

Minutes of the Ogden Valley Planning Commission Regular meeting February 24, 2015, in the Weber County Commission Chambers, commencing at 5:00 p.m.

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

Absent/Excused: Kevin Parson

Staff Present: Sean Wilkinson, Planning Director; Scott Mendoza, Principal Planner, Jim Gentry, Principal Planner; Charlie Ewert, Principal Planner; Ronda Kippen, Planner; Jared Andersen, Weber County Engineer; Christopher Crockett, Legal Counsel; Kary Serrano, Secretary; Sherri Sillitoe, Secretary

Pledge of Allegiance

Roll Call:

1. Minutes: Approval of the November 25, 2014, January 06, 2015, January 27, 2015, and February 03, 2015 Meeting Minutes

Chair Warburton approved the meeting minutes as written.

Chair Warburton asked if any member had ex parte communications to declare. No ex parte communications were declared.

2. Consent Agenda:

- 2.1. CUP 2014-32: Consideration and action on a Conditional Use Permit request for a contracted (Utah Department of Alcoholic Beverage Control or DABC) Type 1 Package Agency doing business as Outpost Spirits located at 3900 North Wolf Creek Drive in the Commercial Valley-2 (CV-2) Zone (Paul Strange representing SMHG Management, LLC, Applicant)**
- 2.2. DR 2014-13: Consideration and action on a request for a Design Review approval of a Master Signage Plan for the North Fork Table & Tavern and Arbor Lodge building at Wolf Creek Resort located at 3900 North Wolf Creek in the Commercial Valley-2 (CV-2) Zone (Paul Strange representing SMHG Management, LLC, Applicant)**
- 2.3. UVS102914: Consideration and action on a request for final approval of the Sandhill Crane Cluster Subdivision, consisting of seven lots located at 2500 N 5700 E in the Agricultural Valley-3 (AV-3) Zone (Blake Wahlen representing JW Valley Properties, LLC, Applicant)**
- 2.4. CUP 2015-05: Consideration and action on a Conditional Use Permit for two buildings existing at Wolf Creek Resort for retail and rental equipment and office and real estate services located at 3900 N Wolf Creek Drive in the Commercial Valley-2 (CV-2) Zone and Commercial Valley Resort Recreation-1 (CVR-1) Zone (John Lewis representing Wolf Creek Utah LLC, Applicant)**

Kirk Langford, who resides in Eden, expressed his concerns with the water issues and the sheet water flows in the Eden Acres and Sand Hill Crane Subdivisions. Director Wilkinson said that the County Engineer is having a discussion after the consent agenda. Eden Acres was on the agenda at the last meeting and tabled. Chair Warburton added that they will not be addressing that at this meeting. The County Engineer has looked at it the water issues in the Sand Hill Crane Cluster Subdivision, they have had it redesigned, and that is why it is on the consent agenda. Chair Warburton stated that when Jared Andersen, County Engineer does his presentation, if it does not satisfy Mr. Langford's concerns, then he can proceed from there.

MOTION: Commissioner Hollist moved to approve the consent agenda items as written in the agenda and in the meeting packet. Commissioner Howell seconded.

VOTE: A vote was taken with Commissioner Hollist, Miller, Howell, Graves, Haymond, and Chair Warburton voting aye. Motion passed unanimously (6-0).

Director Wilkinson suggested having the County Engineer's discussion item regarding the drainage in Ogden Valley as the next item. To clarify; this is not specific to a particular subdivision, and that is why the item was on the consent agenda.

The County Engineer is here to discuss some of the drainage issues, based on some previous comments made by Mr. Langford in the Planning Commission meeting.

Jared Andersen, Weber County Engineer, said he that he appreciated Mr. Langford's issues that were brought up. He was hired January 23, 2012, and the following week he noticed that sheet flow is a big issue in the valley. This is one small subdivision that can be affected by sheet flooding, but he stressed that they need to address the area as a whole. He has Mr. Langford's email address and has talked to some of the other engineers about what they need to do to address that issue. By law, they are not required to address sheet flooding but are required to address those who would be affected the most which would be the farmers. They do have the ability to see what they can do with the sheet flooding when it happens. He has a lot of different ideas, but they need to realize that it will be a long process to address everything that they need to address there. He would love to meet with Mr. Langford and others and have further discussion on these issues.

Commissioner Miller said that she needed more explanation. Mr. Andersen replied for example; let's say that he has a small ten lot subdivision that goes on a bench in the upper valley, they not only have to address the water that they are creating from the hardscape that was not there naturally, but they also have to address the water that is coming down through the subdivision. When they address the water they are creating, they do not combine that with the water that comes through the subdivision. Everything that comes through should go around, bypass, or through that subdivision, but they need to address the extra water that they are going to be contributing to that system. There appears that there are many things that are contributing to the water issues in the Eden Acres Subdivision that Mr. Langford is primarily concerned with. He wished they had easements over all of our county drainages that exist in the unincorporated county but they do not. That's another impediment because there are some drainages that they would like clean but they can't legally get in there to clean them unless they have permission from the property owners. A lot of times there are ditches that run along the bottom of those hillsides. When people go and pipe those major ditches, it still works for the irrigation group that use those ditches, but now that water comes over the top of the pipe creating new water that hadn't been seen there in the past.

Commissioner Miller asked what steps they are taking to alleviate those issues. Mr. Andersen replied in looking at this; let's pull the subdivision off, take the homes and the streets out, and see what's going on with the water. If they take percentages, the homes and the roads contribute a small percentage of storm water to what's existing out there. It's not the actual subdivision that is creating the issues with this large amount of water. They are concerned about the structures and flooding as a whole. So now that they have put them in the land, they now have to figure out what they need to do to get that water so it's not going to be a safety hazard for those homes. There have been a lot of different scenarios up there, a lot of contributing factors, and they can focus on some; whether it is irrigation ditches, canals, water sheds, ice blockages, etc. There are many different scenarios, depending on which issue they look at that are contributing factors. It also depends on what the county has done or has not done in the past to address those issues. The very first steps he will take is to get with Mr. Langford and have a discussion with him to find a good solution to address those items.

Commissioner Miller said that as previously stated, there was lack of easement, but can something still be done? Jared Andersen replied that there are locations where there are no easements for drainages that they have. They have other areas with easements that have not been cleaned, and it's a matter of time, money, and priority. They currently do not have a storm water utility fee in the county, and most of the principalities inside of the county do have a fee. They are trying to get something implemented so they can have the ability to clean ditches on a regular basis and so they can have better response for the residents.

3. Administrative Items

a. New Business:

1. CUP 2015-03: Consideration and action for a Conditional Use Permit for an Agri-Tourism operation identified as the Dancing Moose Farms, Huntsville Art Ecology Center located at 13485 E Hwy 39 in the Forest-5 (F-5) Zone (Daniel Daily, Applicant)

Ronda Kippen said the proposal is for an Agri-Tourism operation which is conditionally permitted in the F-5 Zone. The proposal is an attempt to promote, preserve, and revitalize a piece of property that Mr. Daily purchased in 1999. Due to extensive grazing on the property it's become where the ground has been robbed of nutrients and the applicant has been working with the NRCS to revamp that property. He has been able to create a managed intensive grazing to bring this

back to a farmable piece of property where they would be able to get crops out of it. As part of the conditional use process for Agri-Tourism, they will be looking at the general site, design layout, production of anticipated uses, hours of operation, the Agri-Tourism uses and activities, and the development agreement if necessary. The general site layout will have an entrance sign that is allowed in the FV-5 Zone. The site will consist of some improvements that are on the site; a well, a septic, and a barn. The future improvements will include a farm stand location at Highway 39, a chicken coop, high tunnel greenhouse, a dining yurt, and three 16 foot diameter. The yurts are to be used for classes and other activities. There will be an RV Pad on the site for the owner to be used for the season. There will be temporary restrooms until he is able to construct bathrooms onsite. A dumpster will be located close to the entrance for egress and ingress for the pickup. The site already has a large parking improvement, and staff has been working with the Engineers. They are not recommending a hard surface parking due to the agriculture element, and the need for additional onsite retention when they create a hard surface.

Ronda Kippen said that they want to make sure that they don't offset the non-agricultural activities with the agricultural activities, and they want to make sure that at least 50% of the site activities are agriculture; upon their review, they have found that standard has been met. The applicant is anticipating building more facilities on the site. The applicant anticipates working Sunday through Sunday, from 8 a.m. to 8 p.m., and any other event that is not allowed as Agri-tourism, the applicant will need to go through a special event process which is also permitted in the zone. Prior to the construction of any non-agricultural facilities, the applicant will have to record a farm stay, and a commercial development agreement that Weber County will provide. After doing a thorough review, staff recommends approval of this application based on the conditions and findings in the staff report.

Commissioner Howell asked if anybody was living at the site to take care of the animals that they might have there. Mrs. Kippen replied they will have workers onsite, but the applicant could answer that question. The RV Pad will be onsite so the applicant can stay temporarily on the site during the summer months.

Commissioner Hollist asked if the current agricultural uses to this property are beef cattle and forage crops. Mrs. Kippen replied from her understanding it's been grazed but she didn't know with what type of animal. They want to go in and revamp that use and make it a viable piece of property.

Chair Warburton asked about the intern woofers as talked about in the staff packet on Page 4 of 6, first paragraph. As to the special events; where he is not being able to use multi-farmer open market, why not a harvest market because it is useable? Mrs. Kippen replied that she was not sure about the woofers. There is a difference between a multi-farmer open market and a harvest market. The harvest market is only for the things that he produces, and he can have the stand on Highway 39 and sell the things that he produced on his farm. A farmer's market is where he invites people to come to his site to sell their produce; that is not allowed because it is designated as a small farm that is less than 20 acres. He is allowed to have a special event and the farmer's market falls under a special event.

Chair Warburton said when they developed this ordinance; it was intended to be geared to whatever was happening on that farm already. In a case like this, there was nothing happening except overgrazing. How do they account for that as far as ordinance which is law? Mrs. Kippen read the purpose and intent of Agri-tourism and said from that information they are going to promote farming and that is done by taking that ground and farming it.

Dan Daily, applicant, who resides in Salt Lake City, clarified that Woofers means a worldwide organization of organic farmers; it is people who will take a summer and work on an organic farm and usually camp on the site. The elevation on this property is 5,400 feet. The Agri-tourism ordinance will allow him to grow local food, create a beautiful farm, and an educational center. In going through the ordinance, he felt that he has met most of the requirements of the ordinance and the challenge of showing Weber County that the ordinance does work. He hopes that it would pave the way for have more Agri-Tourism to protect the properties and waterways.

Commissioner Hollist stated that the Planning Commission had a field trip to Sandhill Farms in the Ogden Valley where they grew garlic and purple potatoes. Commissioner Hollist said that their elevation was between 4,300 and 4,700 feet. The owner had brought varieties of agricultural products from the Andes that would grow and do well at his property. So at 5,400 feet, Mr. Daily needs to carefully look at what he is going to crop there, and maybe have horses and Llamas. Mr. Daily replied that tried horses for a while and they were not adding nutrients to the soil. They are looking at doing cattle, basically what they call mob-grazing. This is where you keep cattle in a one acre parcel, and they are going to

bring in a chicken tractor behind them, which will spread around the manure, and then they will re-seed with perennial grasses. Working with the NCRS for about a year and a half, putting together this range plan, they will be able to come up with some good things to help build the soil. During the fall they purchased garlic from Pete Rasmussen's farm and planted those varieties. They planted 28 Willow trees in the fall and will plant more trees as part of this range plan to help with the canyon winds. They are looking at local farmers to be their mentor's to see what works and what doesn't. Then they have Josh Jones, who has a permaculture certificate, and used the 17 acres as one of the permaculture projects, and they have done an analysis of the field to make things grow.

Chair Warburton said that she was not going to open this up for a public hearing but she would open this up for public comment and there is a difference.

Kent Bennion, who resides in Huntsville, said that he knew there was a structure on the property that has been red tagged. The applicant has built structures without permits and he is opposed to that. He felt that until the applicant comes into compliance with county codes, there is a problem. He did not see how Mr. Daily could come into compliance. On the special events there has to be some control, and they don't have anyone living there full time. If an animal gets out, he will be calling the Sheriff. With the applicant not following the codes, this item should be tabled. Chair Warburton said that they are aware of the compliance issue and are working on that.

Bryant Wilson, who resides east of this property and is part of owners group called Cougar Cabin Association, said the problem is that this is in close proximity to properties that are used for recreational summer homes and cabins, where families have purchased those for peace and quiet. The other problem is cattle going through the fences which they repaired for several years. The applicant talks about the overgrazing that he has; it's not because the ground is bad, it's because he had too many animals on it and did not have adequate water. He would have to drill a well, and the water that comes from the field on the other side, is owned by other people. His property borders the river but it's a drop off where he doesn't really have access to the river because it is just a steep access. HE believes that 17 acres is not big enough for all that Mr. Daily wants to do.

Drew Mitchell, associated with the Cougar Cabin Association, said in the meeting packet on page 97, there is a picture of the property boundary. On the east side of that, there is an access road which is the only access that the owners of the Cougar Cabin have to their cabins. If these property lines are outlined correctly, that falls within Mr. Daily's property. The cabin owners that are accessed by that road need to have assurances that the road is going to be open. He concurs with what was said about the livestock and the applicant's track record for not doing the right things. Chair Warburton replied that she will follow-up with staff on that access, and inquired if he went through the complaint process of the county. The county enforcement process is complaint driven, so it's important to make those complaints.

Christy Wilson, member of the Cougar Cabin Association, said she echoes a lot of the concerns stated. It concerns her that the agricultural ordinance is being used to promote a commercial business. Where Mr. Daily has not had a chart record for being in compliance, what recourse is there going to be, that it's not just a commercial business? She worries about people coming to their property, where it borders their property, and there not being any regulation where this is primarily agriculture and not commercial use.

Wilson Blakely, member of the Cougar Cabin Association, agrees with everything that has been said. The elevation up there is between 5,300 to 5,600 feet, so fruits will not grow there. He is concerned that there is not enough water for the proposal available for Mr. Daily to access. Commissioner Hollist asked when you say no water; does that mean water right, paper water, or does that mean wet water? Mr. Blakely replied to his knowledge there is no paper water available. They were told they could not drill wells anymore. Commissioner Howell asked how long ago it was that they were told not to drill wells, and Mr. Blakely replied that it has been approximately ten years. Director Wilkinson said that in their packets Weber Basin has provided information, the well drillers log, and that has been addressed; there is three acre feet for the property.

Jeff Blakely, who resides in Cache County in Logan, said they have been cabin owners for 60 years, and they were told by other property owners who have applied for permits for wells that there were no well permits being issued. He asked if they would have input on where Mr. Daily builds.

Guinea Cole said he was very concerned that there will be a trailer there all summer and that it might become a trailer park where employees would bring their trailers to that property. This would not be very attractive for tourists. His

property is not far from there and they will hear all the noise from activities there. He is concerned that there will be evening and late night activities going on and he is very concerned to what this will do to the beautiful valley.

Shellie Williams, representing a family cabin directly below this property, said that she concurs with all the reasons previously stated. Mr. Daily has expressed that he would keep the conservation and the actual resources with the beauty of the land, but what about 92 parking stalls proposed there. Mr. Daily stated in his application that all he has to do is apply for a special permit and then could hold wedding events, family reunions, farmer's market, etc. As for the 35 ft. structures he plans to build, she believes they would take away a lot of the beauty that is there. This will negatively impact the privacy of the owners of the cabins and summer homes. There is a road through the side of this property that goes down to several cabins and what would happen if someone falls off the huge cement ledge into the river? Would the cabin owners be sued?

Toni Lamph, with RG Williams LLC, asked if the neighbors were notified when the Agri-tourism ordinance was approved.

Chair Warburton said the reason they don't have a hearing today is that there is nothing in this application that is so detrimental that would keep this from being able to be approved. This is an approved application and an approved ordinance. They developed these ordinances through a legislative process, where people were noticed; there were public meetings and numerous public hearings. A public hearing is where input from the public comes together and they create ordinances that become law. Once they become law, the property owner has the right to build and do on his property what the ordinance allows. The ordinance actually calls for them to be shut down by a certain time; there won't be anything past ten o'clock. There are other things in place to protect you, and if he does not abide by the law, you complain to the Sheriff and the county. They protect rights for all property owners and that is what they are doing today. As a conditional use, they have to mitigate any possible detrimental effects and that is what they are going to do within the code, within the law.

Dan Daily said the issue with water; they have a well that has been approved and an approved septic system put in. They spent almost two years meeting with Weber County in an open quorum to express their desire to do this project. This was a public setting where if people had problems with the Ag-Tourism ordinance, they could have expressed so at that time. In terms of the fencing, they are working with the NCRS, USDA to set up some systems to control the cattle through electric fencing. They will have water troughs for the cattle so they won't be seeking the river water, and they will be getting water through a solar pumping station. Their well is an eight inch well where they will be sending water directly where the cows and chicken coops will be. The property line is located on the east side of his property, but in terms of the property line, Josh Jones had pulled up some different variables, so there is a question as to the property lines. They will have a survey done and the property lines defined. Chair Warburton said there is nothing in the ordinance that states some has to be a friendly neighbor, but she would suggest that Mr. Daisy reach out to his neighbors.

Commissioner Howell asked about the road; what is on the other side of this road, is this private property or between two properties? Mr. Daily responded that the road runs between two properties.

Commissioner Hollist asked about the red tagged structure on his property. Mr. Daily replied that the building was built as an agriculture building with an approved building permit which is on file with Weber County. The building was red tagged at one point because someone had complained that they were living in that structure. They actually reside in Salt Lake and they have gone there to camp and have slept in the agriculture building. They have tables in there, a wood stove, and solar panels on the building. They have pulled a mechanical and electrical permit through Weber County.

Commissioner Hollist asked legal counsel if it is legal to reside in a building that is permitted for agricultural use as a shed. Director Wilkinson replied that no one should be living in the agricultural building; it is not approved for human habitation. The building is approved for agriculture and agricultural use only, and camping in the shed is not permitted and should cease if it is still happening. If occupancy continues, staff will bring this back, and the Planning Commission will be able to take action. As far as the permits, the red tag was because the electrical permit for the solar panels had not been taken out, and that has now been remedied.

Commissioner Hollist asked Mr. Daily how many acre feet he owns of paper water; the right to how many acre feet of water for that 17 acre property. Mr. Daily replied that he has three acre feet. Commissioner Hollist said that Mr. Daily transferred two of those and bought an acre foot. There are 300,026 for a year. There are 900,078 gallons in an acre

foot and you are going to run an agricultural operation to include cattle, crops, human beings, and a green house on less than a million gallons of water a year? Mr. Daily replied that it sounded reasonable to him.

Commissioner Hollist said the well is wet water. The well is 150 feet deep and is pump tested at ten gallons per minute for an hour, and it drew down the water table 70 feet. He believes that there is a wet water and a paper water problem, and he does not think the ground can support what Mr. Daily wants to do with the water this is available to him.

Ronda Kippen said on the compliance issues, she has talked with Mike Bosch, the building inspector that put the red tag on the building and Iris Hennon, the code enforcement officer. The concern was that they were living in this structure. To make it a habitable area, they have to have a kitchen which contains a sink, a hot plate or a microwave, a bedroom, and a bathroom. They have a wood stove, and the sink in the structure has been converted to a dry sink. There is not a bathroom in the barn, and if they are staying there, it is not allowed. When people are using an agricultural exemption; they do miss steps that are necessary for us to approve, i.e., electric, plumbing, HVAC, and things like that. To her understanding, this was taken care of. When she did the title search on this, she found that it was the lot of record back in 1962, and there was no notice of nonconformance recorded against the property, nor was there anything in Miradi that would have given her a clue that there were additional concerns. If this has not been 100% taken care of, the conditions of approval are that they meet the building division requirements. As far as fencing, that falls under the applicant's responsibility to make sure that his animals are kept onsite so it's not a danger to adjacent property owners.

Ronda Kippen said that the elevations mentioned are between 5,200 to 5,600 feet above sea level, and basically farming comes down to the talent of the owner and how they will be able to utilize their property to grow what they intend to grow. As for water, that is not part of their review, and they don't have a say if they have enough water or not. Currently, he has been approved by the Health Department and they are the experts. If the applicant needs more water, then he has an opportunity to apply for another exchange to take care of what he needs. Staff will be doing an annual review, and if they find that this is not a viable agricultural operation, they will address it. As he has been working with the NRCS, they stated that he would have to do some mitigation factors; to let the property lay shallow for a couple of years, before it will be able to have a productive crop. These are areas that he needs to work through, to be able to get up and running, and if it's not, then they pull it back, and if there are continued complaints, they are going to look harder during the annual renewal of business licenses. The proposal shows one RV pad onsite, and any modifications to the site plan will trigger another design review, and she does not anticipate that this is going to be an RV Camp. The RV Pad can be utilized as for temporary stay, which means less than 180 days annually.

Commissioner Graves asked about the woofers and where they would be. The application indicated that people would work for a season and typically make camp on the land. Are seasonal campers allowed there, or is there some kind of accommodations for them? Director Wilkinson replied that the code will govern. He will have to meet the code in providing accommodations for those people. Mrs. Kippen said the code allows a temporary restroom, but she was not aware of the ability to have open camping.

Commissioner Hollist asked how many equivalent livestock units the applicant had on this property historically. Mr. Daily replied that historically they had the six to eight horses from the Red Rock Ranch. Commissioner Hollist asked if his property adjoins the Red Rock Ranch. Mr. Daily replied no; there are two roads, one on the east and the other on the west, and until recently where the fences were was his property line.

MOTION: Commissioner Hollist moved that they table this application for an Agri-Tourism permit because he is not convinced that an agricultural basis for this permit has been established. Commissioner Howell seconded.

DISCUSSION: Commissioner Graves asked Commissioner Hollist to explain the reasoning for his motion. Commissioner Hollist replied that when Mr. Daily answered the question of how many equivalent livestock had been on his property, he replied that it was not his livestock; It was someone else's livestock that has been overgrazing this land which is why he didn't think that Mr. Daily or the person whom he acquired the property had been agriculturally involved with this piece of property. He would like to see some demonstration that an agricultural use has been established. His understanding of the ordinance that Mr. Mendoza wrote and they reviewed was that all of these uses to which the property was to be used had to be related to or directly grow out of an agricultural use. There has been nothing that he has seen here, that is evidence that there has been an agricultural use established for this property. Chair Warburton asked Scott Mendoza to clarify the question. Commissioner Hollist replied that the Agri-tourism permit that they are asked to award is based on an agriculture use of the land first. Mr. Mendoza replied that the standard has to be in

green belt, which means that it must be producing something, consistent with the Utah Farm Land Assessment Act. The property has to be in greenbelt, which obviously means that it meets that standard, or within one season or one year, they have to demonstrate that it is producing and can meet that standard.

Chair Warburton said the full purpose behind this ordinance was to give people that had big tracts of land a reason not to sell to developers, and give them a chance to make money and keep the land viable and at the same time keep it open. Scott Mendoza said that they need to remember that the big part of their discussion had to do with this becoming an open space preservation tool. This code may inspire someone to change a sage brush rock field into something that becomes productive. That is why they put in the standard that it had to be active and producing for a certain period of time before it become an Agri-tourism operation. Commissioner Graves said anytime there is a range plan where there is grazing, even if it's overgrazing, that is still an agricultural use. Commissioner Hollist asked if that implied that it doesn't matter whether it's his animals or the neighbor's animals that are taking the agricultural product. Mr. Mendoza replied that he could own a property and lease that property to someone that has animals, and as long as it's productive, it meets the Agri-tourism ordinance.

VOTE: A vote was taken with Commissioner's Hollist, Miller, Howell, Graves, Haymond, and Chair Warburton voting nay. Motion failed by a unanimous vote (6-0).

MOTION: Commissioner Miller moved that they approve CUP 2015-03 for an Agri-Tourism operation identified as the Dancing Moose Farms, Huntsville Art Ecology Center subject to all agency requirements and recommendations with the conditions found on page 5 of 6 of the Planning Staff report 1 through 7. Commission Graves seconded.

VOTE: A vote was taken with Commissioner's Hollist, Miller, Howell, Graves, Haymond, and Chair Warburton voting aye. The Motion passed unanimously (6-0).

Chair Warburton indicated that Nordic Valley is not on the agenda, and if there is anyone here for discussion, it is not on for tonight.

2. CUP 2015-04: Consideration and action for a Conditional Use Permit for an auto repair and service shop, including the required design review for a new commercial building in Eden located at 4930-4938 E 2550 N in the Commercial Valley-2 (CV-2) Zone (Justin Pack representing Dog and Bone, LLC, Applicant)

Ronda Kippen said this is basically a redo of a previous application on a different site zoned CV-2, that does not have a development agreement tied to this piece of property. They are doing a design review without any other pre-agreements that have come through due to legislative action. The applicant is in the process of purchasing two lots within the Valley Junction Subdivision. Our code allows them to do a building parcel designation, which allows them to record something against the title to combine the two parcels, so the building can go across both pieces of property. The CV-2 Zone does not have a minimum lot area and lot width, yard setbacks utilizing complete street and can have zero front yard, and the rear yard can be zero also. They can build this out to all sides of the property; the maximum lot coverage is 60%, and the project is well within those confines. As before, the applicant is proposing a complete street design and the colors are slightly different than before, they are going with a rider's parchment which is more of an off-white color. What the applicant is trying to do is recreate the historic view of the Blacksmith Shop, prior to them stripping the color off of the brick, and that is what the applicant desires for the new location.

Ronda Kippen said that the applicant is doing the entire building instead of phasing as was previously discussed in the other location, so two of the units will be utilized by an auto repair and parts shop. The rest will fill in after the building has been built. During each of those lessees coming forward, they would then evaluate adequate parking and signage; however, for now they are looking at the architectural rendering, site layout, landscaping, and different elements that are tied with the review. They are doing the complete street design. The applicant brought forward the recommendations from the last time, which is to put the trees within the grate along the sidewalk to breakup that mass expanse of the building along the street corridor. They are also looking at the ability to maintain traffic safety and congestion. They have all of the loading located along the rear of the building so as to not tie up traffic along the street. They do have outdoor advertising for the auto repair shop. The applicant has been able to come forward to adequately address all of the landscaping requirements on this site, including the required setbacks of 12 feet, as well as the landscaping with the buffers between those areas.

Ronda Kippen said that the applicant is asking for flexibility with the way the building will look. As they are building this, they want the ability to put in overhead doors in all of the units, or in every other unit. This decision will have to be made very early in the construction, based on any possible tenants that come forward; they need that flexibility. They will make sure that culinary water connections have been made, and once it's been closed, the applicant will secure the water, and get final approval from the Health Department.

Commissioner Howell asked about vacating the other permit that they have. Mrs. Kippen replied upon approval of this, they will request that the applicant submit in writing a request to vacate the other location in Liberty.

Commissioner Warburton asked if they are approving two designs or one design; as previously stated, the applicant wanted flexibility on the design. Mrs. Kippen replied they are approving the design of the building based on what they have submitted. The applicant has brought some architectural renderings, to give a feel of what it would look like with overhead doors on every single unit. On page 4 of 7, she underlined the findings of approval, as part of the final decision to allow either overhead doors on every unit or every other unit.

Justin Pack, applicant, who resides in Eden, said he had nothing to add except that it's the exact same building as he previously proposed. He just will have the proposal on a new lot in order to accommodate a park in Liberty. Commissioner Graves wanted some trees out front so they have added that to the parcel.

Commissioner Howell stated that this area where the applicant is going is next to a dentist office, east of a restaurant, west of another restaurant, and west of a rehab center. This kind of business is a noisy business, and Mr. Pack plans to take this into a neighborhood that has quiet businesses. He asked the applicant if he had looked at other locations possibly near the car wash or some place more secluded. Justin Pack replied that they have looked elsewhere; this place is what fits them and their price range. In the past it may have been a noisy business, but there is a lot of new equipment, two stage compressors with low decibel ratings, and all the pneumatic tools have lower decibel ratings. All the work on these vehicles will be done on the inside, and they have four other units attached to this building, that are not taken or leased at this time. If there is a noise problem, they will be the first to fix it for their other units.

Commissioner Haymond asked to see the renderings of all the garages. His concern is that they have the school bus garage down the street, and this reminds him of parking for school buses. Is this something that your potential tenants would be interested in phases? Justin Pack replied that they hoped to maximize the use; the garage doors are going to be overhead glass doors made to look like they're old. They are going to be double-paned, well insulated, and if this were shut 99% of the time, it is almost like a wall there. They are just opening up the building to as many tenants as they possibly can. They were approached for something like this with overhead doors that are attractive, with the historical correctness; this is not like the white steel overhead doors that are on the school buses garages.

Commissioner Graves said the complete street will have a good impact on the front of this, and whether you have all these doors or every other, he did not have an issue with the application.

Chair Warburton asked staff once they approve one conditional use in this complex, does it not apply to all the other units? Mrs. Kippen replied no, it doesn't.

Chair Warburton asked to get a business permit, the building will have already been made, so how does that work? Mrs. Kippen replied that when a business license application is requested, they would see if it was permitted or if it was conditionally permitted; if not, they would advise the applicant to go through the conditional use process. As part of the motion, they could tie it to the lease space that is part of Exhibit B2, Sheet A1 of the floor plan; it identifies the lease space for the automotive repair shop as 4,887 sq. ft., and it is A1 under the plans.

Chair Warburton asked how much space they are actually approving. Justin Pack replied that they are approving the business Sterling Automotive. Let's say things went well and in six months he receives a request for the next section which is another 2,300 sq. ft., would they have to come in for a new conditional use permit where it has already been approved, or could he just expand? With the new businesses coming in, it would receive new conditional use permits, but if you tied it to the square footage, he would rather not have that tied to that. Director Wilkinson said that it depends on what they say here tonight, if they make a condition that the owner of the first unit uses the second unit for the same use and there have not been any detrimental effects or complaints, then that could be an approval with anticipation or they could say what they are approving tonight is what it is, and if he comes in for that use, then he is on the consent

agenda when it comes back in. Chair Warburton said so he could use the whole building for whatever he wants to use it for, if he wants to use it all for automotive, then he could do that. However, what happens if he rents out the other units? Director Wilkinson replied that those uses, depending on if they are permitted or conditional, will go through the process.

Commissioner Hollist said the picture that they are looking at shows six segments of this building and if he recalled correctly, Sterling Auto will be using two. Justin Pack replied that is correct.

Bill Christiansen, who resides in Eden and represents seven of the quiet businesses, asked if the automotive repair business includes a body shop. The other problem would be the noise and smell. They have a deck on the west side of the restaurant where people sit in the summer and enjoy the quiet. Have they done a decibel reading on the air tools? Now the law has changed on the right of the property owner. He had a question for the attorney and he has addressed this several times; all the uses up there used to be permitted or not permitted, and then it changed to conditional. You have addressed all the conditional uses as a right of the property owner, but he wondered if that was true. He thought that they were conditional uses because you could deny them. Chair Warburton replied that by code he could have a body shop, but right now the applicant says no. As for the air tools, the applicant has indicated that the decibels were low. She fought to get the proposal for the helicopter pad denied. They found that basically according to the state law it is a permitted use. The applicant has the right to go in and address any detrimental effects, to mitigate them the best they can. If the detrimental effects cannot be reasonably mitigated, yes they can deny. Legally, and this was addressed by the Ombudsman, it's a very sticky legal issue. They understand their obligation to do their best to make it allowable. Chris Crockett, Legal Counsel, said that the State Code Section 17a506, requires that a conditional use shall be approved if reasonable conditions are proposed, or can be imposed to mitigate the reasonable anticipated detrimental effects of the proposed use, in accordance with the applicable standards. If they meet the requirements of law, they could require that it shall be approved.

Bill Christiansen said another concern was the smell. Mr. Crockett replied that is something that the commission can consider, but it gets more specific once they look into the County Code.

Steve Waldrip, who resides in Eden, said a letter was provided to the commission prior as part of record. He wanted to go on record to thank Justin Pack and the ownership group from Liberty Park. Mr. Pack took a significant amount of initiative, a significant amount of personal risk, to allow for the friends of the park to find the time, the means, and the money to secure a purchase option, which has been executed. The park has a purchase option on the other parcels, and there are a lot of people in that part of the valley that are very happy about that development. He likes the plan, the location, the glass doors, and believes this is a nice design; he is in favor of it being approved. They have been able to raise over a half of million dollars towards the expansion of Liberty Park to date.

Thomas Parmley, who resides in Eden, said that he will be the proprietor of Sterling Automotive Solutions. The smell is a new thing to him, and his establishment will follow within the guidelines of all EPA regulations about storing, disposal, and transporting any type of hazardous waste. He will not be burning oil on the back of his shop or that nature. As to the noise issue, they can operate with the front door closed, and the back doors open. A quick Google search the first thing on the EPA Website that talks about the noise dissipation, through ambient air. There is a law called inverse square law that states that decibel rating dissipates at a rate of 6 DB per 50 feet. The outdoor patio in the east of Eden, which is the concern of the noise, is approximately 275 feet away. A library or a quiet office clocks in at 40 DB. A crowded restaurant clocks in about 85 DB. His air compressor clocks in at 90 DB and any air tools that he would use intermittently all clock in about 90 and 105 DB. In the event that he were to operate all of his compressors, all of his air tools, out front of his property at 90 DB, by the time the noise dissipated to the outdoor patio area, it would have been reduced to 30 decibels. This type of establishment with some 3,000 residents in the valley; probably 4,500 vehicles, even if he gets one tenth of those vehicles at his establishment, and if they brought their vehicle in for an oil change, they would have an hour to kill, and they would be transporting themselves and their pocket book to the surrounding establishments.

MOTION: Commissioner Howell moved to deny CUP 2015-04 Dog & Bone LLC Auto Repair & Service requested to locate at 4930-4938 E 2550 N, on the finding of facts for denial that this would have a potential detrimental effect to the neighborhood, it is not in harmony or compatible with the adjacent developments, i.e., a senior rehabilitation facility, two restaurants with several retail businesses, and a dentist office. This type of auto repair business can cause excessive noise with mechanical equipment, offensive emissions, pollutants, odors, and smoke that cannot be mitigated. He is not opposed to the business, just the location of it.

Chair Warburton indicated that the motion failed for lack of a second.

MOTION: Commissioner Haymond moved to approve CUP 2015-04, consideration and action on a conditional use permit for an auto repair and service including the design review for a new commercial building in Eden, Utah, with the ability to incorporate the option to have overhead doors in each unit or in every other unit, subject to all review agency requirements and based on the findings and conditions of approval as listed below which is 1 through 6, on page 4 of 7 in the staff report. Commissioner Hollist seconded.

DISCUSSION: Commissioner Graves said that it may be close to other businesses but it fits in; it's in the right kind of zone and it's been upgraded from what they would normally expect to see for an automotive repair place. He has the upmost confidence that Justin Pack will do this right.

Commissioner Hollist said that he voted against this in the prior location as well.

VOTE: Commissioner's Miller, Warburton, Hollist, Graves, and Haymond voted aye and Commissioner Howell voted nay. Motion Passed (5-1).

4. Legislative Items: Public Hearings

a. New Business:

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 said he met with this Planning Commission at a work session to talk about non-conforming lots; lots made non-conforming due to right-of-way expansion. They also talked about the next agenda item which is accessory buildings as they relate to main buildings and accessory uses. He verified with every Planning Commissioner that you have the addendum to the staff report that includes an edited revised version of Exhibit B and C, and provided better clarification than what was proposed in the original staff report. This is the subject proposal, this is what is newly being proposed in the ordinance, and everything else that is coming before you is clarification on how they already interpret their codes. This section creates the ability for the county to consider lots that are reduced below the minimum lot size requirements; because of right-of-way expansion to consider them as legal non-conforming lots. He called other jurisdictions Salt Lake County, Davis County, and others to find out what they were doing and they didn't have an answer. Salt Lake County said that if they took some right of way, and that dropped them below the requirement, they would make them get a variance, and he didn't like that. This is a legislative issue.

Commissioner Hollist asked if they run into problems with conforming and non-conforming lots, and the county acts to make it either non-conforming or more non-conforming, it will be considered a legal non-conforming lot. Mr. Ewert replied and as part of Exhibit B Notice of Effect which is just an example, it has not been vetted through all the appropriate offices, but as they find properties that they know are affected by right-of-way expansions, they will record a blanket notice of effect, so anyone who is negatively affected, and has caused the property to be non-conforming because of the right-of-way expansion, this will be on their title loan and they will know what ordinance to go to.

Commissioner Hollist said the bottom line is that this is a policy shift; they are protecting those owners of lots that are going to be affected by the right-of-way change. Mr. Ewert replied that is the intention. Non-conforming is that the lot is legally established as a non-conforming, and they have established other rules to regulate non-conforming uses in Weber County. The key term here, is they are trying to avoid labeling any of these lots illegally created or illegally modified. Chair Warburton said that the consequences if they left it the way it was, if they had all of sudden a non-conforming lot, which was not compliant and they wanted to do something with their lot, they wouldn't be able to.

Commissioner Hollist said they are protecting the residents of the county by this ordinance.

Open for public hearing

Steve Clarke, who resides in Eden, said this is a great way to make a law.

Dave Kneels, 3257 E 5300 N, said he wondered about this ordinance; if they take a piece of somebody's property, but they make it legal, now a person goes to sell the property that is labeled as non-conforming. Would that be an involuntary taking of that person's property. Mr. Ewert replied a non-conforming is essentially grandfathering. When a law changes, something shifts, when a right-of-way is acquired, it could affect neighboring properties in a certain way, i.e., a 1998 down zone created an incredible amount of non-conforming lots. All those lots could be bought and sold at will, so long as they are legally created and non-conforming. There are special rules for each of those lots. If the structures were built in accordance with a different setback standard, they may not be able to build on that side of the house.

Chair Warburton asked so even though they are making them legal, even though it's non-conforming, they still have to abide by setbacks. Mr. Ewert replied that there are still specific rules and under the non-conforming chapter, there are rules governing how non-conforming lots are treated differently than conforming lots.

Commissioner Howell said when you talk about setbacks, if they chop the front of the house, they can't have the required setback, but it's been declared legal, this would not apply. Mr. Ewert replied if the front right-of-way eats into their setback and their structure is technically non-conforming to that setback, the structure is not illegal. It was legally established in the first place, so this is Law of Entitlements, and the landowner who created that building in the first place when it did comply with the law, is entitled to continue that use forever. The question about non-conformity is what happens when changes come to play.

Commissioner Miller said under the one year vacancy or abandonment, whenever the non-conforming use has been discontinued for a period of one year, how does that apply? Mr. Ewert replied technically, if they stop using this house as a house for a period of one year, they have technically abandoned the use. If they abandoned the use, they cannot reestablish that use.

Closed for public hearing

MOTION: Commissioner Howell moved to recommend approval to the County Commission of ZTA 2014-05 as proposed.. Commissioner Graves seconded

VOTE: A vote was taken with Commissioner's Hollist, Miller, Howell, Graves, Haymond, and Chair Warburton voting aye. Motion Carried (6-0).

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

Charles Ewert said in reference to this ordinance proposal and the last proposal, these all fall within on-going administrative edits as far as the work plan in updating our ordinances. This is a proposal to clarify the treatment of accessory buildings, in the context of main buildings and main and accessory uses. The issue they have is that the definition section says that they don't get to have an accessory building on a property unless you have a main building established on that property. In most of our zones, they say an accessory use, which is accessory and incidental to a building, is permitted. There is a conflict there and they just needed to fix that conflict. In the work session they discussed conflicting uses and how that may relate; however, they wanted to move forward as staff and petition the Planning Commission for a recommendation to the County Commission to fix this issue and if there were ongoing discussions about conflicting issues, they would hit that with the use table. This clarifies what we are already doing where there are conflicting things in the code. The ordinance stated previously that accessory building, structures and uses, customarily tied to a permitted use, and that's where they had the conflict talking about accessory building and permitted uses. Especially when it comes to open air uses, they see this with agricultural uses, golf course, recreation, gravel pits, and those sorts of things.

Charles Ewert said that the way that our code is currently written, it almost seems like if they could put a guard shack on an open air use like a gravel pit, they have to call that a main building, which this doesn't technically change that, it will still be called the main building; however, it helps them understand what the difference is between a main building and accessory building. That is important because main buildings are governed in setbacks differently than accessory buildings. They went in and said accessory buildings incidental to the use of the main building which isn't a change. But

the second line; the main building designed for use to accommodate the main use, to which the premise is devoted, they are calling the guard shack a main building, even though that main building doesn't completely house the main use

For reference on why the word *accommodate* means something; if you go back to Page 8 of 38 in the staff report, and also 2 of 16, of that Exhibit, they find that *accessory building* currently means, "a subordinate structure detached from and located on the same lot as the main structure, the use which is incidental and accessory to that of the main structure, a main building is required prior to an accessory building." That last line is where the problem is; "A main building is a principal building and/or structure or one of the main or principal buildings and/or structures housing the main or principal use on the lot." It almost gives the idea that it has to completely enclose whatever the use of the property is in order to be considered a main building, and open air uses are not inside the building. That's where the word "accommodates" comes in, because they wanted to make sure that they were clear; that they might have a main building that doesn't completely house the main use. With this amendment, it can be conceived that a main building, established as a use on a property, might also be an accessory use. In the CVR-1, the M-3, and the open space zone, accessory buildings are only allowed by conditional use permit, even if it's accessory to an already permitted use in the CVR-1 Zone. This should be administrative approval, rather than making them go through the full CUP process to get approval. They changed that in the CVR-1, the M-3, and the Open Space Zone to say, they don't have to get a CUP, they just have to go through staff approval. The review will still be the same but the reviewing entity will be different.

Commissioner Hollist said in the staff report on page 2 of 38, or 2 of 4 policy analysis, in the first paragraph, it states they need to evaluate, which of the two conflicting positions should prevail? Mr. Ewert replied that he is actually referring to the discrepancy between the definition of accessory and main buildings, and the permission for accessory building listed in each of the zones. Those are the two different things, there's a conflict, one of the two should prevail, and their recommendation is to allow for the modification that they are making which is explicitly putting into the codes that accessory buildings and main buildings incidental used to accommodate main uses.

Open to public hearing

Steve Clarke asked if was possible to have an accessory building established on a property before a main building exists. Chair Warburton replied yes, if they recommend to change this ordinance as proposed. Mr. Ewert replied technically no, you can't have an accessory building without the main building, and that is the problem. You can install a building on a piece of property that looks, acts, and feels like an accessory building, but for the purposes of establishing what the setbacks are, even establishing design standards, they are going to call it a main building.

Closed for public hearing

MOTION: Commissioner Hollist moved to recommend approval to the County Commission ZTA 2014-06 changes to the Weber County Code as noted within the staff report. Commissioner Miller seconded.

VOTE: A vote was taken with Commissioner's Hollist, Miller, Howell, Graves, Haymond, and Chair Warburton voting aye. Motion Carried (6-0).

5. **Public Comment for Items not on the Agenda:** No public comments
6. **Remarks from Planning Commissioners:** Chair Warburton said that she would like to have the timer running when they have public comments.
7. **Report of the Planning Director:** Director Wilkinson said last week in the staff meeting, they had a discussion about whether or not this Planning Commission would like model motions in their staff reports. In the staff report that they just looked at there was a model motion that was laid out on how you could potentially make a motion. Is that something helpful that they would like to see in future staff reports? What they don't want to do is make it seem like that they are telling them what to do or inferring that they should do something by the sample motion, Chair Warburton replied that the model motion would be more appropriate in a training packet. It was agreed by the other Planning Commissioners to have the model motions in a training packet. Director Wilkinson said that they are planning to have a training coming up possibly in the next couple of work sessions, and they will be addressing some of the issues.

This Thursday and Friday they will be having Envisioning Workshops. Thursday night is the open house at Snowcrest, and Friday they will be doing some mobile workshops around the valley. Mr. Ewert replied that they don't plan to put that on the website because they want to have the freedom of moving it from place to place. If this Planning Commission has any suggestions where they could have these workshops, they would appreciate their suggestions.

Director Wilkinson said that Chris Crockett will be transferring to the Western Weber Township Planning Commission and that Ogden Valley Township Planning Commission will be getting a new attorney.

- 8. **Remarks from Legal Counsel:** No Legal Counsel remarks.

- 9. **Adjournment:** The meeting was adjourned at 8:05 p.m.

Respectfully Submitted,

Kary Serrano, Secretary;
Weber County Planning Commission