

Minutes of the Western Weber County Planning Commission held April 14, 2015, in the Weber County Commission Chambers, commencing at 5:00 p.m., 2380 Washington Blvd., 1st Floor, Ogden, UT

Present: Jannette Borklund, Chair; Wayne Andreotti; Andrew Favero, Roger Heslop, John Parke, Ryan Judkins

Excused/Absent: Mark Whaley

Staff Present: Sean Wilkinson, Planning Director; Jim Gentry, Principal Planner, Charles Ewert, Principal Planner; Christopher Crockett, Legal Counsel, Sherri Sillitoe, Secretary

- *Pledge of Allegiance*
- *Roll Call*

1. Consent Agenda:

- *Pledge of Allegiance*
- *Roll call*

1. Minute Approval: Approval of the February 10, 2015 meeting minutes

Commissioner Borklund submitted a few minor changes to the February 10, 2015 meeting minutes. Commissioner Heslop indicated that on Page 4 Swipp should be SWPPP plans; in the middle para., 2nd Line the words should be “Revert Back” to the home owner; on Page 4 state should be real estate; on Page 1, 1st Paragraph 69,490 Acres should it be Acres or feet? Commissioner Borklund declared the February 10, 2015 meeting minutes approved as amended.

Commissioner Borklund asked if there are any exparte communications. None were declared.

2. Consent Agenda:

2.1 CUP 2015-11: Consideration and action for a conditional use permit for the expansion of the Uintah Highlands Reservoir #3, located at 2450 East Jacqueline Drive, Blaine Brough, Authorized Applicant for Uintah Highlands Water and Sewer Improvement District

Mike Atkinson, 2488 S 3500 W, indicated that recent conversations with the County enlightened him of the 40,000 sq. ft. lot size requirement. How much space will that subdivision take up including the open space? Commissioner Borklund indicated that this will be the first regular item heard.

MOTION: Commissioner Parke moved to approve the Consent Agenda Items 2.1 as presented and subject to staff and agency requirements. Commissioner seconded Heslop the motion. A vote was taken and Chair Borklund said the motion carried with all members present voting aye.

2.2. LVW120914: Consideration and action final approval of Winslow Farr Jr. Farm Subdivision Phase 1 (14 Lots and 3 open space parcels), located at 2269 South 3500 West; Bob Favero, Applicant

The applicant was given a 25% bonus density so the overall lot size is not the 40,000 sq. ft. lots. They had to have 30% of the overall subdivision area in open space. The average lot sizes are from ¼ to ½ acre lot size. Most of the smaller lots are on the interior of the subdivision. Staff has recommend approval of phase 1.

Bob Favero, 2049 Bluff Ridge Drive in Syracuse, indicated that they were required to widen the road to 66 ft. which reduced some of their open space; therefore, they had to adjust some of the lot sizes. The lots go from 11,000 sq. ft. up to 24,000 sq. ft.+ The open spaces that can be farmed will be farmed. Open Space C is a parcel across the canal that will also be left in open space.

MOTION: Commissioner Judkins moved to approve Consent Agenda Item 2.2 subject to staff and other agency recommendations. Commissioner Parke seconded the motion. Motion carried by a unanimous vote.

3. Legislative Items: Public Hearings**a. New Business:**

Chair Borklund opened a public hearing at this time.

1. ZTA 2014-05: Consideration and recommendation on a proposal to amend the Weber County Land Use Code to provide for the nonconforming designation of lots made smaller by right-of-way expansions, and to provide administrative clarifications related to those sections.

Charles Ewert indicated that the public hearings were tabled at the March meeting so that they could reach out to additional residents. Staff posted signs around various locations in the Western Weber County area. Mr. Ewert presented a sample visual showing how this ordinance could affect the various roadway widths once nonconforming lots are made smaller by right-of-way expansions within the unincorporated County.

The staff report indicates that the Engineering Department is currently working with the public along 3500 West and 12th Street to initiate a public right of way expansion of both roads. The expansions will take the front portions of the parcels that front these streets. The amount taken depends on a myriad of factors, such as the current right of way width, necessary road appurtenances, and proximity to intersections of streets and canals. A special ordinance is necessary that allows lots made noncompliant to current zoning standards to be considered a legal, nonconforming status. This will help clarify in the law that the current occupancy, use, and the right to initiate new uses, as may be allowed by the zone, may be continued on properties that drop below the zoning standards.

At the end of Title 108-12-15 there is a new section that is titled "Effect of Right of Way Expansion." Along with this new code section, a notice document has been created that will be recorded on the properties affected by right of way expansions. This notice will give current and future property owners notice of the new ordinance, and provide clarity in the record that their right to existing and new uses on the property will not be affected by the right of way expansion.

The non-conforming and non-complying codes were clarified with this ordinance amendment. In Section 101-1-7, the current ordinance only lists that zoning area and zoning width standards may make a lot nonconforming. The new definition specifies that all applicable lot standards are to be considered when evaluating whether a lot is nonconforming. The significance of this change is this: lot standards may be found in various places in the code, including the zoning ordinance and the subdivision ordinance. If a lot is legally created or modified under the lot standards of any land use code requirement at the time and any of those lot standards are later changed, then the lot is considered nonconforming as it relates to the changed lot standard, whatever that standard may be. The proposed definition is no longer limiting to zoning area and zoning width standards.

Even though the framework of Chapter 108-12 Noncomplying Structures and Nonconforming Uses/Parcels appears to follow the framework of historic model ordinances, the chapter has been amended to be more permissive regarding the modification of noncomplying structures. It has also been amended with provisions on how to treat nonconforming lots, giving leniency to those lots created in a manner that did not comply with previous subdivision codes. Essentially, what this does is gives a grant of amnesty from subdivision requirements for these lots.

Rebecca Hurley, 6017 S 2400 E, in Uintah Highlands, indicated that they have approximately 300 yards of a one-way street that is part of Uintah Highlands (Combe Road) and she wonders if there is a proposed list of roads set to be widened. Her concern is that the road has been narrow and one way for several years and it is a safety hazard. The concern is that as they get new people moving to the area or visitors that do not know that the road used to be two-way and it becomes a hazard. If there is a wish list for widening these roads and for getting Combe Road healthy and back to a two-way road, she would appreciate a copy. People are breaking the law on the road and it would probably save the County money if the road was fixed.

Chair Borklund indicated that she believes that Uintah City made the road one way. She lives in that area and is aware of the situation.

Sean Wilkinson, Planning Director, indicated that there have been discussions regarding the road, but he is not sure where the process is at this point. Staff will get with the Weber County Engineer and discuss it with him.

Bill Davis indicated he is involved with the 12th Street expansion. He believes that the County is uprooting over half the community and the homes will end up be non-conforming. He believes that the County should have been taking a 50 ft. right of way on each side of the roadway width since 1969 as he was required to do; he believes there is a planning problem. He believes there is a system that has worked for 70 years and he doesn't know why they need to change it now other than it makes it more convenient for the County.

Anna Giordano indicated that she lives on the roadway expansion. If they do the right of way back to where it is, they will have to move all their corrals that protect her barn from the public. Her question is that when her barn becomes too close to the roadway and someone comes off the road and hits her barn, who would be liable for that?

Cody Ostler, 5595 W 12th Street, asked how much advertising of tonight's meeting actually happened. He only noticed two signs and they were both missing last night. He believes that when they change the law, the lots would be legal non-conforming lots, but it still has the same negative impact. Will it be compensated differently by the County because of its legal non-conforming status?

Rick Gordon, 1173 S 5250 W, indicated that he appreciated seeing the signs advertising this meeting. He believes that this ordinance is a good way to make it conforming for everybody.

Layne McFarland indicated that he appreciated what was presented. The fact that they feel good about what the intent of the ordinance is here, doesn't mean they accept what the County is doing to them. As a group of citizens, they will continue to fight the County on the road width doubling. He appreciates the opportunity to be legally grandfathered in, but that doesn't mean they accept what the County is doing. They will continue to work with the County.

Cody Ostler indicated that he appreciated that the signs were posted and is thankful for this improvement. He hopes that the sign posting continues. He believes that if they would widen the road less strategically, it wouldn't impact as many people. He believes that it is good that the County is trying to make their lots legal. His question is that with this new ordinance, does it change the way the home owners would be compensated?

Mike Atkinson indicated that he lives on 3500 West and the large widening project doesn't affect his property so much because he built his home further back years ago; however, his neighbors are greatly affected. He saw the sign in Taylor two weeks ago and made a note to attend tonight's meeting, but he didn't see it there after that, so maybe they need stronger stakes. He believes that the signage is a great idea.

Director Wilkinson indicated that the plans have been based on the right of way widths that have been in the General Plan for many years (100 ft. road width for 12th Street and 80 ft. on 3500 W.) and that is what the roadway plans are designed to. He knows there are some questions from the public.

Chris Crockett indicated that they need to focus on what has been presented this evening.

Commissioner Parke asked if the road widening would ever come before the Planning Commission, and Director Wilkinson replied that no. Everything that is taking place is under the control of the Engineering Division working with the consultants. Hollin Wilbanks is the County's Public Relations representative and she is happy to take any calls or answer any questions.

Charles Ewert indicated that the Planning Commission saw the road widening width determination in 2003 during the General Plan process.

Chair Borklund asked who would be liable for traffic speed increases due to the road widening. Chris Crockett indicated that the determination of liability does not often come until the end. They need to look at what action is being taken so they can look at what legal procedure they need to follow. If the County is not doing what is appropriate, there is a way to challenge that. There are also provisions in the Governmental Immunity Act which could also govern regarding property damage, etc. Also, there would be other considerations to take into account regarding possible negligence or fault of a third-party individual.

Commissioner Heslop asked if they should keep the ordinance the way it is and have problems, or should they amend and try to provide for the safety of the general public and still have a problem. Chris Crockett stated that they need to ask whether the Planning Commission is the appropriate body to ask that question to. The agenda item tonight is very specific and narrow and he believes that the Planning Commission needs to stick with that.

Director Wilkinson indicated that this ordinance amendment would apply county wide on any road expansion that would take place. Chair Borklund indicated that they cannot send notice to every property owner in Weber County; posting the signs is the best that they can do.

Shawn Earley stated that he understands the need for this, but when you are talking about non-conforming lots, it becomes the standard. Why have standards if you are going to do away with the conformity? This proposal would almost make it so the County could abuse it and widen any road anytime they want.

Danna Giordano stated that the ordinance has been on the books but is being rewritten to clarify the wording for better understanding. She believes it is a good thing because it provides some protection. She wants to state on record that when the Engineering Division first started talking to the group at an open house for widening of 12th Street, they indicated that the road widening was for corridor preservation. Her son studied the issue and asked for an opinion from the State's Ombudsman who indicated that the County cannot use the funds for corridor expansion; therefore, the County could not do their due diligence and study the issue properly. The design of the road and the road width is changing. They are snaking the road and obtaining various road widths, and her opinion is that it is not fair.

Charles Ewert indicated that the Planning Commission's decision is a recommendation to the County Commission. This ordinance is an attempt to help the home owners. Director Wilkinson indicated that feedback from the open houses came back to the Planning Commission and staff. This ordinance amendment is their attempt to help remedy the situations the home owners have found themselves in.

Commissioner Parke explained that it is a legal lot; it is just non-conforming. The ordinance is providing some relief so that the home owner would not have to go to the Board of Adjustment if their property was affected by the road right of way expansion.

Commissioner Favero indicated that he believes that he is hearing from the public that it is bad timing for the ordinance amendment. The change is a great thing and helps a lot of people with future additions or new buildings on lots that were formerly non-conforming. He believes that some people feel that the ordinance is taking away a negotiation point on the projects that are at hand.

Commissioner Judkins asked if this ordinance only affects lots where there is road expansion, and Mr. Ewert said yes.

MOTION: Commissioner Heslop moved to forward a positive recommendation to the Weber County Commission of Z.T.A. 2014-05 based on the presented findings or any other findings they deem necessary. Commissioner Andreotti seconded the motion. The motion carried by a 5-1 vote, with Commissioners Andreotti, Heslop, Parke, Judkins and Chair Borklund voting aye, and Commissioner Favero voting nay based upon the ordinance timing.

2. ZTA 2014-06: Consideration and recommendation on a proposal to amend the Weber County Land Use Code to provide clarifications in the regulations and permissions of main buildings and accessory buildings, and main uses and accessory uses.

Charles Ewert indicated that the way the current county codes are written are that before you can place any accessory buildings on your property, you have to first have a main building established.

They are proposing to change any accessory building incidental to the use of a main building: main building designed or used to accommodate the main use to which the premises are devoted; and accessory uses customarily incidental to a main use.

The ordinance will have implications on agriculture, barns, golf courses, gravel pits; anything that is open air use that would not normally need a building yet might want an incidental building to support that use. They want to make sure that they are not telling someone that they cannot do something; they want to make sure that they are telling them how they can do something. Right now, the only difference will be when they are talking about how far a building can be set back.

Chair Borklund asked if it affects county wide, and Director Wilkinson indicated only if it is located in front of your house or not more than 10 ft. in back of your house.

Chair Borklund asked how they would treat a storage container on their lot, are they illegal? Charles Ewert stated that if it is set back so far behind the house and under a certain size, you could have one.

Chair Borklund asked if there a limit on how many accessory buildings can be on a lot, and Mr. Ewert replied not right now, but they do have to meet the proper setbacks.

Commissioner Judkins said if someone has a 10-acre parcel and wants to build a main building (a barn) and then in a few years they want to build a house, where does that fit now? Charles Ewert indicated that the first building that you build on the property is a main building until you build another building that is also a main building. At the point that you build a new building that replaces that main building, the first building is now essentially accessory and you could move it closer to your property if the building was built so that it could be moved. If it is the only building on site, it is the main building.

Director Wilkinson indicated that the intent of the ordinance is to not just let people put buildings all over vacant lots for whatever purpose; they would still have to comply with whatever use was allowed in that zone.

Layne McFarland, 5202 W 1150 S., stated that it is probably a hard concept to present. He is curious because he is aware of a land owner in West Weber who was required to put a living quarters in his new barn because it would be on the property by itself. Would this ordinance change that? Charles Ewert indicated that as administrations change, interpretations change. Director Wilkinson noticed that this is a problem and he wanted to have that clarified. In this instance, the barn could be built without a living quarters and that barn would be the main building, but the storage limitations would come into play; the barn would have to be used for agricultural use and storage of personal R.V.'s couldn't happen there. Mr. McFarland asked what would happen if an agriculture building wasn't used exclusively for agricultural use. Charles Ewert indicated that the agricultural exemptions prevent county oversight.

Chair Borklund asked about the enforcement process. Charles Ewert indicated that they would go through a permitting process and verify that the building would be used for something that is accessory to a permitted use on the property. The land use permit would state that specifically and then any complaints raised would follow the same enforcement process that is in place today. If the use changes from the agricultural barn to a storage shed, then the inspector would inspect and they would go through the process of determining what needs to happen to bring the building into compliance. Director Wilkinson indicated that he would hope that with this amendment, complaints would not be raised so that they have to go through the code enforcement process.

MOTION: Commissioner Andreotti moved to recommend approval of ZTA 2014-06. Commissioner Favero seconded the motion. A vote was taken and Chair Borklund indicated that the motion carried unanimously with Commissioners Andreotti, Favero, Heslop, Parke, Judkins and Chair Borklund voting aye.

4. Public Comment for Items not on the Agenda - no comments were made.

5. Remarks from Planning Commissioners

Commissioner Favero indicated that he thought the legislation on ZTA 2014-05 was good legislation but felt that the timing showed that they were not transparent. Chair Borklund indicated that by having the ordinance amendment on the agenda at this time almost looked like they were pushing for the road expansion when they were not. They are saying with the ordinance amendment that in case it happens, they want the property owners to be protected.

Commissioner Andreotti indicated that he appreciated the public attending the meeting tonight.

Chair Borklund indicated that it is hard for them to notify people on legislative issues that affect the community so she appreciated the public attending the meeting tonight.

6. Planning Director Report

- Chair Wilkinson indicated that staff is hard at work with several ordinance amendments. They are going to take a look at the Western Weber General Plan and to see what they have not yet accomplished and create a list to bring some of those items to the Planning Commission's attention leading up to a General Plan update in a couple of years.
- The National APA conference will be this weekend. Commissioner Andreotti will be presenting with Scott Mendoza.

There were no comments from Legal Counsel.

7. Adjourn

There being no further business, the meeting was adjourned at 6:39 p.m.

Respectfully Submitted,

Sherri Sillitoe, Secretary
Weber County Planning Division