

Minutes of the Ogden Valley Planning Commission Regular meeting May 05, 2015 in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Laura Warburton, Chair; Ann Miller; John Howell, Greg Graves, Kevin Parson, Greg Graves, Pen Hollist

**Absent/Excused:** Will Haymond

**Staff Present:** Sean Wilkinson, Planning Director; Charlie Ewert, Principal Planner; Ronda Kippen, Planner II; Brett Peterson, Legal Counsel; Kary Serrano, Secretary

***Pledge of Allegiance***

***Roll Call:***

**1. Petitions, Applications and Public Hearings**

**1.1. Legislative Item:**

**a. New Business**

- 1. SUBVAC 2014-03:** Consideration and action on a request to vacate Lot 13 of the Liberty Meadows Subdivision as part of a plat amendment to correct the location of a drainage easement and to reconfigure the Lot lines that have been established through previously recorded boundary line adjustment located at 3500 E 3700 N, Eden UT (Cecil Satterthwaite, Authorized Agent)

Ronda Kippen said the applicant is requesting to vacate Lot 13 of the Liberty Meadows Subdivision as part of a plat amendment to correct the location of a drainage easement and to reconfigure the Lot lines that have been established through previously recorded boundary line adjustment. The Liberty Meadows Subdivision was recorded in 1972, with a drainage easement that goes right down the center of Lot 13. In 1976 it was brought to the county's attention that this easement was in the wrong location and needed to be corrected. The County Surveyor and Engineer performed a site visit to verify that the easement was not where the actual drainage is located and concluded that it needed to be corrected. Because of the erroneously recorded easement, the additional property deeded to Mr. Satterthwaite and the area of Lot 13 that will not be part of the new subdivision, an ordinance to vacate Lot 13 is necessary according to State Statue 17-27a-609 which states, "that a legislative body may vacate a subdivision or a portion of a subdivision by recording in the County Recorder's Office, an ordinance describing the subdivision or the portion being vacated." It further states, "the land use authority may approve a vacation if the land use authority finds that there is good cause for the vacation or amendment and no public street, right-of-way, or easement has been vacated or amended."

Ronda Kippen said they are reconfiguring the lot and will it be re-identified per the County Surveyor as Lot 24. The subdivision amendment will be taken care of administratively in a public meeting in the Planning Division office. The vacating ordinance will be recorded with the new subdivision plat, so they don't create any type of nonconformity for Mr. Satterthwaite. The reason this came forward, is because Mr. Satterthwaite wanted to build a barn, and his site plan identified the barn location in the easement overlapping the original lot line. Staff is unable to approve the site plan until a new plat is recorded correcting the errors. Included in the findings for good cause for the amendment, as part of staff's recommendation that the vacation will allow for a new subdivision plat to move forward, correcting the location of the drainage easement, and granting right for ingress and egress for maintenance to Weber County. The proposal shows good cause for the vacation which will correct the errors found in the previously recorded plat. The applicant has worked with the County Engineer and the applicant's engineer to identify the high water mark because this drainage is not on the adopted stream corridor map. Once the new subdivision is recorded, access will be granted to Weber County in case they need to get in there to clean the easement out and maintain it.

Chair Warburton said as a point of clarification, staff did sent out notices, and she asked how many people in the subdivision contacted staff that was affected, and did staff resolve their issues? Mrs. Kippen replied yes, there were two calls and the main concern was that the property to the east was going to be further subdivided because they love their quiet neighborhood. The one gentleman that resides across the street is also impacted with the same issues of the drainage easement, so he may be coming in to correct that issue as well.

In response to Commissioner Hollist's request, Mrs. Kippen showed where the actual drainage corridor was located.

Commissioner Hollist asked with this actual drainage low land, will this action be given a drainage easement? Mrs. Kippen replied yes, they have actually dedicated a 15 foot easement on the inside of this lot because they cannot do anything outside of the lot because it's not part of the subdivision. They have dedicated a 15 foot access easement for ingress and egress from the high water mark along this drainage so the county will be able to come along this area on the interior portion of the lot and they would have this area to be able to work within.

Cecil Satterthwaite, 4015 E River Drive, Liberty, representing his uncle Lynn Satterthwaite, said his uncle wanted to build a woodworking shop, he went in for a building permit, and found that the erroneous easement has never been corrected. Now they have the easement in the correct location, they had their engineer survey it and put it on the plat. Now the easement is actually where the water runs.

Chair Warburton said that because this is a legislative matter, they are opening this up for public hearing. There was no response from the public, and it was closed for public hearing.

**MOTION:** Commissioner Parson moved to recommend approval of SUBVAC 2014-03 to vacate Lot 13 of the Liberty Meadows Subdivision according to staff recommendations in that this would correct the errors that have been identified. Commissioner Miller seconded. A vote was taken with Commissioner Miller, Howell, Graves, Parson, Hollist, and Chair Warburton voting aye. Motion Carried (6-0)

2. **Public Comment for Items not on the Agenda:** There were no public comments.
3. **Remarks from Planning Commissioners:** No remarks from the Planning Commissioners.
4. **Planning Director Report:** No report from Planning Director.
5. **Remarks from Legal Counsel:** No remarks from Legal Counsel.
6. **Adjourn to Convene to a Work Session**

**WS1. DISCUSSION: Weber County Land Use Code Revision Process: Conditional Use Code**

Charles Ewert said Conditional Use Permits is a tool intended to help build a certain degree of discretion to enable them to allow for a greater amount of uses in their use list. Where a particular use they may be able to put a finite number of standards in the code that specify how to use that property and how to mitigate potential impact. Conditional uses are just a little bit vague and the standards are more vague. The idea here is if a conditional use permit is required to be approved under the law, provided that they comply with the applicable standards, and they are opening that up at every meeting to talk about conditional use permits to public comment, are they inviting a sense of clamor at the podium. Conditional use permit cannot be subject to public clamor like legislative items. Clamor is not a negative term, essentially what public clamor is; it's emotionally charged, not necessarily fact based, evidence based, credibility based statements, comments such as "I don't like that color, I don't like that shape, those kinds of things can be public clamor. There is a various degree of clamor; and sticking to the side with facts, credibility, and evidence will be where your decisions will be upheld upon review and will be defensible. Making decisions over on the clamor side will be a high level of review will start reversing decisions.

Charles Ewert said that in a legislative hearing is open for public hear, it is when the opinions of the people matter, they are creating ordinances that shape their community, and that's the important part. Once the ordinance is there, the standards are set, the process is set, there is nothing much that this Planning Commission can do when they come to the microphone and state that this is not okay. As for conditional use permits, this is an administrative item, and if he is a member of the public, and the microphone is open for his comment, he probably won't comment on any particular standard, or with a particular sense of objectivity. He would come to the podium and make his statement, and this Planning Commission would find in favor, because they are suppose find in favor of the applicant, which would make him feel like they didn't even listen, which might be an exercise in futility. Does this give the public the perception of verbal comment period that their voice will be heard and in the end it won't be? So is it creating an environment where they don't trust the process?

There was a discussion between the Planning Commissioners and the consensus was that they would like to have the public come to the meetings and present their comments.

In response to the time frame of conditional uses, Director Wilkinson said that currently their code requires 30 days prior to the Planning Commission meeting, and he is not saying that can't be changed, but right currently the application comes in 30 days prior. We as staff need time to analyze, to think about writing the report, and this does not happen in two or three days. He does understand from the citizens why they want to review these things, but there has to be the understanding as well, that if it meets the code, it meets the code, and no amount of time or input is going to change that if it does meet the code.

Steve Clarke and Kirk Langford echoed what the Planning Commissioners said about having the public comment verbally during a public hearing.

Charles Ewert went through Exhibit A: Proposed Conditional Use Code Amendments noting that those in blue are additions, those in red are deletions, and those in green are recent changes either addition or deletion.

Section 108-4-1 under Purpose and Intent:

- This explains what a conditional use permit is

Section 108-4-3 under Application and Review Procedures:

- This is broken into two parts, one is what the application shall include, and the second part is the procedure to process the application.
  - (1) An application shall include: This will supplement every application with what is required to review it.
  - Complete application is referenced in state code. If there is a complete application, the applicant is entitled to a decision. Until the application is complete, the applicant is not entitled to a decision. As a review agency or reviewer, sees something that is incomplete, he/she needs to get that comment back to the applicant as quickly as possible, so they know they are not entitled to anything until they have a complete application.
  - The application must comply with standards is part of the complete application.
  - Under state code, the Planning Staff have an obligation to the applicant, to get them noted that their application is incomplete within 30 days from submittal.
  - (2) Application submittal and review: This states the process where an applicant comes in for a pre-meeting and brings a concept plan and talks to staff to get guidance on how to submit a complete application.
  - Upon acceptance of an application, staff will submit it to the applicable review agency.
  - The reviewer will forward to staff reasonable recommendations for conditions.
  - Planning Staff shall review the application, together from applicable reviewers, to determine compliance with this Land Use Code.
  - Upon receipt of application and staff recommendation, the Land Use Authority shall make final decision if the application complies with this Land Use Code.

Section 108-4-4 under Decision requirements:

- (a) A Conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to substantially mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with the standards: This verbatim and the rest of the information is added in.
- (b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

Section 108-4-5 under Conditional use standards:

- The following is a list of standards that may be applied to a conditional use permit. The Land Use Authority may apply any relevant standard to a conditional use provided credible evidence exists that such standard is reasonable and necessary to mitigate detrimental effects of the use.
  - This list of standards is comprehensive, but they may not be relevant to all CUP's.
  - They can get really finite on the mitigating standards, but he would suggest not having in the conditional standards, have it in the design review standards.
- (1) Standards relating to safety for person and property.
  - A nuisance is a defined term in land use law, but it all comes down what the science behind it.

- They can claim a nuisance if another person is losing their property in a manner that prevents the quiet and enjoyment of your property.
- Substantially mitigate the likelihood that the proposed use or facility may cause bodily injury or property damage to potential persons or property in the area
- They need to identify what the problem is and this is an umbrella because they can't anticipate every harmful detrimental effects
- Almost of all these are directly measureable and they don't get them until the use has been approved and is in place.
- Create a little fact sheet on what kinds of condition they could look into to mitigate detrimental effects.
- (2) Standards relating to infrastructure, amenities, and services.
  - Recommend not going above and beyond what the experts are suggesting.
  - There are standards and the reason why they are asking for the standard.
  - The conditions of approval should speak to the entire standard not just portions of the standard.
- (3) Standards relating to the environment.
  - Local waters are not managed by the local entities; it is managed by the state.
  - Water Balance Report for the Valley
- (4) Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the general plan.
  - Providing buffering, screening, or fencing as a standard to not have an unattractive site
  - The general plan should have some general element of architectural control
  - There are already design review controls in place
  - There are architectural controls in place
  - There is the Ogden Valley Lighting Control in place
- (5) Standards relating to performance
  - They might require a developer to submit a bond, or an agreement, or a development agreement, but they don't want to administer, manage, and track a hundred thousand development agreements
  - A bond would be required if it's a large earth moving effort, in terms of storm water and pollution prevention, as well as erosion control and revegetation
- (6) Standards Generally
  - Provide an economic analysis
- (7) Voluntary Contributions providing satisfactory compliance with applicable standards. When considering a conditional use the Land Use Authority has discretion to determine satisfactory compliance with any applicable standard, requirement, provision, or restriction of this Chapter if the applicant has voluntarily offered a more desirable alternative to mitigate the reasonably anticipated detrimental effects of the use than those otherwise
  - The purpose of any of the above standards can be satisfied by some alternative proposal that the applicant volunteers for and we say they aren't waiving those standards, they have been satisfied.

#### Section 108-4-6 under Appeal

- They removed revocation from the appeal section and moved it to the expiration section and amended the appeals section. Added the Board of Adjustment is the Appeal Authority for Conditional Use Permits.

#### Section 108-4-7 under Permit and improvement guarantee

- Just added as may be allowed by law as per the approved site plan, and for the completion of any incomplete improvements

#### Section 108-4-8 under Revocation and expiration

- Made changes by adding section (a) and added Land Use Authority in section (b).
  - This is an enforcement mechanism; it was only reviewed with certain constraints.

#### Section 108-4-9 under Discontinued Use

- Made changes by including discontinued and/or abandoned use and replacing planning commission to Land Use Authority.

Commissioner Hollist suggested to Lee Schussman, if he could write a letter to the editor of the Standard Examiner and the Ogden Valley News and highlight Section 108-4-4 Decision requirements, subsection a and b, and indicate that this is

the heart of what this Planning Commission has to do. If in his own words say to the public; here is what the state law says, here is what is in front of the Ogden Valley Planning Commission currently for their approval, and that the assumption is that a conditional use shall be approved, unless they can come up with some mitigating circumstances it may be denied, but if there are no mitigating circumstances it must be approved.

**WS2. DISCUSSION: Weber County Land Use Code Revision Process: Land Use Table (Agricultural Uses)**

Charles Ewert brought up the Land Use Table and said they wanted to categorize and classify the things in accordance with like uses. Agriculture was a different because there were so many different agricultural uses that have different kinds of impact. Categorizing like uses in terms of certain impact helps to identify the form and function versus the use. The use isn't always the problem; the issues that become a problem are issues of morality, and when they start talking about uses that should be allowed or not allowed. All the other uses are just skills of impact, so if they can group things in terms of like impact that is going to help reduce the amount of regulation they have. What they is a proposal for the agricultural section to the proposed land use table. The first spread sheet is the new proposed, the old deleted, and his comments on why he made the determination that he did. The next section is the actual land use table with the suggestion by Commissioner Hollist, with comments and edits, and then something more complete, and this is an attempt of what the final product would be if they were just looking at agricultural uses.

Charles Ewert said to familiarize with the zoning maps because they will need to know what they are talking about on what is allowed and their proximity to certain neighborhoods, historical features, geological or topographical features. The maps are out on Geo Gizmo and if he needs to he could put them out on Miradi. On this Land Use Table, it is Permitted (P), Conditional (C), or Not (N). The blue underline is the proposed code to be added and the red strikethrough is the existing code to be deleted. On these items it may be more beneficial to go through these item by item, otherwise will go through line by line, and if there are questions, he would explain.

3. Agriculture: Agricultural uses not otherwise more specifically regulated by this Land Use Code:

- The Planning Commission needs to have when knowing and how to interpret and apply the zone. The more specific always trumps the less specific. When you have agriculture and it says general agricultural uses included but not limited to these kinds of things, but if they have a fur farm chinchillas, it's very specific regulating that, and that trumps what your agricultural can do.

18. Animal husbandry: Keeping of horses. The keeping of horses for private use only, subject to the requirements of 108-7-8 of this Land Use Code.

- Section 108-7-8 – This was changed to Animal husbandry and Setbacks for animals and fowl has been moved further down in this code.
- Section 101-1-7 Definitions – Animal Husbandry: The term “animal husbandry” means a branch of agriculture for the raising, nurturing, management, breeding and production of domesticated farm animals, not including household pets as defined by this section. Animals are bred and raised for utility (e.g. food, fur), sport, pleasure, and research.
  - The difference between a large animal farm and a small animal farm because the use table treats them differently. Previously it stated the raising and grazing of horses, cattle, sheep or goats, and it didn't extend the offer to raise other kinds of animals, i.e., elk, alpaca, or llamas.
  - In some types of uses there is a limited number of pets. In a particular type of use, there is not a limit in the large animal. In a dairy farm there is a limitation.
  - Large animal farms, small animal farms, aquaculture, and apiary; they don't count as animal units calculations.

25. Green House, agricultural. A greenhouse or nursery, accessory to an agricultural use, limited to the sale of product, produced on the premises. No retail shop.

- Permitted Use in the Land Use Table: AV-3, A-1, A-2, A-3, RE-15, RE-20

26. Green house, noncommercial. A noncommercial greenhouse, intended for the private use of participating persons who reside in the vicinity.

- Permitted Use in the Land Use Table: FV-3, FR-1, R-2, R-3, R-1-12, R-1-10

27. Greenhouse, commercial. See “greenhouse commercial” in commercial use section of this land use table.

171. Greenhouse, commercial. A greenhouse or nursery intended for retail or wholesale sales in the AV-3, A-1, A-2 zones. The greenhouse and nursery shall be limited to the sale of plants, landscaping materials, fertilizer, pesticide and insecticide products, tools for garden and lawn care, and the growing and sale of sod.

- Conditional Use in the Land Use Table: AV-3, A-1, A-3
  - Permitted Use in the Land Use Table: C-2, C-3, CV-2, M-1, M-2, M-3, MV-1
  - Not Listed in the Land Use Table: A-3, F-5, F-10, F-40, FV-3, FR-1, FR-3, S1, R-2, R-3, R-1-12, F-1-10, RE-15, RE-10, RMHP, RMH-1-6, DRR-1, C-1, CV-1, CVR-1, G, O-1
15. Animal husbandry, Large-Animal Farm: The raising and grazing of any “large-animal farm” animal husbandry unit, except where otherwise more specifically regulated by this Land Use Code, and subject to the requirements of Section 108-7-8 of this Land Use code. When conducted in the RE-15, RE-20, AV-3, A-1, and A-3 zones, a five acre minimum lot area is required.
- Sec. 108-7-8 – Animal Husbandry: (b) Setbacks for stable, corral, or enclosure etc. (this was already there).
  - Sec. 108-7-8 – Animal Husbandry:(c) Sanitary keeping of pasture ground stable, corral, etc. (this is something new)
18. Animal husbandry, keeping of horses: The keeping of horses for private use only, subject to the requirements of 108-7-8. In the O-1 zone a five acre minimum devoted to pasture size is required.
- Permitted Use in the Land Use Table: AV-3, A-1, A-2, A-3, F-5, F-10, F-40, FV-3, FR-1, RE-15, RE-20, DRR-1, O-1
  - Not Listed in the Land Use Table: FR-3, S-1, R-2, R-3, R-1-12, R-1-10, RMHP, RMH-1-6, C-1, C-2, C-3, CV-1, CV-2, CVR-1, M-1, M-2, M-3 MV-1, G
7. **Adjournment:** The meeting was adjourned at 8:30 p.m.

Respectfully Submitted,

Kary Serrano, Secretary;  
Weber County Planning Commission