Minutes of the Work Session of the Ogden Valley Planning Commission for September 28, 2021. To join the meeting, please navigate to the following weblink at, https://us02web.zoom.us/j/85297024137, the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** Chair John Lewis, Chair; Shanna Francis, Vice Chair; Commissioners Jeff Burton, John (Jack) Howell, Trevor Shuman, and Justin Torman.

**Absent/Excused:** Commissioner Lackey

**Staff Present:** Charlie Ewert, Principal Planner; Scott Perkes, Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

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

Chair Lewis asked if anyone had any ex parte communication or conflict of interest to declare. No disclosures were made.

1. **Petitions, Applications, and Public Hearings.** 
   1. **CUP2021-15: Consideration and/or action on a conditional use permit for short-term rental use at 4819 E 3925 N, Eden, UT 84310. *Staff Presenter: Felix Lleverino***

Planner Lleverino reported the applicant is requesting approval of a conditional use permit for short-term use in a residential dwelling located in the FR-3 zone. The proposed use will occur within an existing dwelling. As such, there is no design review required. The applicant has submitted a project narrative detailing their intended use of their property as a short-term rent the property. This narrative also indicates that Mr. Brady Jeppsen, who is hired to manage the rental, will address issues that may arise from noise, security, parking, and garage use. The applicant has also submitted a parking exhibit. This application is being processed for an administrative review through the Ogden Valley Planning Commission as directed by the approval procedures outlined in LUC §108-4-3. This section of code indicates that a review of a conditional use permit application is intended to verify compliance with applicable ordinances and provide appropriate and reasonable mitigation of anticipated detrimental effects.

The subject property is located within the Forest Residential (FR-3) Zone. The purpose of the FR-3 Zone can be further described in LUC §104-17-1 as follows:

*“The purpose in establishing the Forest Residential, FR-3 zone is to provide for medium density residential uses of apartment clusters or condo-tels adjacent to and in conjunction with major recreational resorts, recreation areas and facilities in the mountain areas of Weber County on the basis that such medium density multiple-family housing is an integral and normal part of a recreational resort complex* ***catering to the needs of both tourists and permanent homeownership****. This zone is intended to be used in mountain locations in areas associated with major recreational resorts.”*

The FR-3 Zone allows for a “nightly rental” as a conditional use. For comparison purposes, the FR-3 Zone also allows similar conditional uses such as condo-tels, group dwellings, lockout sleeping rooms, multi-family dwellings, timeshare buildings, and recreational lodges.

Conditional Use Review*:* A review process and use standards have been outlined in LUC §108-4 to ensure compliance with the applicable ordinances and to mitigate anticipated detrimental effects. The conditional use standards are as follows:

1. Standards relating to safety for persons and property
2. Standards relating to infrastructure, amenities, and services
3. Standards relating to the environment
4. Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the general plan
5. Standards relating to performance (bonds, agreements)
6. Standards generally (economy, other applicable LUC standards)
7. Voluntary contributions providing satisfactory compliance with applicable standards

Nightly Rental Ordinance*:* Under the current land-use code, §108-7-25 titled ‘Nightly Rentals’, states the following:

*The rental of a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than 30 days is considered a nightly rental. Nightly rentals are allowed only when listed as either a permitted or conditional use in a specific zone or when approved as part of a planned residential unit development (PRUD).*

Staff offers the following analysis following review of the application against the conditional use standards:

1. Standards relating to safety for persons and property.
   * Apart from the Fire Marshal’s review and conditions, the operation of a short-term rental is not anticipated to cause safety hazards to persons or property.
2. Standards relating to infrastructure, amenities, and services.
   * The parking infrastructure for visitors includes one “comfortable” parking spaces in the garage, two parking spaces on the driveway, and one parking space in the guest parking area directly across from the front yard. The members of an operational HOA enforce the parking requirements. It is Staff’s opinion that parking should be limited to the garage and driveway. A condition related to staff’s opinion is within the staff recommendation.
3. Standards relating to the environment.
   * Staff does not anticipate any detrimental effects on the natural features of the site or surrounding areas.
4. Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the general plan.
   * The current FR-3 zoning anticipates short-term rental use and the area has been developed for resort and lodging purposes. As such, staff does not anticipate the proposed use to be detrimental to the characteristics of the area. The zoning is consistent with the General Plan.
5. Standards relating to performance (bonds, agreements).
   * There is an existing dwelling, with a sufficient parking area. No performance bonds or agreements are necessary for the proposed use.
6. Standards generally (economy, other applicable LUC standards).
   * The proposed use is not anticipated to have detrimental effects on the local economy.
   * Before issuance of a conditional use permit, the applicant will need to apply for, and be issued with, a business license.
7. Voluntary contributions providing satisfactory compliance with applicable standards.
   * There are no voluntary contributions that are offered with this request.

Based on the staff analysis and the findings listed below, staff recommends approval of this conditional use application. This recommendation is subject to the applicant meeting the conditions of approval listed below and any other conditions required by reviewing agencies and the Planning Commission:

* + 1. There is a ten-person limit in non-sprinklered dwelling units. A fire-extinguisher shall be left in plain sight. Carbon monoxide and smoke detectors are required.
    2. A business license shall be obtained before the issuance of this conditional use permit.
    3. The dwelling’s attached garage shall be made available to the guests. Visitor parking is limited to the two-car garage and the two-car driveway.

The following findings are the basis for the staff’s recommendation:

1. The proposed use is allowed in the FR-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 reasonably anticipated detrimental effects can be accomplished.

There was brief discussion among the Commission and Mr. Lleverino regarding communication from the Homeowners Association (HOA) for the subdivision regarding short term rentals; Mr. Lleverino indicated he is aware that the HOA Board has taken action to prevent any future short-term rentals in the subdivision, but the subject property has been grandfathered under previous bylaws of the HOA. Planning Director Grover clarified that the County has no authority to enforce HOA bylaws or covenants, conditions, and restrictions (CCRs) for this project; the Commission should consider whether the application should be approved according to the land use laws and conditional use guidelines for Weber County. HOA denial of a land use that is permitted by the County would become a civil matter between the applicant and the HOA.

Commissioner Torman then addressed the availability of water and whether there is sufficient water to serve the project and this subject property as a short-term rental. Mr. Grover stated that water, and other utilities, are subject to life, health, and safety matters and the service providers have indicated that there is sufficient water available to the project and the subject property. It would be very difficult to deny approval of a conditional use permit based on concerns about insufficient water when the service provider has indicated there is sufficient water.

Chair Lewis then invited public input.

Allen Elliott stated he is President of the Fairway Oaks HOA, and the HOA Board is very concerned about the number of short-term rentals that are being allowed in the area. There are at least 1,000 short term rentals in the valley, but only a portion fo them have secured a conditional use permit from the County. He is concerned about the amount of water available to supply these uses, which will place a greater demand on water resources. The development was designed to be a single-family project in nature and use of individual units as short-term rentals do not meet the definition of a single-family unit. Residents have noticed that the people staying at these homes changes on a very regular basis and these contribute to safety concerns. He is concerned about the County’s inability to enforce the conditions placed on short term rentals and that enforcement may fall to the HOA, which will increase the costs paid by the HOA and will be overly burdensome.

There were no additional persons appearing to be heard.

Commissioner Burton stated he is concerned about denying a conditional use permit application based upon HOA bylaws; however, he would like to pursue including language in the ordinance governing short term rentals that would allow the County to rely upon HOA bylaws when making a decision on a conditional use permit application. Commissioner Howell agreed. Mr. Grover stated he can pass that recommendation on to the County Commission.

Commissioner Howell moved to approve CUP2021-15, conditional use permit for short-term rental use at 4819 E. 3925 N., Eden, based on the findings and subject to the conditions listed in the staff report. Commissioner Torman seconded the motion. Commissioners Lewis, Francis, Burton, Howell, Shuman, and Torman all voted aye. (Motion carried 6-0).

**1.2 UVW06062021: Request for a recommendation of final approval of Westwood Homestead Subdivision, consisting of four lots and road dedication along 1900 North St. *Staff Presenter: Tammy Aydelotte.***

Planner Aydelotte reported there are no requirements to be fulfilled prior to receiving a recommendation of final approval from the Planning Commission. All conditions of approval listed in this staff report will be required prior to recording the final plat.

General Plan: The request is in conformance with the Ogden Valley General Plan, as the property is being platted under the existing 3-acre zoning.

Zoning: The subject property is located in the FV-3 Zone. Single-family dwellings are a permitted use in the FV-3 Zone.

Culinary water and sanitary sewage disposal: Well permits, and septic feasibility for each lot, have been issued by Weber Morgan Health Department, in response to a requested Order of the State Engineer.

Secondary water by private well. The applicant has indicated that a portion of the water share for each lot, from Weber Basin, will be utilized for irrigation purposes. If homeowners wish to increase their landscaped area, they may have access to the irrigation shares owned by the developer, from Middle Fork Irrigation Co. This irrigation water is located within the subdivision boundaries and will be relocated along the western boundary of lots 1 and 2 within the proposed subdivision.

This application was submitted prior to the recent changes to the Weber County Land Use Code (Culinary and secondary water requirements) were adopted in July of this year.

Review Agencies: To date, the proposed subdivision has been reviewed by the Planning Division, Engineering Division, and Surveyor’s Office along with the Weber Fire District. All review agency requirements must be addressed and completed prior to this subdivision being recorded.

Tax Clearance: There are no outstanding tax payments related to these parcels. The 2021 property taxes are not considered due at this time but will become due in full on November 30, 2021.

Staff recommends final approval of Westwood Homestead Subdivision, consisting of four lots located at approximately 1900 N 7800 E, Eden. This recommendation includes road dedication along 1900 North Street and is subject to all review agency requirements prior to recording of the subdivision, and the following conditions:

1. The proposed access shall comply with safety, design, and parcel/lot standards as outlined in LUC
2. An alternative access covenant, per the approval for an alternative access dated 10/28/2020, shall be recorded with the final plat.
3. An onsite wastewater disposal covenant shall be recorded with the final plat.
4. A private well covenant to be recorded with the final plat.

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.

Discussion among the Commission, Ms. Aydelotte, and Legal Counsel centered briefly on changes that have been made to the County’s LUC since the application was initially filed; Legal Counsel Erickson noted that the applicant is entitled to have his application reviewed according to the land use regulations that were in effect when his application was filed.

Chair Lewis invited public input. There were no persons appearing to be heard.

Commissioner Burton moved to approve UVW06062021, final approval of Westwood Homestead Subdivision, consisting of four lots and road dedication along 1900 North Street, based on the findings and subject to the conditions listed in the staff report, and clarifying that the application conforms to the version of the LUC that was in effect at the time that the application was initially filed. Commissioner Shuman seconded the motion. Commissioners Lewis, Francis, Burton, Howell, Shuman, and Torman all voted aye. (Motion carried 6-0).

Commissioner Shuman asked if the applicant will drill all wells in the project, to which Ms. Aydelotte answered yes.

**2. Public Comment for Items not on the Agenda**

There were no public comments.

**3. Remarks from Planning Commissioners**

Commissioner Howell referenced the following items:

* + A recently built storage unit project and indicated that the fencing and landscaping elements have not been completed.
  + A new restaurant, Mad Moose, has a great deal of outdoor storage onsite and it should be fenced or stored elsewhere.
  + Has a solar panel code been developed?
  + Does the County have an ordinance governing lunch wagons?

Mr. Grover indicated he will check on the issues raised about the storage unit project and the Mad Moose restaurant; he noted a solar panel code has not been developed yet and the County does not have an ordinance governing lunch wagons.

Vice Chair Francis stated she is very interested in exploring the matter of observing HOA regulations for projects; she does not want to create problems between property owners and their HOA by approving a certain use that may be prohibited by the HOA. Chair Lewis stated he is supportive of that matter being investigated.

Commissioner Torman suggested that the Commission be provided with a refresher training regarding the types of things that the Commission should be considering when acting on a conditional use permit application; he specifically expressed concern about parking concerns for certain conditional use applications. There was a brief focus on components of a project that could contribute to life/safety concerns, with Mr. Grover noting that the conditional use permit can be approved if certain issues can be mitigated. Legal Counsel Erickson summarized the section of State Code that governs conditional uses; the County’s conditional use ordinance has been crafted to essentially mirror State Law; the Commission can deny a conditional use permit if certain issues cannot be reasonably mitigated. The Commission should ask for credible evidence that a certain detrimental effect cannot be substantially mitigated before denying a conditional use permit. An action to deny such an application should include clear findings about why the detrimental effects cannot be mitigated.

Commissioner Burton asked if the County has a noise ordinance. Mr. Grover answered there is not a specific noise ordinance, but law enforcement has the ability to regulate certain things that could be defined as disturbing the peace. He noted that noise could be considered in the Commission’s evaluation of a conditional use permit.

**4. Planning Director Report**

Mr. Grover indicated he had nothing additional to report.

**5. Remarks from Legal Counsel**

Mr. Erickson indicated he had nothing additional to report.

**Meeting Adjourned: The meeting adjourned at 5:41 p.m.**

**Respectfully Submitted,**

**Cassie Brown**

**Weber County Planning Commission**