

Minutes of the Work Session of the Ogden Valley Planning Commission for June 7, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/81809370043>, the time of the meeting, commencing at 5:00 p.m.

Ogden Valley Planning Commissioners Present: Trevor Shuman, Chair; Shanna Francis, Vice Chair, Jeff Burton, , Justin Torman.
Absent/Excused: Commissioners John (Jack) Howell, and Dayson Johnson, Jared Montgomery
Staff Present: Charlie Ewert, Principal Planner; Scott Perkes, Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

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

Chair Shuman conducted roll call and indicated Commissioners Howell, Johnson, and Montgomery were excused.

1. Approval of Minutes for April 5, 2022.

Chair Shuman announced there have been no corrections or suggested edits to the meeting minutes and he declared them approved as presented.

2. Work Session 1: Discussion of Osprey Ranch Subdivision, a proposed subdivision consisting of approximately 61 lots, in the FV-3 zone. This proposal includes a proposed new sewer system, water from Nordic Mountain Water, and a public right of way that will connect Hwy 158 to Nordic Valley Drive

Planner Aydelotte offered Eric Householder the opportunity to provide the Commission with information about the Osprey Ranch Subdivision project.

Mr. Householder used the aid of a brief PowerPoint presentation to summarize proposed phasing of the project, proposed residential uses in the project, utility services to the area, and access agreements from the Utah Department of Transportation (UDOT). He presented the proposed site plan and identified points of access, and phasing; phase one has 31 lots and phase two has 30 lots. This proposal is much less dense than projects that have been approved for the subject property in the past.

Mr. Householder then participated in high level discussion with the Commission regarding issues such as connectivity to existing roads in the area and efforts to work with existing residences, homeowner's associations, and other developers in the area to pursue cohesive development and planning for the area.

Shane Dunlevy stated he is president of the Big Sky Number One Homeowner's Association (HOA) and a partner in the Osprey Ranch project; at their annual meeting they took a vote regarding thoroughfare through Hidden Brook from Osprey Ranch. Hidden Brook is not capable of handling additional traffic and the HOA opposed that connection. He has discussed the same issue with the Big Sky Number Two HOA and they are of the same opinion. The only improvement they would approve is a fire crash gate on the roadway.

Continued discussion among the Commission and Mr. Householder centered on utility service capabilities; density of the project; zoning regulations; open space and trail improvements, including parking) in the project and whether they will be open to the public; natural vegetation to be preserved around the perimeter of the project; location of a water storage tank to serve the project area; and geologically sensitive areas in and around the project area.

Steve Emery, Eden resident, discussed access and road improvements in and surrounding the project area; he noted he feels there is a conflict of interest when developers begin to communicate what types of improvements they are feel are not feasible. He stated the connectivity that is desired in the area is feasible and there should be much more attention paid to the proposal.

Principal Planner Ewert stated the developer can not unilaterally decided to take over a private road or connections that exist on Big Sky Drive; the County is not interested in being party to a project that would 'force the hands' of private land owners on Big Sky Drive and, instead, the County is looking for opportunities to pursue public road connections in the future via reservation of a public right of way. Chair Shuman noted that Big Sky Drive is currently in a state of disrepair; however, residents are comfortable

with the current condition. If, at some point in the future, it makes sense to connect to and improve Big Sky Drive, preservation of a public right of way easement would allow for that. Mr. Householder stated that scenario is sensible, but he identified what he feels is the more natural connection for the project area. He stated providing an easement may be more difficult and it would be costly to build a road in that easement at some point in the future.

Fred Blickley stated he lives on Oakland Circle and he asked for information regarding the alternatives that are being considered for effluent disposal in the area. Mr. Householder stated that he is pursuing an operating permit with the Division of Water Quality, which includes a public notification and input process. He discussed requirements for securing the permit and indicated that he expects to hear back from the Division in order to begin design work and launch the public process.

Commissioner Francis stated that at the time this application comes before the Commission for formal consideration, she would like clear information about utility infrastructure and level of service for the project area.

Mr. Emery asked if short term rentals will be allowed in the project area; this land use has created many problems in the Valley and he wanted assurance that short term or nightly rentals will not be allowed. Mr. Householder state the minimum rental period for any unit will be 30 days and that will be restricted via the covenants, conditions, and restrictions (CCRs) for the project.

Mr. Householder concluded by thanking the Commission for their consideration of this project; he feels the current proposal is an improvement when compared to past proposals for the same property – especially when considering density.

Continued discussion among the Commission and staff centered directly on connectivity and preservation of any public right of way or easement for future transportation improvements in the project area.

Chair Shuman stated he looks forward to continuing discussion of the application in future meetings and he thanked the applicant for the information provided tonight.

3. Public comment for items not on the agenda.

Ron Gleeson requested that the length of time that a resident is allowed to speak during a public hearing be increased from two minutes to three or even five minutes. He stated that approximately six months ago this rule was changed and the time reduced to two minutes. He cited other government agencies that allow three minutes or greater.

Valerie Fowler stated she lives in the Elk Ridge development in the Ogden Valley and she expressed her concern about the lack of progress in developing an enforcement mechanism for illegal short term rentals in areas that are not zoned for that use. She stated that short term rentals are a regular topic of conversation. She and many of her neighbors chose to buy a home in an area they plan to reside in and in areas where short term rentals are prohibited. Everyone buying their home in the Valley should know the zoning of their property and that short term rentals are prohibited; nobody has the right to break those regulations for any reason, including profit. About a year ago, the Weber County Commission announced a pause on short term rentals, citing unspecified misinformation. She noted she was a U.S. foreign service officer for 30 years specializing in special communications; in that position, one of her challenges was countering disinformation. She knew the importance of pushing correct information. With this background, she asserts that continuing the pause on developing enforcement for illegal short term rentals could be problematic. The County Commissioners are ceding the information space to those that wish to create their own narrative. In her neighborhood, there is one owner who is repeatedly renting to large groups who are trespassing on neighboring properties and causing many problems; the sheriff knows the address of this property well and her neighborhood is fed up with the lack of accountability for illegal rentals. In addition, the owner is not required to meet any health or safety standards because the unit is not a legal rental. Also, large rental groups use a lot more culinary water than a single family home typically would. She reiterated that the pause on developing rules for this issue is concerning; the last update she heard about the issue was that the County Commission expected to have a contract out to bid early this year with implementation by early this summer. She stated she has two questions for the Planning Commission: what action has been taken with respect to short term rentals in the past year and what does the Commission understand is the timeline for which residents can expect to see enforcement in the Ogden Valley.

Mr. Ewert discussed the current process that residents can use to report illegal short term rentals, after which the County will launch an investigation. The State Legislature has adopted a rule prohibiting the County from using an online listing for a short term rental as evidence of the short term rental itself. The County needs other evidence in order to pursue legal action against an

illegal short term rental. He then noted that the County did publish a RFP for bids for a contactor that can aid in the investigation process; a number of bids were received, but the County Commission put a hold on executing a contract for a time. He hopes that issue will be addressed again in the next few quarters.

The Planning Commission and staff then engaged in discussion regarding past actions taken by the body relative to short term rentals. The Commission has supported enforcement against illegal short term rentals. Mr. Ewert stated that the challenge that the County has is not relative to legal short term rentals as there are typically not problems with licensed rentals. For illegal short term rentals, there is insufficient revenue to pursue a strict enforcement program. The County Commission has discussed opportunities for requiring owner-occupancy of short term rentals and requiring a minimum three-night stay in a unit. Enforcement, however, will be incumbent upon the neighbors of the properties where illegal rental is occurring. This is due to the fact that code enforcement staff is not working during the hours when illegal rentals are typically taking place.

Ms. Fowler thanked Mr. Ewert and the Planning Commission for their discussion on the matter of short term rentals, but noted that her neighborhood has already done everything that he suggested in order to ensure that enforcement action will be taken against the property owner that is using their property illegally. One neighbor even went so far as to rent the unit in order to provide the County with proof of the illegal operation. She stated that over the past year she has not received a response from Planning staff and Code Enforcement staff. Unless the Planning Commission and County Commission are willing to take a property owner to court, nothing will be done to stop the illegal use of the property. She stated she and her neighbors have tried everything they can think of and they are in desperate need of help.

Mr. Ewert asked Ms. Fowler to email him directly and he noted he will follow up with those individuals at the County who are currently involved in enforcement. Chair Shuman asked that the Commission hear a report on this matter from the Planning Director during the next meeting.

Steven Regan stated he live in Eden. He received a phone call last April about a town hall meeting with Weber County Commissioners; one topic of discussion during that meeting was the number of short term rentals in the Valley, but the Commissioner disregarded the number of rentals and indicated the problem lies with enforcement and lack of staffing to handle enforcement. He stated that this does not give Valley residents confidence that the County Commission is serious about addressing the problem; if they were serious, they should pursue resources that will make it possible to handle enforcement. He stated that the Governor has come down on the land use because it is making it hard for the State to address housing needs. The County needs to take the issue seriously.

Fred Blickley stated that he also shares concerns about short term rentals; he lended his support to Ms. Fowler's statements and noted he appreciates that the Planning Commission is paying attention to the input and that they will ask for a report on the matter soon. The County Commission needs to understand that their constituency is concerned about this. He thanked Mr. Ewert for his input, but noted that the residents of the valley are not as concerned about whether there is funding to pay for enforcement efforts. He noted that when someone calls the police or Fire Department for support, they are not asked to consider whether there is sufficient funding to pay for a response. Regulations should not be selectively enforced based upon an arbitrary view of whether there is funding to pay for that enforcement. Residents should not be asked to be the party that is investigating situations and gathering data to make it possible to take enforcement action; that is the County's job. The residents are fatigued by this issue and he asked that it be addressed.

Ray Bertogli echoed the comments made by residents who spoke about short term rentals; he spoke to a personal experience where a bus pulled into his driveway to drop off adults at a vacation rental property down the street from his home. Residents should not be asked to consider whether there is funding to pay for enforcement. The same is true for storm water pollution prevention programs (SWPP); such SWPP programs are not being enforced and contractors are getting away with breaking rules. This results in infringement on the rights of existing residents. The County Commission needs to take a serious look at how to fund an enforcement program against short term rentals and soon.

Kay Hogeland also echoed the comments made regarding short term rentals. She asked that the Commission's legal counsel, Cortland Erickson, look into the State law regarding short term rentals as it is her understanding that the provision prohibiting examination of an online listing for enforcement purposes has been changed. She views the inaction of the County Commission as a failure; there was a strike last summer to stop further action based upon misinformation. The Planning staff has prioritized an enforcement program for nightly rentals and the Commission ranked the matter at the bottom of the list. This is bordering on nonfeasance and a waste of County money; the County Commission has spent a great deal of time investigating a matter that

other Counties have already acted on. It is wrong to think that any enforcement program should be self-funding. Commissioners have stood on property rights, but they are disregarding the property rights of those that have chosen to live in a neighborhood where short term rentals were prohibited. She asked that Planning Director Grover consider this is a very important matter for the Valley and communicate that to the County Commission.

Chair Shuman asked Mr. Erickson to responds to Mr. Gleason's request that those making public comments be given more than two minutes. Mr. Erickson stated there is no law governing the length of time given to those making public comments; the Chair has the authority to set a reasonable amount of time for public input according to the Commission's rules of order.

4. Remarks from Planning Commissioners.

There were no additional remarks from Planning Commissioners.

5. Planning Director Report.

In Mr. Grover's absence, Mr. Ewert provided remarks; he thanked those residents who spoke about short term rentals and advised that their input may be better focused to the County Commission than this Planning Commission.

6. Remarks from Legal Counsel.

Mr. Erickson stated he will research the State Statute regarding short term rentals and indicated he will work with Planning staff to provide updated information to the Planning Commission.

7. Work Session 2: Discussion regarding transferable development rights overlay zone.

Principal Planner Ewert noted the County Commission has discussed the concept of transferable development rights (TDR) due to the recent Nordic Valley application; he presented a map illustrating open space areas in the valley from which TDRs can be sent from and to. The intention is not to increase density in the Valley, but to move it from some locations to others in an effort to preserve open spaces and large agricultural areas. In theory, many people support the concept of TDR, but those that may be located closer to more dense areas have expressed concern. In total, the undeveloped rights spread across the Valley floor is approximately 10,000; there are approximately 5,000 developed rights, for a total buildout of 15,000 dwelling units. He then facilitated discussion among the Commission regarding the creation of small area plans in the Valley, including the Nordic Valley small area plan, in which the remaining development rights can be located. Throughout the discussion there was a focus on the ability to provide services to the areas in which density may be increased; areas designated for preserved open space; and the properties that have been recommended for inclusion in the TDR overlay zone. Some areas will be receiving areas only, some will be sending areas only, and others will be a hybrid of the two.

Commissioner Burton stated that he feels that the direction regarding sending or receiving areas only is somewhat arbitrary; he would prefer that all areas be open to sending and receiving development rights and that such actions be market driven. These comments led to deliberation of the type of policy recommendation the Planning Commission may send to the County Commission; Mr. Ewert stated that the underlying zone will control the ultimate development potential of a property, but there will be options for the County and landowners to consider relative to TDR actions. He is suggesting creation of an overlay zone that does not require legislative actions for each individual zoning application.

Commissioner Francis stated she would like for the TDR zoning ordinance to consider sensitive lands and usage of impact fees to acquire and preserve open space. Mr. Ewert stated he feels there is a strong argument for using impact fees for that purpose and he will confer with Mr. Erickson regarding the legality of doing so.

Mr. Ewert then thanked the Commission for their consideration of this issue; he indicated he will use the feedback from the Commission to formulate a document for further discussion and consideration in a work session setting.

Chair Shuman invited public input on the matter of TDRs.

Ron Gleason stated Geo-Gizmo allows a user to identify TDR's that have already been designated. He asked if these designations will still be valid if the County Commission adopts a TDR overlay zone. He referenced a piece of property at the corner of Old Snow Basin Road and Highway 39 that was rezoned from CV to FR-3 upon which homes were built, but 54 development rights were not used. The developer used every square inch of land to build the development and the County Commission has told them they can sell their remaining 54 development rights. He wondered if that should be the case and if that is a good precedent to set.

Mr. Ewert stated he does think it is a good precedent, though others will disagree and suggest that the market is being flooded. He does not think that is the case. Mr. Gleason stated that the transaction to sell the development rights has already occurred and the precedent has been set. Mr. Ewert agreed and stated he feels the transaction is appropriate. Unless there are appropriate restrictions in place that would prevent further subdivision of land within a project area, he feels that extra density should be available for sale. He added that the current Geo-Gizmo information will not change; future TDR actions will be added to Geo-Gizmo.

Vicky (no last name given) stated she knows there has been a great deal of work put into the TDR plan, but she wondered if there is a transportation study supporting the plan. Mr. Ewert stated it is available on the County's website; he invited residents to email him and he will provide the plan and/or studies in response.

Meeting Adjourned: The meeting adjourned at 8:34 p.m.

Respectfully Submitted,

Cassie Brown

Weber County Planning Commission