

Minutes of the Joint Work Session of the Ogden Valley Planning Commission and Western Weber Planning Commission, for March 2, 2021. To join the meeting, please navigate to the following weblink at <https://us02web.zoom.us/j/83242137851>, the time of the meeting, commencing at 4:30 p.m.

Ogden Valley Planning Commissioners Present: John Lewis, Chair; Shanna Francis, Vice Chair; Jeff Burton, Chris Hogge; John (Jack) Howell, Ron Lackey.

Western Weber Planning Commissioners Present: Bren Edwards, Chair; Wayne Andreotti, Greg Bell, Andrew Favero, Sarah Wichern, Jed McCormick, Bruce Nilson.

Absent/Excused: Ron Lackey and Steve Waldrip

Staff Present: Rick Grover, Planning Director; 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.

WS1: Discussion regarding culinary and secondary water infrastructure requirements

Principal Planner Ewert noted this matter has been a topic of discussion for the past year to 18 months; various development applications over that time period have stimulated discussion about inadequacies in the County's Subdivision Code in terms of water provision. This led to a discussion between Planning staff and the County Commission regarding the appropriate timing for review of access to water for a subdivision application. The County Commission indicated that at the time an applicant pulls a building permit, it is necessary to determine water can be provided to that building; Planning staff has been working to develop policies to accomplish that directive. Additionally, Hooper Irrigation Company became concerned about secondary water systems being installed in subdivisions that are somewhat removed from their irrigation lines and they applied for a Code amendment that would result in improved policies for secondary water provision and to ensure that all building lots have access to secondary water. Finally, the third issue results from discussion among culinary water entities in the area about their struggles in providing water due to some residents using culinary water for landscaping purposes. This is problematic given that they only provide culinary water approval for culinary purposes. He noted these are some of the difficulties that developers, homeowners, and service providers encounter when building in unincorporated areas and often these types of issues build to the point of incorporation into a municipality or creation of a new municipality. That has not occurred at this point and Planning staff is pursuing Code amendments to ensure that subdivisions have access to functioning culinary and secondary water systems. There has been a great deal of discussion about whether the County should be a utility providing entity and decisions about that matter have not been made; for that reason, the proposed Code amendment will provide more support for culinary entities that serve properties located in unincorporated areas. The County will not have responsibility for secondary or culinary water systems but will include service providers in the subdivision approval process to ensure that they have provided approval of a final subdivision plat before it is approved and recorded. He then facilitated a review of the proposed code amendment document and discussed the implications for the amendments for properties in unincorporated areas of the County, service providers, and developers. Throughout his review of the document, Commissioners sought clarification on certain terms included in the document such as the amount of water/number of water shares a developer is required to contribute to the service provider in order to develop a property; and whether different approval procedures are warranted for different land uses, such as accessory dwelling units (ADUs) and short-term rentals (STRs) when compared to single family/low density residential uses.

Ryan Rogers, Taylor/West Weber Water, stated that his company is considering a share dedication/rate schedule adjustment for properties upon which ADUs may be built. A property that could contain a ADU or STR will likely be considered to have two equivalent residential units (ERUs) for the purposes of calculating the amount of water a developer must dedicate in order to secure a building permit.

Miranda Menzies, 3807 North Elk Ridge Trail, Eden, stated she is the Chair of Wolf Creek Water and Sewer District. The key factor to consider in terms of water is the new calculation adopted by the Division of Drinking Water; the calculation must be based upon three years of meter data. This will cause service providers to consider maximum usage, which could be dramatically increased because of ADUs and STRs. Higher usage will result in reduced capacity unless service providers can increase their water sources.

Mr. Ewert continued his review of the Code amendment document. Continued discussion among Commissioners and staff focused on ownership of water and sewer lines in various areas of the County; processes service providers follow before issuing a will-

serve letter for a development; the level of involvement of County engineering in reviewing the infrastructure plans for a project to determine it is accurate; and the parties that could be liable for a utility failure.

Paul Joyce, 1041 S. 950 E., Huntsville, stated that one of the conditions that is commonly overlooked, but which he feels the Code amendment should address is the type of case when there is no culinary water service provider. In those situations, a developer obtains a use contract from Weber Basin Water Conservancy District and works with the Utah Division of Water Rights to get an exchange application. Language in the current Code very specifically addresses situations in which there is a culinary and/or secondary provider; in these situations, the service provider can require conditions. However, in many areas of the Ogden Valley, there is no culinary or secondary water provider, and he suggested an additional condition for the Planning Commission to consider; in such situations, Weber Basin would not be willing to identify themselves as the culinary provider. The workflow identified in the Code amendment should consider that type of situation as well.

Mr. Ewert thanked Mr. Joyce for his input and stated his comments are correct; it is important to consider situations in which no culinary service is available, but the property can receive adequate water from a private well on the property. He then continued his review of the Code amendment document, focusing specifically on the rewrite of the section dealing with 'water supply'; there was discussion about regulations relating to private wells and a landowner's desire to sink their own well; and methods for evaluating or assessing the quantity and quality of culinary water that will be provided to a development. Several Commissioners expressed a desire for County staff to gather information on costs to connect to water lines owned by a service provider comparative to costs to drill a private well; this information would be helpful in determining if there could be exceptions to the regulations requiring connection to an existing line when a property owner deems it prudent to sink their own well. Mr. Ewert stated that it would be appropriate to provide exceptions under which a property owner could opt to build their own well, rather than connecting to existing infrastructure, but build a system that is capable of connecting to a larger system once water infrastructure is built near the property at some point in the future.

Commissioner Bell asked Mr. Ewert if he received Charlie Heslop's comments about the section dealing with 'required secondary water quantity'. He noted it is important to explicitly state that secondary water is also necessary for all intended purposes of the land; there is no requirement for water rights for an agricultural use is required to accompany the agricultural parcel. Mr. Ewert stated that is correct; the County's cluster subdivision ordinance requires a certain amount of open space. In Western Weber County, the open space is required to be agricultural and in Ogden Valley it can be agricultural open space or conservation open space of some sort. There are also areas out west where people have stopped farming and are no longer irrigating their land; the challenge is that without water running on the land, problems are created. However, one issue he sees in requiring water to run with the land is that if the water is not put to beneficial use, it is subject to forfeiture. He spoke to a representative of Weber Basin Water Conservancy District to confirm this and was told that if someone is not putting their water to beneficial use, it is subject to forfeiture. While forfeiture is currently fairly rare in this area, if water becomes scarce – similar to what has occurred in Washington County – forfeiture is more likely. Commissioner Bell stated that his greatest concern is that a property that is no longer being farmed and/or does not have water shares associated with it will not have sufficient access to secondary system in order to use the property for the purpose under which they may have been granted bonus density. Mr. Ewert stated he feels that he can craft language to include the ordinance that will address that concern. Commissioner Andreotti added that some property in Western Weber County never did have water associated with it and that creates additional problems when considering development options. He feels it would be appropriate for the County to have greater discussions about the idea of preserving agricultural land; he has not seen owners of farmland lining up to pursue the types of developments that have been identified as being best suited for the area. Mr. Ewert stated he shares some of the same concerns when it comes to properties that have never had water on them; however, a number of the parcels identified as open space in the General Plan have been identified by agricultural producers and animal keeping.

Commissioner Burton briefly addressed the section dealing with 'secondary water quantity' and noted that the text indicates 60 percent of the area will be watered at three-acre-feet per acre; if there is a three-acre lot, two acres of the area must be watered and that will require an owner to dedicate six-acre-feet of water. If a property has a private well, the owner could pay \$650 per acre-foot, which would translate to over \$4,000 per year to water two out of three acres of the property. He stated that it is important to recognize the difference between watering an agricultural crop and sprinkling grass and the 60 percent requirement must be reduced. Mr. Ewert noted the 60 percent number is actually a reduction from the original recommendation of 90 percent, which was proposed by one of the County Commissioners. The Commissioner was actually fairly adamant that 100 percent of the property should be watered, and he anticipates difficult conversations at the Commission level relative to the percentage of a three-acre lot that should be watered. Commissioner Burton stated that there has been a great deal of attention on housing affordability in the State of Utah, but if a property owner is required to provide water in accordance with the standards discussed tonight or desired by the County Commission, land will be rendered unusable, which is inappropriate. Mr. Ewert agreed and noted

there will definitely be more discussion about this matter. Ms. Muneses added that it is appropriate for the group to consider the opposite of the scenario that Commissioner Burton referenced; in the Ogden Valley area there are houses without almost no irrigated area and beyond the home, the vegetation is native. The language included in this section should accommodate large building lots in mountainous areas; these types of lots could be deed restricted to address the concerns that have been raised. Mr. Ewert stated that the Code does provide for a restricted landscape easement on the final recorded plat to illustrate an area that must be xeriscaped or maintained with native vegetation and in this case the 60 percent requirement can be reduced to include only the area of the lot not covered by the landscape restriction.

Commissioner Burton noted the purpose of the Code amendment is to ensure that no individual water is using more water than it has the right to use. Additionally, different types of irrigation or landscape watering methods must be clearly defined in the Code to give a developer or property owner a clear understanding of the water allotment they must fall within. He stated that trying to 'paint the issue with a broad brush' may create more problems than it is intended to solve. Mr. Ewert agreed, but noted that as long as the State is allowing property owners to self-report their water capacity, there will be unsolved issues. The reason that the State is allowing self-reporting is that they do not have the resources to facilitate a water capacity measurement on their own. Commissioner Howell stated that while there is a great deal of focus on housing affordability as a result of staggering growth, the State is not doing anything to conserve water to serve the future population. Mr. Ewert agreed and suggested that it may be possible for the County to recommend legislation that addresses the concerns that have been expressed tonight.

Mr. Ewert continued his review of the proposed Code amendment document and there was a focus on the need to adjust plan review processes responsive to increased regulation of property development and water provision; he accepted input from Commissioners and service provider representatives regarding the appropriate language to use to clearly communicate the intent of the ordinance to applicants. Commissioner Edwards indicated one concern he has is that the language is crafted in a way that the burden of inspection of culinary water systems will be placed on the service providers and he does not agree with that; he feels that the burden should be placed on other parties, and perhaps the County Engineer. Mr. Ewert stated that he feels that the secondary water entity should share the burden of ensuring their system is operable and can service a property; he included in the culinary water service provider in the ordinance because they are the entity that will provide backup service in the event a secondary water system fails; the County is third in line for performing inspections to ensure that service providers are required to fulfill their commitments. He stated there are some well established secondary water systems, but there are other entities that are not as well established and operated. In these cases, it is necessary for the County to have a mechanism to hold these service providers responsible to provide the service they committed to. He feels that the service provider needs to be involved in the inspection process in order for this to be possible. Commissioner Edwards stated that he agrees with the points made regarding the secondary water service providers, but he is concerned about the same requirements for culinary water service providers given that they are not in the business of providing secondary water and they do not get paid for providing secondary water. Mr. Ewert stated that it may be appropriate for culinary service providers to adopt a policy governing the minimum approvable secondary infrastructure required in order for a property owner or developer to get access to the culinary water system. Mr. Rogers stated that his biggest concern is that the County expects for service providers to use escrow money to install a system in the event that a developer's plans fail; he stated that is not feasible and culinary service providers are not in that business. Perhaps it is necessary to create a new special service district in the Western Weber County area to operate a private secondary water system rather than placing this burden on private culinary water service providers. Mr. Ewert agreed, but it would be necessary to get the taxpayers in Western Weber County to agree to pay a tax for a new private secondary water system; or it may be possible for Taylor/West Weber Water to expand their operations to cover secondary and culinary water. Mr. Rogers stated that has been discussed and the Water Board is not interested in such an expansion. He suggested that a smaller group of stakeholders assemble to discuss the Western Weber County water issues further. Mr. Ewert stated that is a good idea as there are different conditions in Western Weber County and the Ogden Valley.

Mr. Ewert concluded his review of the proposed Code amendment document, focusing on improvements specific to secondary water only; he emphasized that culinary water service providers should not sign off on a project until they are certain the secondary water system is functional or will function. Service providers can require a cash bond in an escrow account to provide them the ability to complete improvements for a project in the case that the developer does not complete the project. He then read the for the record text amendment specifically requested by Hooper Irrigation Company, which is included in Section 106-4-2(m)(a)(6)(c)(1-6); Hooper Irrigation Company is asking that the County Engineer verify certain conditions, but staff feels the County should not accept that responsibility as the County is not in the business of providing secondary water. However, using the word 'may' rather than 'shall' will give the County and the culinary water service provider the ability to ensure that secondary water improvements are installed. He stated the language may not be necessary if an applicant is using a secondary water service provider and installs improvements in accordance with their Hooper Irrigation Company standards. Commissioner Favero stated he wants to utilize text that will make it difficult for a developer to complete a project without approval of service providers; he

noted he has personally dealt with a situation where the County and all service providers for his own property were able to avoid responsibility when he did not have access to the water needed to irrigate his landscaping. Mr. Ewert asked Commissioner Favero if the culinary water service to the subdivision was conditioned upon access to secondary water or if secondary water was promised for the subdivision but was never delivered. Commissioner Favero stated that a later underground drainage system was installed with a pump station in two locations; one pump worked well, but the other failed miserably and there was a great deal of discourse and no service provider or other entity was willing to accept responsibility for the failed pump. Mr. Ewert stated that it is his understanding the County Commission is unwilling to consider a provision that would require the County to assume responsibility in the case of failure of a service provider or developer to perform. Commissioner Favero stated he is comfortable with the responsibility being shifted to the developer in the case of a service provider failure, but regardless, there must be a responsible party and inspections should be performed early in the development process prior to a neighborhood being built out so that any issues can be discovered in advance of responsibility being shifted to individual property owners. The group engaged in philosophical discussion and debate regarding the appropriate mechanisms to include on the Code to ensure that individual homeowners are not solely responsible in the event of a secondary or culinary water failure in their subdivision up to five or 10 years after the project has been completed; they concluded to include a five-year warranty period in the Code.

Mr. Ewert then indicated he will use the feedback provided by the group to adjust the proposed amendments and bring the document back to the group for continued review in a future work session meeting.

WS2: Discussion regarding a transferable development right program and ordinance

Principal Planner Ewert presented the components of the conceptual transferrable development rights (TDRs) program staff is contemplating in the Ogden Valley; the County Commission has requested a mechanism under which TDRs are reasonable and he feels staff has developed a simple system that will be functional. He noted that a property's zoning sets forth minimum standards, including density, open space, buildable area, etc. Base density is calculated by evaluating the buildable area and subtracting areas unsuitable for development. A TDR is essentially moving one development right from one property to another property and this is essentially the same as 'down-zoning' a property. He wants to develop a way for a zoning regulation to be relied upon for the purposes of considering a TDR. Record-keeping for a TDR action is vital to ensure that a property from which a development right has been shifted is never allowed to have the initial maximum density allowed under the property's zone. Staff recommends the County develop a ledger form that would be executed by the property owner, accepted by the County, and recorded against the property in perpetuity. He then noted it is necessary to identify 'sending' and 'receiving' areas for TDRs; under the current TDR ordinance, all area in the upper valley is a sending area and the resort areas are receiving areas. He suggested that resort areas continue to be receiving areas, but he would also like for certain village areas to also be receiving areas. He presented a map to orient the group to the locations that he is recommending be receiving areas; the higher the density in the village areas, the lower the cost of developing will be and this will make it easier for developers to buy development rights from sending areas. He also presented a map illustrating proposed sending areas; this included parcels that are 10 acres and larger that have not been developed. He clarified he is suggesting three types of sending/receiving areas: one is sending only; two is receiving only; and three is sending and/or receiving by virtue of a cluster subdivision project. He facilitated discussion among the group to solicit their feedback regarding the suggestion she has offered tonight and indicated this feedback will inform a draft document that he will present for detailed review at a future work session meeting.

Commissioner Burton stated that when the TDR concept was initially proposed 10 years ago, the idea was that any property could send, and any property could receive, and those actions would be market driven. However, TDR actions have morphed into a system that will perpetuate current zoning and will not be market driven, which means it is a program that will fail. Mr. Ewert agreed it is important for this type of project to be market driven and there are opportunities to adjust the current General Plan to make that possible.

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

Meeting Adjourned: The meeting adjourned at 8:15 p.m.

Respectfully Submitted,

Cassie Brown