

Minutes of the Work Session of the Ogden Valley Planning Commission for June 21, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/85287811569>, the time of the meeting, commencing at 5:00 p.m.

Ogden Valley Planning Commissioners Present: Trevor Shuman, Chair; Shanna Francis, Vice Chair, Jeff Burton, Jared Montgomery.

Absent/Excused: Commissioner Dayson Johnson and Justin Torman

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

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

Planning Director Grover commented on the passing of Commissioner Howell; he extended condolences to Commissioner Howell's family and indicated there will be a recognition item included on the next business meeting agenda to provide a plaque to Commissioner Howell's family.

Chair Shuman conducted roll call and indicated Commissioners Johnson and Torman were excused.

Chair Shuman then noted that there was an issue with the noticing of both the administrative and legislative items included on tonight's agenda; staff caught the noticing error and corrected it within 24 hours of tonight's meeting but felt that it would be most appropriate and transparent to delay the items to provide for more thorough noticing of the applications for public view. The items will be heard during the July 26 business meeting.

1. Approval of Minutes for April 26, 2022.

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

Petitions, Applications, and Public Hearings:

2. Administrative items:

2.1 File No. UVO111221, Request for preliminary approval of Osprey Ranch Subdivision Phase 1, consisting of 31 lots and two open-space parcels. Presenter: Tammy Aydelotte

This item was continued to July 26, 2022.

Petitions, Applications, and Public Hearings:

3. Legislative items:

3.1 ZDA 2022-01, public hearing to consider and take action on a request for an amendment to the Powder Mountain Development Agreement. Applicant Anne Winston. Presenter: Steve Burton.

This item was continued to July 26, 2022.

6. Planning Director Report.

Mr. Grover discussed efforts to improve the audio of meetings for those participating electronically. He then introduced the County's Code Enforcement Officer, Iris Hennon, and noted she has been invited to the meeting to discuss current efforts to address unlicensed short-term rental properties in the Valley.

Ms. Hennon stated that enforcement action is typically complaint driven; when she receives a complaint from someone about an illegal short-term rental, she visits the property to investigate, and researches records regarding property ownership. She summarized the noticing procedure she follows to notice a property owner about potential code enforcement action. It is important that the County be able to prove illegal operation of a short-term rental in order for code enforcement action and legal

action to be pursued. She indicated that many property owners have discovered loopholes in the law that has allowed them to continue to operate their short-term rental and this had made her job very difficult, but she will continue to respond to complaints and notify property owners of any illegal use of their property. She stated she sympathizes with property owners who occupy their property and are being negatively impacted by others using their property for nightly rentals.

Chair Shuman thanked Ms. Hennon for her efforts and for the information provided to the Commission. Vice Chair Francis asked Ms. Hennon if she notifies the County Assessor/Treasurer when a property is being used for business purposes or as a second home for tax purposes. Ms. Hennon answered yes and indicated that the County Assessor also sends notices to the property owner regarding the tax implications of using their home for short-term rentals.

Commissioner Burton inquired as to the fine for using a property as a short-term rental. Ms. Hennon answered \$100 per day. Commissioner Burton asked what happens if the owner refuses to pay the fine and the matter is taken to court. Ms. Hennon stated that once the matter is taken to court, it is considered to be a Class B misdemeanor and the court will consider a commensurate fine and eliminate the County's code enforcement fines.

Mr. Grover indicated the County is pursuing an arrangement with a third-party company that can assist with enforcement, which will help Ms. Hennon with her responsibilities and will make it easier for the County to respond to complaints from residents. This is the cause of most of the frustration about short term rentals and Planning staff is very understanding of that situation.

Commissioner Burton stated there is some confusion about a provision in State law that prohibits reliance upon an online advertisement of a short-term rental as proof as the illegal operation. Ms. Hennon stated that she cannot patrol online short-term rental listings, but if a resident provides her with proof of a listing, she can use that in her enforcement action. Legal Counsel Erickson clarified there is nothing that prohibits the County from looking for a property listing to initiate a code enforcement action, but the County cannot include a provision in its land use ordinance that prohibits listing a short-term rental on a short-term rental listing website. If all the County has is proof of the listing, that is not sufficient to take action; it can be used to initiate an investigation to gather other evidence, but it cannot serve as the sole piece of evidence.

There was high level discussion among the Commission and staff regarding potential future consideration of code adjustments regarding short term rentals; there was also discussion about code enforcement actions that have taken place to date.

4. Public comment for items not on the agenda.

Valerie Fowler addressed the discussion regarding short term rentals, and she asked about the timing of hiring with a third-party enforcement company.

Mr. Grover stated that the County Commission asked that Planning staff obtain costs for working with a third-party enforcement company and they indicated they were not willing to take action on that matter until the Western Weber County General Plan project is completed.

Ms. Fowler stated that it has been over a year since the Commission laid out a plan for proceeding with obtaining bids and selecting a third-party enforcement company by this June. She appreciates the time it takes to handle those types of projects, but she is pleading on behalf of the Ogden Valley residents that the Commission be forthcoming regarding timeline changes. When the project was paused, it seemed all communication with the community was also paused. She stated this is very important to those with a vested interest and she asked for proactive information from the County. Mr. Grover stated that he understands the concerns of the community; many projects have taken longer than expected and due to staffing levels and the amount of time it has taken to develop the Western Weber General Plan, it has not been possible to complete the third-part code enforcement RFP.

Chair Shuman thanked Mr. Grover for his comments and Ms. Fowler for her input. He stated he is hopeful the RFP can be published in August and that a contractor can be selected shortly after that. Mr. Grover stated he is hesitant to communicate a timeline as schedules for many projects continue to shift. He stated he understands the importance of the project and will work on it as soon as possible.

Commissioner Burton inquired as to the number of active short term rental licenses in the Ogden Valley, to which Ms. Hennon answered 33.

Jan Fulmer thanked Ms. Hennon for her efforts and acknowledged the difficulty of her job. She added she also is aware of the work performed by the employees in the Assessor's Office and thanked them for their efforts as well. She stated that she and many other residents in the Valley have been waiting for 18 months for the County to address the issue of short-term rentals in the Valley; the Assessor's Office is unable to generate a report that indicates the number of dwelling units in Weber County that are in areas where short term rentals are allowed. They can produce many other types of reports, but not the type of report that would be helpful in this situation. Therefore, residents have created the report and it includes the number of legal dwelling units in Ogden Valley communities that are actively being used for short term rentals and there are more than 1,000 of them. This does not include 'lock out' units, of which there are several. As of the end of March, based upon a Government Records Access and Management Act (GRAMA) request she submitted to the County, there are just 32 licenses in all of Weber County for short term rentals. However, she is aware that the 1,000 plus units are being used for short term rentals as she has spoken with the companies managing them. She also referenced an article that was included in the Ogden Valley News and Standard-Examiner regarding short term rentals; one of the County Commissioners was quoted in the article to indicate that the County's ordinance efforts were not to expand the short-term rental use, but to enforce them. She asked that this be kept in mind as it is highly likely the County will be receiving zone change applications to allow more multi-family units to be built and/or used as short-term rentals. That is clearly an expansion of the short-term use in the Ogden Valley. Ms. Fulmer then discussed transfer of development rights (TDR), which are noted in the Ogden Valley General Plan that was approved in 2016. The plan intends for TDRs to be transfer rights from large parcels of vacant or agricultural land to clustered village areas. This would maintain open space, but still give the owner of the open space monetary value for the development rights. TDRs were not meant to be used to transfer rights from a clustered village area to another clustered village area; the primary objective was to preserve as much open space as possible and ensure sustainable growth in the Valley by observing total buildout projections. Use of TDRs, especially in Ogden Valley, has already been eroded; after the General Plan was accepted, the concept of bonus development units for developers was added to the Plan behind closed doors by the Weber County Commissioners in 2019 without absolutely no input from the community. Granting bonus density can easily exceed the total buildout projections of the Valley. This needs to be monitored as carefully as possible given drought conditions and lack of natural resources.

Karen Bartholomew stated she lives in the Elkhorn HOA, which does not allow short term rentals based upon its zoning designation. It also does not have PRUD approval. However, the use is being operated in her neighborhood and she relayed her personal experience with the use, which has been very negatively impactful to her and her neighbors. On-street parking and accessory vehicles parked on other property properties, visitors driving ATVs and motorcycles in the road and in side yards of other properties, menacing tenants, and public urination in one case. These people should not be there according to the rules for her neighborhood, but one particular property has been regularly used as a business.

Commissioner Burton asked Ms. Fulmer for clarification on the list of properties she provided; he asked if it is correct that those are properties in which short term rentals would be allowed. Ms. Fulmer answered yes and indicated she has provided that information to communicate that there are already plenty of places where short term rentals could be legally operated; some developments have on-site management companies for that purpose, but other property owners are independently operating their property as a short-term rental use because they can do so using online management tools.

There was brief discussion among the Commission and Planning staff regarding the process a property owner must follow to secure a license to operate a short-term rental. There was also a brief focus on the revenue being lost by the County due to illegal operation of a short-term rental.

Jim Brough stated he was in attendance for one of the agenda items that has been tabled; he asked if those will be heard in July. Chair Shuman answered yes and restated the explanation for the tabling of the items. He stated both agenda items have been postponed to July 26. Mr. Brough stated that it is his understanding that in a past meeting there was some discussion about using roads in his neighborhood to access the Osprey Ranch Subdivision and he communicated that his homeowner's association (HOA) is fine allowing emergency access on their roads, but their roads are privately maintained and should not be opened for general public access. Chair Shuman stated there was discussion about using Big Sky Drive for connectivity, but only at some point in the future when development warrants such use. He stated that at that point, the road could be dedicated to the County and the HOA would no longer be responsible for maintenance of the road. Chair Shuman encouraged Mr. Brough to attend the July 26 meeting to hear the applicant's presentation and to provide input at that time.

5. Remarks from Planning Commissioners.

There were no additional remarks from Planning Commissioners.

7. Remarks from Legal Counsel.

Mr. Erickson had no additional remarks.

W1: Discussion regarding new state requirements for moderate-income housing plans and implementation strategies.

Planner Burton reported on legislation adopted by the Utah Legislature in 2019 aimed at addressing the housing shortage in Utah and increasing the amount of moderate-income housing in the State. Each government entity has been required to update their General Plan to include a moderate-income housing element and submit a yearly report regarding compliance with the State law. He reported on the County's progress to date relative to implementation of the moderate-income housing element of the General Plan, after which he noted in 2022 the State Legislature adopted House Bill (HB) 462 amending housing affordability requirements. The bill modified and expanded moderate-income housing implementation menu items and requires that implementation must include a timeline and specific benchmarks for each chosen strategy. October 1, 2022 is the deadline for updated moderate income housing planning elements and annual reports are also due October 1. Compliance is tied to a government entity's receipt of transportation funding and an additional incentive is included which provides priority consideration for transportation funding. The bill provides three options going forward:

- Option 1: pick or reaffirm three strategies and adopt an implementation timeline for each. (This option meets the base requirement).
- Option 2: Pick new strategies and a corresponding implementation timeline for each. (This meets the base requirements with reaching priority consideration).
- Option 3: Incorporate at least 2 strategies beyond the base requirement and adopt an implementation timeline for each. (This option reaches priority consideration).

The Commission and Planning staff then engaged in high level philosophical discussion regarding the intent of the legislative amendments and the implications of the amendments for different planning areas of the County. The Commission will need to hold a public hearing to consider options for compliance with the law and make a recommendation to the County Commission; the County Commission must take action prior to October 1 in order to comply with the reporting requirement. Mr. Burton asked that the Commission familiarize themselves with the menu options for complying with the legislation in preparation for the next discussion of this matter. The Commission briefly debated the potential effectiveness of some of the menu items for the Ogden Valley area specifically; they also discussed the current amount of moderate to affordable housing stock in the Valley. Mr. Burton stated that staff proposes the Commission hold an additional work session, during which staff will provide their recommendations regarding the menu items to use in the General Plan update. Once those recommendations have been discussed by the Commission, staff will proceed to scheduling a public hearing regarding the matter. The Commission stressed their desire to consider strategies that will actually provide moderate income housing in the Valley. Staff agreed and indicated that it is important to consider strategies that are measurable. Mr. Burton invited the Commission to email him any recommendations regarding the menu items they are most interested in.

W2: Discussion regarding Transferable Development Rights Overlay Zone.

Principal Planner Ewert presented a map to illustrate the total area in the Ogden Valley and he identified areas from which transfer of development rights (TDRs) are most appropriate and reasonable; he also identified areas that are suitable as receiving areas. Vice Chair Francis stated it is important to clearly define the term 'suitable'; many areas near Powder Mountain are not really suitable as a being a receiving area due to watershed and other geological conditions that impact the health, safety, and welfare of the Valley. Chair Shuman stated that suitable is a subjective term and the definition is different from person to person. Vice Chair Francis agreed and indicated that is why she feels it is important for the Planning Commission, and ultimately the County Commission, to consider a clear definition when adopting a TDR overlay zone. The Commission and staff debated the most appropriate receiving areas in the Valley, with Commissioner Burton stressing that government exists to enhance the exercise of individual private property rights – not to restrict or diminish them. He noted that it is his desire to consider this viewpoint when

determining the areas to which development rights can be transferred; if a hazard or condition on a property can be mitigated to allow for responsible development, such development should be allowed. Vice Chairman Francis stated she agrees, so long as government dollars will not be used to respond to problems created by the development. Mr. Ewert concluded that he will utilize the feedback provided the Commission tonight to formulate an updated proposal for review/consideration in a future meeting.

Meeting Adjourned: The meeting adjourned at 8:14 p.m.

Respectfully Submitted,

Cassie Brown

Weber County Planning Commission