

Minutes of the Ogden Valley Planning Commission Regular meeting May 26, 2015 in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Laura Warburton, Chair; Ann Miller, Greg Graves, Will Haymond, Pen Hollist, Kevin Parson, John Howell

**Absent/Excused:**

**Staff Present:** Jim Gentry, Principal Planner; Charlie Ewert, Principal Planner; Dave Wilson, Legal Counsel; Kary Serrano, Secretary

***Pledge of Allegiance***

***Roll Call:***

**1. Minutes: Approval of the April 28, 2015 Meeting Minutes**

Chair Warburton moved to approve April 28, 2015 meeting minutes as written.

**MOTION:** Commissioner Graves moved to move the Administrative Item #1. UVS051415 and #2. CUP2015-13 to the consent agenda items. Commissioner Parson seconded.

**VOTE:** A vote was taken with Commissioner Miller Graves, Haymond, Hollist, Parson, Howell and Chair Warburton voting aye. Motion Carried (7-1).

Charles Ewert read the opening meeting statement.

**2. Consent Agenda:**

**2.1. CUP 2015-16:** Consideration and action for a Conditional Use Permit to raise an existing 40 foot cell tower by 14 feet, add 4 new antennas, and a new equipment shelter to make an existing site co-locatable located at approximately 546 Ogden Canyon in the Forest Residential-1 (FR-1) Zone Craig Chagnon, Agent for AT&T)

**1. UVS051415:** Consideration and action on a request to amend the Summit Eden Phase 1C PRUD by reducing the parking requirements for Lots 57A through 62R within the Destination Recreation Resort-1 (DRR-1) Zone located at approximately 5761 N Copper Crest, Eden. (Summit Mountain Holding Group, LLC, Applicant)

**2. CUP 2015-13:** Consideration and action for a conditional use permit for the water system improvements and restroom expansion located at the Cobble Creek RCMP, location to be determined in the Forest-40 (F-40) Zone (John J.D. Simmons, Forsgren Associates)

**MOTION:** Commissioner Miller moved to approve the consent agenda CUP2015-16, UVS0514145, and CUP2015-13 Commissioner Parson seconded. A vote was taken with Commissioner's Hollist, Graves, Parson, Haymond, Howell, Miller and Chair Warburton vote aye. Motion Carried (7-0).

**3. Administrative Items: (Moved to Consent Agenda)**

**a. Old Business**

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

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

**6. Planning Director Report:** None

**7. Remarks from Legal Counsel:** None

**8. Adjourn to Convene to a Work Session in the Breakout Room:**

**WS1. DISCUSSION: Request to consider allowed detached accessory apartment:**

Charles Ewert said there is a gentleman who asked for discussion about detached accessory apartment. He is not here so we will move to the next agenda item.

**WS2. DISCUSSION: Request to consider a land use code amendment to the Home Occupation Chapter**

Charles Ewert said that Thomassen have moved to a five acre residential property in Western Weber County in the A-1 zone that has an accessory building to run a small business there. When he started looking at this request, he began analyzing the potential to just change the A-1 Zone to allow for recreational opportunities outside of the home. If the code is written in such a way that they can't, it stops the ability for that to happen. Our current code is written that they can't use any part of their site for a home occupation, but for 400 maximum inside the dwelling unit. If the dwelling unit is less than 1,600 sq. ft. that 400 unit gets smaller, and is normally 25% of the dwelling foot of the home. In analyzing this request, he saw that there could be a need for the ability for an athletic instruction outside. He called about eight different counties, three of them said inside only, and the other ones said they have a process that they can ask for outside as well. Our current home occupation code not only restricts it to being inside, it also makes all home occupations permitted across the board, so there not a Planning Commission review, it just goes through staff, if it meets standards they are good to go. There is a list of examples that prohibit home occupations and a list of permitted home occupations. He is eliminating those in favor of giving a list of what that they know are prohibited in home occupations, and just a list of standards for everything else that comes forward. He asked Kregg and Kami Thomassen to do their presentation.

Kregg Thomassen said that they bought their property in Taylor on 3500 west, and it does have an exterior steel building that the previous owner had built a pool size collagen basketball court, with hoops on the end and two on the side. As part of this process when they were widening their road on 3500 west, and we were told the parameters of that road, and as part of that they would be taking seven feet from the front of their property. The property actually sits on five, and when they looked at the property they thought about getting a land use permit, and some of those allowed business on five acres, fell into that Agri-tourism. There were a few things that five acres seemed advantages to them if they needed to fall back on that as an asset. With that widening project they will have less than five acres and so what would they do and that is why this was brought this forward. They don't have a business now and they wanted to address it sooner than later. As a little league basketball coach it has been really difficult finding a gym for these junior leaguers and as a coach, he wants to have a facility for these teams to have practice. They aren't licensed physical therapists, trainers, or coaches and they are self-taught but there is a lot of need for that and they wanted to provide something for the kids to have something like that. The gym has been there since 1994 and there are a lot of things that have been addressed for that, and with them adding some renovations that they have done to that like extra padding on the wall for safety issues. What they would like have the ability to do, is have some instruction that they could actually charge for that, because at this point they are a residential building and they could offer a place for his children to practice where they could shoot a round. This has been around for year and the neighbors are used to that. There are opportunities there that they would like to do and have that as a possibility.

Commissioner Hollist asked staff if they considered an ordinance, where the county is taking from their property for a road, and places them in a different category. Did they not say in that ordinance that they would not suffer because of an action by the county, making their property ineligible for certain things. Mr. Ewert replied they did but to clarify there is not currently an ordinance that allows the business to operate on the property. So they are talking about legislatives changes in the code to allow that first. There has been discussion in the past about businesses that go outside of the home, with a lot of different impacts to the neighbors, and some of that might be mitigated by having a specific lot size for businesses that do conduct business outside. That was part of the conversation and five acres was thrown out, and now the county takes out seven feet where there is not currently a right to do so that won't be a right later. So if they have 4.8 feet and they are required to have five, then they wouldn't be entitled to that.

Charles Ewert said in talking more to their specific request, it is not about their site, building, or houses; this is something that could be applied to the county broadly. There are number of ways that they could do this, if this is not the right way, and maybe go other ways that they could do this. He thought that they could get this as a home occupation, and not open up all recreational opportunities. The A-1 is still residential and not open the ability for someone to have a recreational center on their property, but enable the ability for someone who lives onsite and work onsite as well and

provide a source of income. So addressing the impact that this kind of use, they looking at parking, lighting, noise, and there is the obvious dust, etc., that you might find from outdoor uses. Morgan County, Box Elder County, and Summit County allow things like outdoor sales. You can have part of your yard space for outdoor sales provided that certain criteria are met. The point of home occupation code no matter what jurisdiction you are in is to mitigate the effects of a use not looking residential essentially. It's a home occupation residence and you want it to look, feel, and operate and act like residential site. With the change here, by narrowing down what kinds of things could happen, and also requiring certain kinds of standards to help mitigate those effects. Is it going far enough, that is something you need to tell him to find the detrimental effects?

Commissioner Howell asked what kind of outdoor activities they plan to do outside. Mr. Thomassen replied that it would all be inside the building; it will be basketball, and there is one small batting cage netted off that they could do some possibilities, but for right now it is just basketball. Mr. Ewert added in looking at proposed language, there are a couple of things that he wanted to look at; there is athletic instruction in accessory buildings, and athletic instructions outside. In the proposal that is in the proposed code it is both, and it doesn't matter what the Thomassen will do, what matters what someone else who is allowed to do this could do. If the issue is outside stuff, then maybe we should say only inside, which get's them where they want to be. It may not get the guy who owns a swimming pool where he wants to be unless he encloses it. They have a swimming pool and they aren't asking to teach swimming lessons, and if this stays adopted, they might be able to ten years from now, so long as the states adopt it, they could teach swimming lessons.

Chair Warburton asked the type of business that you are talking about sounds very expansive, so how many days of the week are you talking about, and how many people, and they had talked about 16 people. Mr. Thomassen replied because they are focusing more on the school age, it is difficult for them because when they get a group of six 2<sup>nd</sup> or 3<sup>rd</sup> graders, and a lot of the times the parents or grandparents will want to sit on the sideline and what their kids practice for an hour. The overall occupancy that is the difficult of how many people can actually be inside, even though it's a facility that can hold 150 people. As far as individual instructions, this Planning Commission could specify and they would work around their suggestion.

Chair Warburton asked this sounds like a business that should be commercial zone. So all of their neighbors will be notified, so what do they think their neighbors are going to say. Mr. Thomassen said from his personal experience with being there a few years and getting to know them, and they are more upset with the road widening and taking seven feet from their property, than they will be with what they are proposing, it is inside the building, and has been there for 20 years.

Commissioner Howell asked how large are the adjacent properties to their property? Mr. Thomassen replied that one of the neighbors has two acres and not sure about the rest, and there is no one to the back of them. He would like to do more personal instruction.

Kami Thomassen said a couple of years when they looked at this property in the conditional use and the opportunities they could use. They could have this recreational building or playground and they could use it, but they couldn't charge for it. They could let people come and use it but they couldn't charge for it. She understands that they need to keep this a residential feel if they were in a subdivision, but that was built to be more commercial eventually. It's the ultimately the usage as they both hold full time jobs, and that is why the limitations of eight people.

Chair Warburton said what they have to look at is the detrimental effects and think of the community as a whole. She did appreciate that is where a commercial should come in but that is not where commercial is at right now. There is a process where you could make that commercial if you wanted to but it isn't right now. It is not just you're particular project that they have to look at all the projects, and it doesn't matter to them if they make money or not. What you are asking for is a business license for a home occupation license to do that. There is no way to revoke your conditional use permit unless there is a complaint, it's complaint driven and they can revoke it if there are too many complaints.

Commissioner Parson asked about their parking. Mr. Ewert replied that he could pull that up if they wanted to see their specific site. However, if the Planning Commission wouldn't mind, he would rather keep this in ordinance and policy perspective because they are looking at their specific site and there may be other ways they can deal with this by changing the ordinance in different ways.

Charles Ewert said what they are talking about now, this is in the AV-3 zone, this is not their zone, this is the zone in the valley, is the ability for them currently and this is written in the A-1 zone, to have recreational area outside on their property, it is not for commercial purposes so they can already do it and they are already doing it. This requires a CUP as it does in the A-1 Zone. They are looking at their specific site for them to do a non-profit they would ask for something like this, the question is can they make money, and right there they cannot. That's where part of the problem comes in and one of the reasons why he didn't want to address this on a zone by zone basis is because he wanted to ask the broad question, and is there a need for this county wide. If there is a need for this county wide, let's address this through the home occupation process. He wants to make sure that it's clear on the home occupation code moves far away from what the Thomassen want and he will just split that out and talk home occupation code and what the Thomassen want so that they are wasting their time and also getting our objectives met.

Chair Warburton asked so he does want to talk specifics. Mr. Ewert replied that he did, so let's first talk about the Thomassen and get a good understanding from the Planning Commission.

On Exhibit A: Proposed Changes – Home Occupation Code: Section 108-13-2 Home Occupations: Line: Under (a):

(13) Athletic instruction shall be limited to eight nonresident, nonemployee persons at any one time, including observers, with a maximum of 16 nonresident, nonemployee persons per day. It shall require a minimum lot size of three acres if conducted outdoors or in an accessory building. It shall not include recitals, competitions, performances, and shall not permit general recreational activities without the athletic instruction.

- How many people can be there in association with the athletic instruction? Eight total people not including the employees or coaches, and they are allowed up to two non-resident employees. So they can have a husband and wife, two extra coaches, and that's the workforce.
  - Under the child daycare the number is 8 and he wanted to be consistent with that number.
  - No more than 8 and up to 16 including observers

(8) Home occupations shall provide adequate off-street parking for residential dwellings, as specified in Title 108 Chapter 8 of this Land Use Code, and in compliance with the following:

- a. One parking space shall be required for each driver-age patron or clientele, or one space per two non-driver age patrons or clientele.
- b. One parking space shall be required for each non-resident employee.
- c. The parking area for patrons, clientele, or non-resident employees shall be substantially screened from view from the adjoining properties.
  - As far as parking is insuring that there are enough triggers in the code to make sure that as soon as they flip a certain threshold of commercial nature, they're finding their own commercial property. Can they make that threshold for this kind of a use?
  - All of these parking standards are for any home occupation that brings in clientele.

The Planning Commission and staff had a discussion with screening and the general consensus was to take that out.

- d. Large truck deliveries, except for parcel delivery service at times and in intervals typical for a normal residential use, shall be limited to one delivery per week between the hours of 8:00 a.m. and 5:00 p.m. A loading and unloading area, adequately sized for the type of truck, shall be provided on the site. No loading or unloading shall be permitted in the right-of-way.

The Planning Commission and staff had a discussion and it suggested changing the word "parcel" to "packaged." It was also suggested to limit the size of the large delivery truck with a tandem and staff indicated he would do some research on what a large truck with tandem is and the weight issue. The Planning Commission agreed to the delivery being one per week and the hours of operation of 8:00 a.m. to 5:00 p.m.

(13) Athletic instruction shall be limited to eight nonresident, nonemployee persons at any one time including observers, with a maximum of 16 nonresident, nonemployee persons per day. It shall require a minimum lot size of three acres if conducted outdoors or in an accessory building. It shall not include recitals, competitions, performances, and shall not permit general recreational activities without the athletic instruction.

The Planning Commission and staff had a discussion and suggested having only 8 pupils at a time, and have two sessions in a day. As to the acreage, it was suggested to have 3 acres and they were okay with it being conducted outdoors or in an accessory building. On the last sentence replace "it" with Athletic Instruction shall not include recitals, competitions, and performance. Take out and shall not permit general recreational activities without the athletic instruction and remove Athletic and just say Instruction. It was suggested to combine paragraph 11 with paragraph 13.

Section 108-13-2 – Home Occupations

(a) Use regulations. Home occupations are allowed in specified zones in accordance with the provisions of this ordinance:

(1) The following uses are prohibited as home occupations:

(b) Body art or tattoo parlors:

Staff called the Health Department and asked what the regulations are, and they said they regulate that but they don't restrict it, so they can do a body art or tattoo parlor in their home but under their code they are not allowed and this would be a policy issue from what they currently have. There was a discussion among the Planning Commission if having a body art or tattoo parlor should be allowed as a home occupation.

(h) Sexually oriented businesses:

The Planning Commission asked to clarify sexually oriented businesses. Mr. Ewert said there are certain businesses that can be inside of the home, i.e., webcam businesses. They are making money, and they are supposed to be a business, get their business license, and pay their taxes, and under this, it is a sexually oriented business that is not allowed. There is a big debate in the industry and should they be rendering what is happening behind closed doors in a house. Of all the different codes that he read, sexually oriented businesses were not on anybody else's list. We have another sexually oriented business code that specifically says that they are only allowed in certain areas. The Planning Commission said since they are talking about homes businesses that it should stay there.

(i) Others:

The question about someone putting in a motor cross or four-wheeler track and staff indicated that on that type of activity, it is outside and they may be charging for people to be outside on their track. Our code would restrict them from doing so under the 400 sq. ft. rule, but if they are allowing instruction it would no longer restrict them. The noise and dust would be a limiter and it cannot be unreasonable for the residential areas. Keep in mind that motor cross is not just a threshold of decibels; it is also an annoying sound. If they do decibels, as objective as it gets, it won't flush out all the nuisance and annoyances that the neighbors might complain. What he would suggest doing under prohibited distances is business conducted outside that produces sound above a certain decibel rating as measured from the property line.

(2) Home occupations not prohibited shall be allowed provided compliance with the requirements and standards listed in this chapter:

Staff said he wanted to make a good point of this; in all of their zones they listed 513 lines of things that are allowed and if it's not listed it's not allowed.

(b) Requirements: A home occupation shall comply with the following requirements:

(1) An application for a land use permit with a site plan depicting the site boundaries and relevant buildings or facilities onsite shall be required in order to verify zoning requirements.

(2) The property owner's written authorization shall be submitted as part of the application for the home occupation.

(3) The home occupation shall obtain an annual business license.

Staff asked if anything else should be shown or demonstrated other than these three. The Planning Commission did not add any new requirements.

(c) Standards: A home occupation shall comply with the following standards:

(1) A home occupation shall only be carried on by the resident(s) who reside on the premises; except that two non-resident employees may be allowed provided the lot size is a minimum of one acre.

(2) No changes

(3) The extent of a home occupation shall be incidental and secondary to the use of the property for residential purposes. The home occupation shall not occupy more than 400 sq. ft. or 25% whichever is less, of the total floor area of the home. This does not apply to a child day care.

(4) The home occupation shall not substantially increase the demand for services of excess of those usually and customarily provided for residential uses. It shall not substantially increase foot and vehicular traffic, parking, noises, lighting, vibration, smoke, or anything else that is uncommon to the established character of the neighborhood to such a degree as to constitute a nuisance to the residents of the immediate area.

(5) The home occupation shall only be carried on inside a dwelling unit. The home occupation shall not use any space in an attached or unattached garage, accessory building, yard or any space on the premises outside of the dwelling, except for child day care or athletic instruction activities. A child day care may have outdoor facilities for outdoor play. Athletic instruction may have athletic facilities outdoors or in accessory buildings.

The Planning Commission and staff discussed the sq. ft. and the percentage and it was decided to up the square feet to 500 sq. ft. and keep the 25%. It was suggested to take out Athletic and keep instruction activities. Staff indicated

that he would be looking to change “instruction activities” to some better and it would be inserted before the next meeting.

b. No home occupation with visiting clientele shall be allowed in multi-family dwelling units consisting of four units or more.

Planning Commission and staff had a discussion and it was decided to take this out. Staff said he was surprised by the Home Occupation Code that doesn’t go along with many other jurisdictions in a couple of different ways. Number one 400 sq. ft. inside the dwelling unit is so restrictive and the majority isn’t doing that; however, number two it is permitted. So they have nailed it down with the 400 sq. ft. inside of the house without having to go through the additional conditional use evaluation of traffic, lighting, noise, inspection, and hours of operation. When they start looking at visiting clientele, in speaking with Summit County, they said that was a big deal. They have Type 1 Home Occupation with no visiting clientele and no employees permitted across the board. Type 2 Home Occupation with clientele and employees, have to go through the conditional use process so they can view their site plan, parking, evaluate direct impact to neighbors, etc.

(10) Barber or beautician services shall be limited to two stations per residence.

Staff said this was taken straight from the examples of their permitted businesses. It is clear that the intent of the current code is intended to limit the amount of clientele on the inside but it doesn’t do that anywhere else with the exception of the four-plexes. The Planning Commission had a discussion and suggested employees or contractors. Staff said that he would work on this and figure this out and bring it back.

(12) Group instruction, motivational, or sales presentations shall be limited to one meeting per month.

Planning Commission and staff had a discussion and it was suggested to eliminate it completely.

(d) Home occupation signs: One flat sign or name plat not exceeding two square feet attached to the house or mail box may be permitted. A land use permit is required for the sign. Any modification made to the permitted sign requires a new land use permit. No freestanding or banner signs shall be permitted.

Planning Commission and staff had a discussion and said to leave in as is.

Commissioner Hollist asked staff to bring this back as a whole with the changes so they can review it and then at the next meeting to recommend for approval or not. This needs to be provided to them so they have ample time to review. It was suggested to have a copy to them 7 days in advance prior to the next meeting.

**WS3. DISCUSSION: Weber County Land Use Code Revision Process: Conditional Use Code**

**WS4. DISCUSSION: Weber County Land Use Code Revision Process: Land Use Table (Agricultural Uses)**

9. **Adjournment:** The meeting was adjourned at 8:30 p.m.

**Respectfully Submitted,**

**Kary Serrano, Secretary;  
Weber County Planning Commission**