practices. Examples of legislative actions are general plan, zoning map, and land use code amendments.

Summary

In the 2023 Legislative Session, the Utah State Legislature passed a law known as SB 174. This bill requires counties in Utah to change their subdivision review procedure, including several significant process changes that will be discussed in detail below. At the same time, the County desires to amend the provisions in the financial guarantee portion of the subdivision code to ensure the viability of the improvements and bonds the County accepts from developers. These changes must be completed prior to February 1, 2023.

Proposed Changes

The following is a brief explanation of the changes proposed:

1. **Section 106-1-4 Subdivision Application Requirements**, regarding the submittal requirements that the County needs. This is important because up to this point the County has had the option to receive partial submittals and the opportunity to work with developers to determine whether or not an application is complete. Due to the changes in State Code, this opportunity is being curtailed and the County must – from this time forward – only accept “complete” applications. More on that below.
2. **Section 106-1-5.20 Agency Review and Determination of Completeness**, regarding responsibility of the applicant to work with agencies outside of the County Planning Department/Engineering Department to obtain reviews prior to submitting their application and all subsequent revisions, and the requirement for the County to review submittals within 15 days for not more than four review cycles.

3. **106-1-5.30 Approval Procedure**, regarding the designation of the Planning Director as the "Administrative Land Use Authority" to review and approve subdivision plats.
4. **106-1-8.10 Final Plat Required**, regarding the determination of complete applications for final plat and the requirement for the County to review submittals within 20 days for not more than four review cycles.
5. **106-1-8.30 Final Plat Approval Process**, regarding the designation of the Planning Director as the Administrative Land Use Authority for final plat approvals.
6. **Section 106-4-1 (d) Improvements to be installed prior to the issuance of permits**, regarding the required improvements to be installed prior to issuance of permits and a financial guarantee.
7. **Section 106-4-2 Specific Requirements**, regarding specific requirements for improvement, including driveway aprons, and sidewalks and pathways.
8. **Section 106-4-3 Guarantee of Improvements**, regarding financial guarantee of improvements, including financial guarantee cost estimates, financial guarantee expiration and default, partial releases of financial guarantees, warranty guarantees (at conditional acceptance), and final acceptance of guarantees and release of the warranty guarantee. A new provision is added to allow for the authority of the County to use remaining funding to bring the subdivision improvements into compliance with the requirements.

Policy Analysis

Weber County Code Section 102-2-4 requires the Planning Commission to make a recommendation to the County Commission:

The planning commission shall be an advisory board to the county commission, and shall make recommendations regarding:

1. *Amendments to changes in zoning map.*
2. *Land Use Code text amendments.*

Utah State Code further explains the role of the Planning Commission, as found in Section 17-27a-503 Zoning District or Land Use Regulation Amendments:

- (1) *Only a legislative body may amend:*
 - (a) *the number, shape, boundaries, area, or general uses of any zoning district;*
 - (b) *any regulation of or within the zoning district; or*
 - (c) *any other provision of a land use regulation.*
- (2) *A legislative body may not make any amendment authorized by this section unless the legislative body first submits the amendment to the planning commission for the planning commission's recommendation.*
- (3) *A legislative body shall comply with the procedure specified in Section 17-27a-502 in preparing and adopting an amendment to a land use regulation.*

The reference State Code Section 502 states that:

- (1) *A planning commission shall:*
 - (a) *provide notice as required by Subsection 17-27a-205(1)(a) and, if applicable, Subsection 17-27a-205(4);*
 - (b) *hold a public hearing on a proposed land use regulation;*
 - (c) *if applicable, consider each written objection filed in accordance with Subsection 17-27a-205(4) prior to the public hearing; and*
 - (d)
 - (i) *review and recommend to the legislative body a proposed land use regulation that represents the planning commission's recommendation for regulating the use and development of land within:*
 - (A) *all or any part of the unincorporated area of the county; or*

- (B) for a mountainous planning district, all or any part of the area in the mountainous planning district; and
- (ii) forward to the legislative body all objections filed in accordance with Subsection 17-27a-205(4).

(2)

- (a) The legislative body shall consider each proposed land use regulation that the planning commission recommends to the legislative body.
- (b) After providing notice as required by Subsection 17-27a-205(1)(b) and holding a public meeting, the legislative body may adopt or reject the proposed land use regulation described in Subsection (2)(a):
- (i) as proposed by the planning commission; or
- (ii) after making any revision the legislative body considers appropriate.
- (c) A legislative body may consider a planning commission's failure to make a timely recommendation as a negative recommendation if the legislative body has provided for that consideration by ordinance.

Today's public hearing is in fulfillment of these requirements.

Section 104-21-1 (e) notes that:

The purpose of the Manufacturing and Technology (M-T) District is to provide for and encourage the development of well-planned and designed technological and manufacturing parks. These areas are characterized by uses such as research, development, manufacturing, fabrication, processing, storage, warehousing and wholesale distribution. These areas are to be located in proximity to adequate transportation facilities and infrastructure so that the needs of these users may be met in an efficient manner with consideration to adjoining uses.

The proposed change to the Land Use Table (Section 104-21-3.040 Commercial Services Table), adding a line item for "**Data Services**. Data Centers, Data Warehousing, Data Processing" as a permitted use in the M-T zone

Staff Recommendation

Staff recommends that the Planning Commission consider ZTA 2023-11 and -12 and if the Planning Commission approves, the Planning Commission may forward a positive recommendation to the County Commission for the proposal.

This recommendation may come with the following findings:

1. The proposal helps to accomplish amendments to the subdivision ordinance as required by State statute as well as clarifying and modifying other subdivision requirements.

Model Motion

The model motions herein are only intended to help the planning commission provide clear and decisive motions for the record. Any specifics provided here are completely optional and voluntary. Some specifics, the inclusion of which may or may not be desired by the motioner, are listed to help the commission recall previous points of discussion that may help formulate a clear motion. Their inclusion here, or any omission of other previous points of discussion, are not intended to be interpreted as steering the final decision.

Motion for positive recommendation **as-is**:

I move that we recommend approval of File # ZTA 2023-11 and ZTA 2023-12. **I do so with the following findings:**

Example findings:

- The proposed ordinance amendment is supported by the General Plan.
- [_____ add any other desired findings here _____].

Motion to **table**:

I move that we **table** action on File # ZTA 2023-11 and ZTA 2023-12 to [_____ state a date certain _____], so that:

Examples of reasons to table:

- We have more time to review the proposal.

- Staff can get us more information on [____ specify what is needed from staff ____].
- The applicant can get us more information on [____ specify what is needed from the applicant ____].
- More public noticing or outreach has occurred.
- [____ add any other desired reason here ____].

Motion to recommend denial:

I move that we deny File # ZTA 2023-11 and ZTA 2023-12. I do so with the following findings:

Examples of findings for denial:

- The proposal is not adequately supported by the General Plan.
- The proposal is not supported by the general public.
- The proposal runs contrary to the health, safety, and welfare of the general public.
- The area is not yet ready for the proposed change to be implemented.
- [____ add any other desired findings here ____].

Exhibits

Exhibit A. Draft Ordinance Language

Title 106 Subdivisions

Chapter 106-1 General Provisions

Chapter 106-2 Subdivision Standards

Chapter 106-3 Condominium Projects

Chapter 106-4 Subdivision Improvements Required

Chapter 106-5 Enforcement And Permits

Chapter 106-6 Penalty, Validity And Repealer

Chapter 106-7 Owner's Dedication

Chapter 106-8 Signature Blocks

State Law reference—County Land Use, Development, and Management Act subdivision ordinances, U.C.A. 1953, § 17-27a-601 et seq.

Chapter 106-1 General Provisions

Sec 106-1-1 Purpose And Intent

Sec 106-1-2 (Reserved)

Sec 106-1-3 Applicability

Sec 106-1-4 Subdivision Application Requirements

Sec 106-1-5 Preliminary Plan/Plat Requirements And Approval Procedure

Sec 106-1-6 (Reserved)

Sec 106-1-7 Subdivision Time Limitations

Sec 106-1-8 Final Plat Requirements And Approval Procedure

...

Sec 106-1-4 Subdivision Application Requirements

(a) *Pre-application meeting required.* Each person who proposes to subdivide land shall confer with the county planning staff before submitting any plats, charts, or plans in order to become familiar with the county subdivision requirements and existing general plans and to discuss the proposed development of the tract. Additional required submittal information will be identified during the pre-meeting, such as sensitive lands, slope analysis, wetlands, wells, taxes, state roads, neighborhood circulation plan, landscape design, and water budget submittal.

(b) *Subdivision application submittal.* Subdivision applications shall be submitted to the planning division. Only complete applications will be accepted. A complete application shall include all applicable submittal requirements for subdivision review as required by this Land Use Code, including, but not limited to:

(1) *Application form.* A complete subdivision application form, signed by the property owners.

(2) *Preliminary plan.* A preliminary plan meeting the requirements, standards, codes, regulations, and all other specifications listed in this title and other applicable regulatory documents. This includes a phasing plan if phasing is proposed.

Sec 106-1-5.20 Agency Reviews and Determination of Completeness

(a) *Agency review.* The Planning Division shall distribute copies of the preliminary plan to other County divisions or departments. ~~Any, or other reviews by non-county agencies, or organizations, outside of the County's direct organization, as authorized by State Law required by~~

County or State Code, that ~~it deems~~ are necessary to ensure thorough review of the proposed plan, shall be submitted to the County by the applicant.

~~(a)~~ **(b) Application Determination of Completeness.** Upon determination of a complete application, the County shall not require more than four review cycles, as outlined in Utah State Code Section 17-27a-604.2, unless mutually agreed upon otherwise by the County and the applicant. The ~~reviewing agencies~~ County shall have ~~30 days~~ 15 business days to review the preliminary plans and return detailed, itemized, and all other applicable information and recommendations to the ~~planning division, after which the planning division shall send the review to the applicant.~~

UDOT corridor review. A subdivision proposed within a designated UDOT corridor preservation area shall be sent to the UDOT regional office for review and comment.

HISTORY

Adopted by Ord. 2021-23 on 7/6/2021

Sec 106-1-5.30 Approval Procedure

(a) Subdivision approval. After the applicable staff and agency reviews, the preliminary plan/plat, including the phasing plan, shall be presented to the Land Use Authority. The Land Use Authority shall review the preliminary plan/plat to verify compliance with applicable ordinances. After determining compliance with applicable ordinances, or determining compliance after adding conditions of approval to ensure compliance with applicable laws, the Land Use Authority shall approve the preliminary plan/plat. When considering conditions of approval, the Land Use Authority shall follow the decision requirements found in Section 108-4-4 of this Land Use Code, and the conditional use standards of Section 108-4-5. A decision on a subdivision that includes conditions of approval shall not constitute a conditional use or require a conditional use permit.

(b) Small subdivision review. Preliminary plan/plat approval of a small subdivision, as defined in Section 101-2-20 of this Land Use Code, is not required. The preliminary plan/plat required in this section shall be reviewed simultaneously with the final plat.

(c) Administrative Land Use Authority designated. The Administrative Land Use Authority for preliminary and final plan/plat approval ~~of a subdivision other than a small subdivision, as defined in Section 101-2-20 of this Land Use Code,~~ is the ~~applicable planning area~~ Planning Commission Director.

...

Sec 106-1-8 Final Plat Requirements And Approval Procedure

Sec 106-1-8.10 Final Plat Required

Sec 106-1-8.20 Final Plat Requirements

Sec 106-1-8.30 Final Plat Approval Process

Sec 106-1-8.40 Final Plat Recordation

Sec 106-1-8.10 Final Plat Required

1. After compliance with the preliminary plan/plat provisions of Section 106-1-5, the applicant shall digitally submit a draft final plat and draft improvement plans, meeting the remaining requirements of this Title and any additional conditions set by the Administrative Land Use Authority. The registered land surveyor's certification on such plats shall indicate all lots meet the requirements of the Land Use Code.

~~The final plat and accompanying information shall be submitted to the planning division at least 45 days prior to a regularly scheduled Administrative Land Use Authority meeting.~~

2. Upon determination of a complete application submittal, the County shall not require more than four review cycles, as outlined in Utah State Code Section 17-27a-604.2. The County, in each review cycle, shall return detailed comments to the applicant within 20 days of submittal from the applicant. Reviews by the County shall be detailed, itemized, and complete.

Sec 106-1-8.20 Final Plat Requirements

The following are requirements for final plat consideration:

...

1. **Signature block.** A signature block conforming to State Code and county ordinances shall be included on the plat for the following:
 1. Private licensed land surveyor's "certificate of survey";
 2. Owner's dedication certificate;
 3. Notary public's acknowledgment;
 4. County ~~Administrative~~ Land Use Authority's certificate of approval, to be signed by the ~~planning director~~ Planning Director or designee;
 5. County Engineer's certificate of approval;
 6. County Attorney's certificate of approval;
 7. Board of County Commissioners' certificate of acceptance;
 8. County Clerk's certificate of attest;
 9. County Surveyor's certificate of approval;
 10. Local health department certificate of approval, if required by the local health department;
 11. Culinary water authority certificate of approval, if not the local health department; and
 12. Sanitary sewer authority certificate of approval, if not the local health department.
 13. In lieu of a signature block on the final plat for the culinary water authority or sanitary sewer authority, the applicant may furnish a final plat approval letter from either or both of these entities, if applicable. The final plat approval letter shall indicate the water or sewer authority's unconditioned approval of the final plat and the proposed improvements for their respective facilities, and shall include a copy of the final plat and final improvement drawings for which they are granting approval. A conditional letter of approval is not allowed.
2. **Recorder's block.** A three-inch by three-inch space in the lower right-hand corner of the drawing for recording information.
3. **Subdivision boundary.** The subdivision boundary corners, lot corners and centerline street monuments shall be noted on the final plat in conformance with county ordinances.
4. **Map narrative.** A map narrative that complies with U.C.A. 1953, § 17-23-17 and Section 45-3-4 of the Weber County Code of Ordinances.
5. **Occupation lines.** All evidence of occupation such as fence lines, walls, curbs, etc. shall be shown on the dedication plat, as directed by the County Surveyor.
6. **Easements.** All easements observed, recorded in the Office of the County Recorder, or included in a preliminary title report unless legally vacated by all easement holders.

...

Sec 106-1-8.30 Final Plat Approval Process

1. ***Final subdivision approval.*** After the applicable staff and agency reviews, the final plat shall be presented to the Land Use Authority. The Land Use Authority shall review the final plat to verify compliance with applicable ordinances. After determining compliance with applicable ordinances, or determining compliance after adding conditions of approval to ensure compliance with applicable laws, the Land Use Authority shall approve the final plat. If applicable, when considering conditions of approval, the Land Use Authority shall follow the decision requirements found in [Section 108-4-4](#) of this Land Use Code, and the conditional use standards found in [Section 108-4-5](#). A decision on a subdivision that includes conditions of approval shall not constitute a conditional use or require a conditional use permit.
2. ***Land Use Authority designated.*** ~~The Land Use Authority for final plat approval of a subdivision other than a small subdivision, as defined in [Section 101-2-20](#) of this Land Use Code, is the County Commission, after recommendation from the applicable planning area Planning Commission.~~ The [Administrative](#) Land Use Authority for final plat approval ~~of a small subdivision~~ is the County Planning Division Director.
3. ***Submittal of final plat and final improvement plans.*** After approval of the final plat, the applicant shall submit a final plat printed on a 24-inch by 36-inch mylar sheet that includes the required signatures of all non-county employees. With the mylar, the applicant shall submit final improvement plans to the County Engineer for final approval, pursuant to [Title 106, Chapter 4](#). After the final plat mylar has all required official approval signatures, and after the final improvement plans have received final approval by the County Engineer, the final plat may be recorded in the Office of the County Recorder, at the expense of the applicant.
4. ***Tax clearance.*** The county may withhold an otherwise valid plat approval until the owner of the land provides a tax clearance letter indicating that all taxes, interest, and penalties owing on the land have been paid.

Record of survey. A copy of the subdivision mylar shall be filed as a record of survey in the county surveyor's Office, prior to the Weber County Surveyor signing the dedication plat.

1 Title 106 Subdivisions

2 ...
3 Chapter 106-4 Subdivision Improvements Required

4 ...
5 Sec 106-4-1 General Requirements

6 ...
7 ~~(d) Improvements to be installed prior to issuance of permits. All required subdivision~~
8 ~~improvements shall be installed and pass inspection, pursuant to , prior to issuance of any land~~
9 ~~use permit in a subdivision. This shall not apply to street trees or other required landscaping the~~
10 ~~asphalt, chip and seal, landscaping, street monuments, or curb, gutter, and sidewalk as long as a~~
11 ~~sufficient financial guarantee of improvements exists or is provided as required by for the~~
12 ~~incomplete improvements. A certificate of occupancy shall not be issued until the missing~~
13 ~~improvements are installed and pass inspection.~~

14 ~~(d)~~ (d) Improvements to be installed prior to issuance of permits.

15 (1) All required subdivision improvements shall be installed and pass inspection, pursuant to
16 Section 106-4-3, prior to issuance of any land use permit in a subdivision.

17 (2) This shall not apply to the required asphalt, chip and seal, landscaping, street monuments, or
18 curb, gutter, and sidewalk, street trees, and other required landscaping (and associated
19 irrigation and controls) as long as a sufficient financial guarantee of improvements exists or is
20 provided as required by Section 106-4-3 for the incomplete improvements.

21 (3) A certificate of occupancy shall not be issued until the missing improvements are installed
22 and pass inspection or if an updated financial guarantee has been provided as required by
23 Section 106-4-3.

24 (4) For the purpose of ensuring that improvements are not damaged or neglected during
25 construction, in the event that a property is not granted certificate of occupancy outside of the
26 one year warranty guarantee period, a separate landscaping, sidewalk, and curb and gutter
27 bond shall be posted in the amount for those improvements where the lots have not been
28 given certificate of occupancy, as determined by the County. The County shall retain this
29 bond until certificate of occupancy is granted to each subsequent lot.

30
31 Sec 106-4-2 Specific Requirements

32 ...

33 Sec 106-4-2.050 Curbs And Gutters

34 (a) **Curb and gutter.** Curbs and gutters shall be installed on existing and proposed streets by the
35 applicant. The County Engineer may allow curb and gutter to be deferred to a later time if it is in
36 the best interest of the street system. Deferrals shall be documented by recorded agreement, in a
37 form as approved by the County Attorney, between the County and the owner. Curb and gutter
38 shall be installed by the applicant in subdivisions along abutting Utah State Highways unless
39 specified in writing by the Utah State Department of Transportation.

40 (b) **Driveway aprons.** The applicant shall install driveway aprons to each Lot that has a Lot Width of
41 60 feet or less. These driveway aprons shall be provided on construction drawings. No such
42 driveway apron shall be of greater width than ~~25-20~~ feet and no lot shall have more than one
43 driveway apron. Driveway aprons shall be constructed of concrete. Installation of a driveway apron
44 for a Lot that has a Lot Width greater than 60 feet may be postponed until after the approval of a
45 site plan.

46 Sec 106-4-2.060 Sidewalks and Pathways

(a) Sidewalk. Five foot wide sidewalks are required on both sides of the street, unless specified otherwise in this Land Use Code or other adopted street right-of-way standard. Regardless of any other provision otherwise, all sidewalks are required to be six inches (6") in depth. Where no sidewalk currently exists in the area, or where a subdivision's required sidewalk is premature given existing conditions, the required sidewalk may, at the sole discretion of the County Engineer, be deferred to a later time by recording a deferral agreement to each lot in a form as approved by the County Attorney, County Engineer, and County Planning Director.

(b) Pathway. A pathway, either paved or concrete as determined by the County Engineer given site conditions, shall be substituted for a sidewalks along routes that are delineated on an adopted trail or pathway plan or map, or as may be required in this Land Use Code. Otherwise, at the option of the developer, a pathway may be substituted for a sidewalk as long as it is constructed of a material as determined by the County Engineer.

Sec 106-4-3 Guarantee of Improvements

(a) Financial guarantee for the completion of improvements. An applicant who desires to record any subdivision plat prior to the completion of subdivision improvements shall provide a financial guarantee to assure ~~for the~~ completion of ~~incomplete the~~ improvements within a two year period.

(1) Financial guarantee cost estimate. The applicant shall furnish and file with the county an escrow agreement or a letter of credit in an amount equal to ~~440-100~~ percent of the estimated future cost of the installation of ~~incomplete the~~ improvements, plus a 10 percent warranty guarantee. ~~at the termination of the two year improvement completion period.~~ The estimated future cost shall include a 10 percent construction contingency that is separate from the 10 percent warranty guarantee. The estimated cost shall be as estimated provided by the applicant's engineer and verified by the county engineer, to assure the installation of improvements within two years.

(2) Financial guarantee expiration and default. If the subdivision is not complete within two years, the financial guarantee is in default unless an extension of the financial guarantee is requested, in writing, by the applicant and approved by the County Engineer. An extension shall not be granted unless the applicant provides an updated estimated future cost for remaining improvements to be installed. At this time the financial guarantee shall be reassessed and increased to reflect cost increases, if any.

(3) Allowed financial guarantees.

- a. **Escrow agreement.** An escrow agreement, and the associated funds, requires the approval of the County Engineer and County Attorney. Escrow funds shall be deposited with the County Treasurer at the time the escrow agreement is executed.
- b. **Letter of credit.** An applicant may only use a letter of credit if the following conditions are met:

1. The engineer's cost estimate for installation of the improvements exceeds \$54,000,000.00;
2. The applicant and, if applicable, the applicant's subsidiaries and the applicant's members or shareholders has a history of positive performance, with no incidences of negative performance, in its development related contractual obligations in the State of Utah, and has a history of positive performance, with no incidences of negative performance, in completing developments in the State of Utah. The Planning Director or County Engineer may require the applicant to provide a performance history from other jurisdictions;
3. The applicant's financial institution has a history of positive performance in fulfilling its financial obligations, as determined by the county treasurer and based on typical conventions of the financial industry;

- 98 4. The applicant's financial institution provides the letter of credit on a
99 standard letter of credit form supplied by Weber County or in a form that
100 provides equal or greater financial protection to the county, as determined
101 by the County Attorney;
- 102 5. The County Attorney, County Treasurer, and County Engineer approve
103 the letter of credit, which they shall do if all of the conditions above are met
104 unless they have reasonable, objective indications of a substantial risk that
105 either the applicant or the applicant's financial institution will not fulfill its
106 obligations related to the completion of improvements or the financial
107 guarantee; and
- 108 6. A cash escrow is deposited with the county treasurer at the time the letter
109 of credit is executed equal to the full cost to revegetate any removed
110 vegetation in the event the applicant, his successors or heirs, or his
111 financial institution fails to perform.
- 112 (2) **Acceptance of financial guarantee.** A financial guarantee under this section is accepted
113 when the County Engineer signs a standard subdivision improvement agreement and an
114 escrow agreement or letter of credit. After the subdivision improvement agreement is
115 approved and executed, the applicant may record the subdivision, as long as all other
116 recording requirements have been met. The recording of the subdivision will allow the
117 developer to sell the lots, but not allow building and/or land use permits to be issued until
118 all improvements are installed, except as listed in this Title.
- 119 (b) **Partial release of financial guarantee.** Unless otherwise specified by the terms of the subdivision
120 improvement agreement, the county is only obligated to offer a partial release of the financial
121 guarantee for an independent improvement system, ~~including but not limited to those specified in~~
122 ~~section 106-4-2,~~ that is completed to the satisfaction of the County Engineer. An independent
123 improvement system includes but is not limited to those improvements specified in Section 106-4-
124 2. At no time shall the balance of the financial guarantee be reduced below the actual cost to
125 complete an incomplete improvement system, regardless of the engineer's cost estimate. If, in the
126 opinion of the County Engineer, costs are increasing or have increased greater than anticipated by
127 the initial engineer's cost estimate, the guarantee shall be reassessed and increased to reflect cost
128 increases, if any.
- 129 (c) ~~44~~ **Warranty guarantee, and conditional acceptance of improvements.**
- 130 (1) Upon satisfactory completion of all improvements, as determined by the County Engineer,
131 the improvements shall enter a conditional acceptance period. At this time, remaining
132 financial guarantee funds may be released, except those necessary for the warranty
133 guarantee, as specified in Subsection (c)(2) of this section. If street trees or other required
134 landscaping, or driveway aprons for Lots with a Lot Width greater than 60 feet, are not
135 installed by the time the rest of all other required improvements meet satisfactory
136 completion, then, at the discretion of the County Engineer, all other improvements may
137 enter the conditional acceptance period.
- 138 ~~(1)(2)~~ Ten percent of the approved estimated cost of all improvements, using current
139 market costs as approved by the County Engineer, financial guarantee, shall be remitted or
140 retained by the county for an improvement warranty guarantee, for a period as defined by
141 U.C.A. 1953, § 17-27a-103. If any improvement fails within the warrantee guarantee period,
142 the failure shall be remediated by the developer, and the warrantee guarantee period shall
143 restart. At the discretion of the county County engineer Engineer, the warranty guarantee
144 period, and conditional acceptance, may be restarted for any individual improvements
145 needing replacement or repairs, rather than restarting the entire warranty guarantee period,
146 prior to the end of the conditional acceptance period.
- 147 ~~(e)(d)~~ **Final acceptance of improvements.** After the warranty guarantee period has expired, if
148 the improvements have performed to the County Engineer's satisfaction, the County Engineer shall
149 release the ~~remainder of the financial~~ warranty guarantee. At this time the County Engineer may
150 also offer final acceptance of the improvements. Final acceptance may be withheld if circumstances
151 unforeseen at the time of conditional acceptance become known that expose the county or the
152 public to unreasonable financial or safety risk. The county is not responsible for operations or
153 maintenance of public improvements that have not received final acceptance. At the time of final

154 acceptance of all other improvements, if street trees or other required landscaping is not
155 satisfactorily installed or has not satisfactorily performed through the minimum warrantee period,
156 then the appropriate amount of financial guarantee shall be retained by the County in an amount
157 sufficient to satisfactorily install the trees or other landscaping, and to ensure proper performance
158 of the trees or other required landscaping through the duration of the minimum required warrantee
159 period. If the amount of remaining financial guarantee and warrantee guarantee is not sufficient to
160 pay for the County's current costs to install the street trees, an updated engineer's cost estimate
161 and financial guarantee shall be retained by the County.
162 (e) **County's authority under default.** If a financial guarantee authorized by this section is defaulted,
163 the County shall have the authority, in its sole discretion, to use the remaining defaulted funds to
164 make whatever improvements the County deems necessary to bring the subdivision into or closer
165 to compliance with the requirements of this Land Use Code. For any subdivision that has a
166 defaulted financial guarantee, the County is authorized, but not obligated, to release financial
167 guarantee funds to a third party that performs the work that the County has deemed necessary.
168