Minutes of the Regular Meeting of the Ogden Valley Planning Commission for November 14, 2023, 5:00 p.m. To join the meeting, please navigate to the following weblink at, https://webercountyutah.zoom.us/j/83247091304, the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** Trevor Shuman (Chair), Jeff Burton (Vice Chair), Jeff Barber, Dayson Johnson, Jared Montgomery, Justin Torman, and Janet Wampler.

 **Absent/Excused:** None.

**Staff Present:** Rick Grover, Planning Director; Charlie Ewert, Principal Planner; Steve Burton, Planner; Felix Lleverino, Planner; Tammy Aydelotte, Planner; Bill Cobabe, Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

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

Chair Shuman conducted roll call and indicated all Planning Commissioners were present and Commissioner Wampler was participating via electronic means.

1. **Minutes:**

Comments from Planning Commission Chair: Chair Shuman encouraged all Planning Commissioners, staff, and the public to be respectful in their dealings with one another. He referenced recent dialogue in the community that has led to misinformation and distrust; he encouraged all to move forward in a manner of mutual respect and abstaining from tactics that are disparaging and lacking decorum.

**Petitions, Applications, and Public Hearings:**

**2. Legislative Items:**

**2.1 ZMA2023-09: A public hearing to discuss and take action on an application to amend the Weber County Zoning Map, rezoning approximately 20 acres of land at approximately 5204 East, HWY 166, from the AV-3 Zone to the FB Zone. Planner: Charlie Ewert.**

Planning Director Grover provided a brief description of the Planning Commission’s role relative to levitative items; when the Planning Commission is acting as a recommending body to the County Commission, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use code amendments. Legislative actions require that the Planning Commission give a recommendation to the County Commission. For this circumstance, criteria for recommendations in a legislative matter require a review for compatibility with the general plan and existing ordinances. He stated he has asked Legal Counsel Erickson to provide the Commission with a brief description of the reason the Planning Commission is hearing this application at this time.

Mr. Erickson stated that he was asked to address why there is a deadline for this application; under State law, UCA 17-27A-509.5, if a reasonable amount of time has lapsed since the submittal of an application the applicant may request a final decision be made within 45 days of the request for the decision. The County has received a request for a final decision from this applicant. This request was received on October 28, 2023. This rezone application was initially received by the County on April 5, 2023 and the application fee was receipted April 20, 2023. At that time the applicant had another application also submitted and requested that staff postpone review of this application until there was more clarity on the direction of the other application, as the two are related. Mr. Grover concluded the Commission has two options tonight, they can either recommend approval or denial. Tabling is not an option because the application needs to appear on the Legislative Body’s agenda within 45 days of the date they filed their request for a decision. Chair Shuman stated it is his understanding that if the Planning Commission fails to act on this application tonight, it will still be included on the County Commission’s next agenda, but without a recommendation or input from the Planning Commission. Mr. Grover stated that failure to act could create some legal issues for the County. Mr. Erickson added that the County’s land use ordinance does not explicitly state that failure to act is equal to a recommendation of denial from the Planning Commission. The only clear path for complying with State Law is to make a recommendation for approval of denial.

Commissioner Barber stated this application was connected with another application from the same petitioner and he asked Mr. Grover to remind the Planning Commission of the action taken on the other application. Mr. Grover stated that the Planning Commission considered an application relating to the street regulating plan and recommended denial of the application to the County Commission; that item will be considered by the County Commission on December 5. They will also be considering the Planning Commission’s recommendation regarding ZMA2023-09.

Planner Ewert then explained this is an application for a rezone. The Planning Commission has held several work sessions and meetings to discuss the property in relation to amendments to the Form Based (FB) Zone’s street regulating plan, but this is the first time the Planning Commission will be reviewing this requested rezone. He then stated there has been extensive discussion about the purpose and intent of the Ogden Valley General Plan; there are many opinions and a lot of misinformation about the General Plan, and he will not spend time addressing that misinformation. He also will not address the personal attacks and vilification of County staff and the applicant. Rather, he will discuss County policy and the purpose of the General Plan. He cited changes/corrections to the staff report regarding this item, which have been addressed and updated for public review. He then noted the purpose of the General Plan is to correct trending growth patterns under existing zoning. He presented an image of the Ogden Valley and highlighted existing preserved open space (highlighted in green); these areas have been preserved in some manner to ensure they remain open and undeveloped for the future. He added an additional layer (highlighted in red), which included existing subdivisions in relation to existing preserved open space. A final layer (highlighted in brown) included areas that have development rights assigned to them, but development has not occurred yet or the area is underdeveloped. He stated that it is known that trending growth patterns need to be corrected to address where existing zoning could potentially lead. Under existing zoning at total Valley buildout, the number of dwelling units could be 12,622. There are 3,977 existing dwelling units and 2,459 existing vacant subdivision lots; the remaining development rights are 6,186 based upon current zoning. He noted these numbers are different and more accurate than those presented in the September 26, 2023 open house based upon a calculation error. He displayed the image of the Ogden Valley again and added more layers to represent the dwelling unit numbers identified above to illustrate how the Valley will look at buildout if trends are not corrected:

* The orange specks on the map are the actual footprints of the existing primary buildings on each lot or parcel in the Valley.
* The yellow specks represent residential buildings that could be constructed on an existing vacant subdivision lot, or with an approved master planned development.
* The white specks represent future unplanned residential development that is allowed by existing zoning. These are property rights that currently exist, and if any of these landowners apply to develop their land accordingly the County is prohibited by State Law from denying it (as long as it follows alle existing development laws.)

He reiterated that the existing zoning leads to 12,622 total dwellings units (excluding Snowbasin and Power Mountain’s mountain top units. This means dwelling units will be spread throughout existing open fields and each new development will lead to additional streets being built by a developer. He displayed the image of the Ogden Valley again and added red lines to identify the location of existing roads and dark blue lines to represent streets that are planned to eventually be constructed. He addressed the public outcry regarding the street regulating plans and noted that the desires of the public are not an option because landowners have development rights that would allow them to construct streets to serve their property and the County should be planning and preparing for such development, not trying to avoid it. He then presented maps from the Ogden Valley general Plan, which generally identify future growth areas as well as areas that should be preserved as open space. Mr. Ewert noted the General Plan also addresses rural residential development and housing vision for the Ogden Valley community and suggest residential development should be centered around villages and town centers; this will help to correct the eventual undesirable outcomes of growth in the Valley. The Plan also encourages new development to locate in areas where water and sewer service could be provided by a sewer system. This helps to minimize tax increases associated with infrastructure improvement and service provision. He then addressed misunderstandings about the General Plan; some believe the statement ‘no new density’ means open spaces will stay open, but it actually means that new residential development rights will not be added to the existing rights already allocated by existing zoning. The General Plan expects currently allocated development rights to remain in effect, even those not yet constructed. He noted that this application is not seeking any new density; rather, they are asking to be able to use transferrable development rights (TDRs) from other locations. He then stated that land use principle 1.1 in the General Plan stated “in general, additional density should not be authorized in the Ogden Valley planning area above that allowed by current zoning. Minimal density bonuses (the exact amount to be determined by ordinance, master plan, development agreement, etc.) should only be allowed when they are granted to incentivize significant contribution to the advancement of the goals and principles found in this plan.” He noted another misunderstanding is that a village should not be bigger than a quarter mile radius; this is not true, and the General Plan identifies village areas as ¼ mile radius circles centered on each area. For these purposes, the study area boundaries are not intended as growth boundaries but are areas within walking distance of each village center. Another misunderstanding is that residential development, through TDRs, should only occur inside commercial areas and villages. He noted the General Plan is clear that residential uses should be both within and encircling commercial areas and villages. He added the Plan also calls for a variety of residential uses in these commercial areas and villages. He added another misunderstanding is that the Plan says not to upzone. The opposite is true and the only way for the Plan to work utilizing TDRs is to upzone around growth areas in exchange for reducing growth in other important open space areas. This will not be easy to accomplish, but it is important. He stated that another misunderstanding is that the center of New Town Eden is the post office. The correction is that the Plan is clear that the center of New Town Eden is the center of Highway 158 and 162/166 intersection. He noted he has reviewed the current and the two previous versions of the General Plan and cannot find any mention of the post office being the center of New Town Eden. He stated another misunderstanding is that the Plan does not specify a priority village area. This is also incorrect, and he read text from page 29 of the General Plan: “The Eden town centers Is considered the main commercial center in Ogden Valley. Oriented around the intersection of SR158 and SR162, this area consists of many service-oriented businesses, such as a dentist office, the post office, and the only grocery store in the Valley.”

Mr. Ewert then addressed misunderstandings about the FB zone:

* Misunderstanding: the FB zone will not help the Valley be rural.
	+ Correction: the FB zone is designed to protect the more rural areas of the Valley by allowing areas for density to be transferred. In addition, the FB zone also enables rural residential and estate lot residential spaces. These areas are intended to stay rural.
* Misunderstanding: the FB zone is a commercial zone; allowing it to expand will only lead to expanding commercial and high-density village areas.
	+ Correction: the FB zone allows commercial in certain locations, based on the specifics of the street regulating plan. The FB zone provides for more areas with single-family residential than for commercial or multi-family.
* Misunderstanding: expanding the FB zone only promotes sprawled development that will continue to expand in other areas.
	+ Correction: because the FB zone has many different development types, from large lot residential to missed use commercial, the FB zone can provide for most, if not all, development types, rural and commercial alike. The key is in the designation of the streets in the street regulating plan.
* Misunderstanding: the FB zone’s street regulating plans are/will cause the expansion of new streets into areas currently without streets.
	+ Correction: development rights, not the street regulating plan, will drive whether new streets are created. The street regulating plan gives the community the chance to plan where those streets will go. Without it, the developer will choose, and it may not be optimally beneficial to the future community.

Mr. Ewert then discussed staff’s analysis of the rezone application. The current zone of the subject property is AV-3 and the purpose and intent of the AV-3 zone is to “designate low-intensity farm areas, which are anticipated to develop in a rural residential development pattern; set up guidelines to continue agricultural pursuits, including the keeping of farm animals; and direct orderly low-density residential development in a continuing rural environment.” The proposed zone for the subject property is the Form-Based (FB) Zone. The purpose of the FB Zone is: “to provide a form-based regulatory tool that focuses on the public street design and the buildings that frame the public street. This de-emphasizes separation of land uses as is typically found elsewhere in this Land Use Code. Form-based regulations help enable a mixture of allowed uses, multimodal active transportation, and enhanced building design. Additionally [,] the Form-Based Zone regulations are intended to carry out the objectives of the 2016 Ogden Valley General Plan through the implementation of form-based small area zoning and transferable development rights. Each area affected by the Form-Based Zone shall be governed by a Street Regulating Plan. The purpose of the Street Regulating Plan is to address specific design and functionality of streets and building facades along these streets. The intent is to stimulate the creation of buildings and streets that frame the public rights-of-way with architectural and design elements that are unified under a common design theme whilst enabling unique building facades.” He presented images to orient the Commission to the location of the subject property and the implications of the zone change; the FB Zone is unlike other zones in the Land Use Code. It contains a variety of what could be viewed as “subzones” within it. These so-called “subzones” are identified by the specific street types and delineated in a street regulating plan. If the FB Zone is approved for the subject property, all of those uses and development types prescribed by the specific street type should be anticipated in a future development thereon. Weber County Code has six general decision criteria for determining whether a rezone is merited. They are as follows:

* 1. Whether the proposed amendment is consistent with goals, objectives, and policies of the County’s general plan.
	2. Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property, and if not, consideration of the specific incompatibilities within the context of the general plan.
	3. The extent to which the proposed amendment may adversely affect adjacent property.
	4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, stormwater drainage systems, water supplies, wastewater, and refuse collection.
	5. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.
	6. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.

Mr. Ewert expounded on the matter of General Plan compatibility; relative to commercial development implementation, the General Plan "requires new commercial or mixed-use development to locate on property currently zoned for commercial uses. Avoid rezoning new property to commercial or manufacturing until such time that the community supports it. Future commercial or mixed-use rezoning should only be considered adjacent to existing commercial or mixed-use zoning in a manner that creates village clusters and avoids strip commercial along highway corridors.” Relative to utilities and public services, the General Plan “encourages new development to locate in areas where water and sewer service could be provided by a sewer system. Encourage residential cluster developments with smaller building lots and larger areas of open space for most subdivisions.” Additionally, “new developments in the village areas (reference Commercial Development Implementation 1.1.1) and the resort areas should connect to existing sewer facilities or provide limited-capacity sewage treatment facilities for identified service areas. The facilities should be designed to be expandable to accommodate additional development in the village or resort areas. New residential developments not proximate to existing sewer service areas should employ clustering and provide limited capacity advanced sewage treatment facilities.” He presented a map to identify where the new sewer and culinary water lines would be installed for this project and noted that he has heard from some in the Valley that they do not support the location of the lines and they would prefer that they run through the commercial areas. He noted that to the applicant’s credit, they could have pursued another project that would have allowed septic systems; they instead agreed to pursue installation of adequate sewer infrastructure that is 10 times the size of the system they need to build.

Mr. Ewert then discussed the street regulating plan, which is the cornerstone of FB zoning; he presented a map of the current Eden area street regulating plan, noting the plan includes vehicle oriented commercial streets, rural residential streets, estate lot residential streets, and general open space streets. This map has changed when compared to the original version of the map and some have claimed these changes are a result of the County trying to help the developer with his project. Rather, the County has approved changes that would help facilitate the TDR actions needed to preserve open space and locate density in village areas. Chair Shuman pointed out that the street regulating plan was approved as part of another action, not on its own merits. Mr. Ewert stated that is correct. He then expounded on the type of development the applicant can pursue if the FB zone is approved, but the street regulating plan is not approved. He presented the street regulating plan that is currently being considered by the County Commission and he identified the differences between the updated plan and the original plan.

Mr. Ewert concluded that after reviewing the proposal within the intended context of the Ogden Valley General Plan, it is staff’s opinion that this rezone will substantially advance the vision and goals of the general plan. Staff is recommending approval of the rezone. This recommendation is given to the Planning Commission with the following findings:

1. The proposal substantially advances the vision, goals, and objectives of the Ogden Valley General Plan.
2. Considering the direct context of the plan, the benefits that the proposal offers to the execution of the plan and to the long-term desirable community outcomes as specified in the plan overwhelm the proposal’s conflict with Commercial Development Implementation Strategy 1.1.2.
3. The proposal will bring sewer to the Eden area, thereby creating further village and TDR opportunities for other landowners in the surrounding area in the future, further compounding the benefits of the proposal to the intended effects of the general plan.
4. The TDRs anticipated to be consumed by the development within the proposed rezone, or the TDRs that might be consumed by other properties in the area will help remove development rights from the remaining areas in the community that are intended to remain rural.
5. The project is beneficial to the overall health, safety, and welfare of the community, as provided in detail in the Ogden Valley General Plan.

Commissioner Montgomery asked if the Commission is voting on the application based upon the current version of the street regulating plan, or proposed amendments to the plan that have not been acted upon yet. Mr. Ewert stated the Commission should consider both and could include a finding in their recommendation to the County Commission to support the original or proposed street regulating plan. Commissioner Torman asked if the proposed amendments to the street regulating plan will be presented to the Planning Commission for a recommendation. Mr. Ewert answered no; the County Commission is planning to take final action on the proposed amendments tot eh street regulating plan on December 5.

Chair Shuman asked Mr. Ewert to address whether short term rentals (STRs) will be allowed in the proposed project. Mr. Ewert stated that STRs have been removed as an allowed use on every street type, except for multi-family, mixed-use commercial, and vehicle-oriented streets. He reviewed the street regulating plan map again and stated that STRs would be allowed on the streets highlighted in red and dark orange.

Commissioner Barber stated that he has seen renderings of the proposed project and has heard that the unit count could be in the hundreds. He asked Mr. Ewert to address parking requirements for these types of developments and if there will be requirements for trailer parking areas, overflow parking areas, and commercial parking. Mr. Ewert stated the FB zone has a robust chapter dealing with parking requirements. For commercial uses, adequate parking must be provided within 500 feet of the use. The majority of the parking will be in the rear of development to be hidden from public streets. Residential areas must meet the minimum parking requirements based on density; single family dwellings must have two parking spaces and the ratio can be reduced for multi-family uses, such as townhomes or apartments. Commissioner Barber inquired as to the parking requirements for hotels and restaurants. Mr. Ewert stated that a hotel requires one parking space per room and parking for a restaurant is based upon the seating capacity and square footage of the space. There is not a requirement for trailer parking, but all vehicles must be parked in a way that does not block the public right of way. This will be a self-regulating matter.

Discussion among the Commission and Mr. Ewert centered on the six decision criteria considered by staff when determining whether a rezone is merited. Mr. Ewert referred to opinion statements in his staff report that provide staff’s explanation regarding how they felt each of the decision criteria have been satisfied. Chair Shuman stated that there have been concerns about traffic mitigation in the project area and whether the cost of traffic calming measures should be considered as part of the action on the zone change. Mr. Ewert stated that is something that could be addressed in a development agreement, though development agreements are less than desirable for a FB zone. If the development agreement strictly addressed one issue, such as traffic mitigation, it would be appropriate. However, the County could wait until after the zone change is granted and a specific development application is submitted and, at that time, ask for a transportation study to understand the impact the project will have on the roads in the long run. The County could ask for transportation improvements or a dedication of funding from the developer that could be used when the County pursues improvements in the future. He added that transportation impact fees can also be used to improved transportation; the Utah Department of Transportation (UDOT) and Nordic Valley have indicated they will be contributing to transportation improvements at the key intersection in the project area. Commissioner Burton stated that those types of negotiations typically occur before the rezone is acted upon; he asked how the City can ask for support from the developer after the zone change is approved. Mr. Ewert stated the County would rely upon the transportation/traffic study for the project and exact funding adequate to provide the desirable level of service for the area. This led to philosophical discussion and debate among the Commission and staff regarding the appropriate time to require a traffic study for the subject property and any agreement on the amount of funding the applicant will contribute to transportation improvements. Commissioners Burton and Wampler asked whether the negotiation for financial contribution to improve the existing four-way stop in the project area should happen now or at the time the development application comes forward. Mr. Ewert stated either option is acceptable; if the negotiation occurs at the time of the zone change, there is a different level of review available. If negotiation occurs at the time of the development application, the applicant would only be required to pay for improvements needed based upon the project’s impact on the area. Chair Shuman stated that essentially the Planning Commission could recommend that the rezone only be approved if the applicant provides sufficient funding for desired traffic improvements at the four-way stop. Mr. Ewert stated that is correct, but the applicant would need to agree to that via contractual mechanism. Commissioner Burton asked if the County is prohibited from exacting something from a developer that is in excess of what is needed to cover the increased impact on the area. Mr. Ewert stated that is true for administrative applications, but not for legislative applications. When considering a rezone, there are many opportunities for negotiating these types of issues. Mr. Erickson provided his legal opinion; there is significant room for the ability to negotiate these types of issues when considering a legislative matter.

Commissioner Johnson asked if the General Plan addresses an increase in general commercial use in a FB project. Mr. Ewert stated the General Plan “requires new commercial or mixed-use development to locate on property currently zoned for commercial uses. Avoid rezoning new property to commercial or manufacturing until such time that the community supports it. Future commercial or mixed-use rezoning should only be considered adjacent to existing commercial or mixed-use zoning in a manner that creates village clusters and avoids strip commercial along highway corridors.” This led to high level discussion and debate among the Council regarding the appropriate timing of commercial development throughout the Valley; there was a focus on the need for adequate infrastructure to support commercial development and the other types of development that commercial development will catalyze as well as the market demand for commercial development in certain areas of the Valley. Commissioner Wampler stated it is important to note that public American Rescue Plan Act (ARPA) funds have been used to facilitate some significant sewer infrastructure improvements in the Valley and the grant agreement for the use of those funds specifically states that the purpose of the improvements is to benefit the public, not any one private entity. This must be taken into account when considering this project because the sewer improvements would have been completed regardless of whether the project is approved and moves forward. Mr. Ewert noted that is a good point but added that the oversizing of the sewer line never would have been considered without the applicant volunteering to facilitate some of the sewer improvements. Commissioner Torman stated that is ‘putting the cart before the horse’ and should not be considered when considering an action on this application. Commissioner Wampler agreed and stated that she is concerned about approving an application that will result in significant TDRs without having seen any kind of proposal regarding where the development rights will be coming from. She added that the sewer improvements are not only benefiting the applicant for this application, but also for his other projects, including Cobabe, Eagle Ridge, and the Bridges projects.

Commissioner Burton stated that Mr. Ewert has provided the proposed street regulating plan and identified where STRs can be located, but he would like to see where STRs can be located on the existing street regulating plan in the event that the amended street regulating plan is not approved. Mr. Ewert presented the existing street regulating plan and highlighted a magenta line where STRs would be located.

Chair Shuman invited input from the applicant.

Brent Bateman stated he is an attorney representing the applicant; he is prepared to address any legal questions about his client’s application, but his client will be making the presentation about his project. He added that his client is aware of where the TDRs will come from as he has 150 units primarily from the Legacy Mountains Estates in Osprey that can be transferred to this area. If he is able to obtain more development rights, he will transfer those to the area as well. He addressed the conversation about negotiating certain concessions of the developer at the time of a zone change. He stated that anything the Commission wants to ask for at this time will be handled on a quid pro quo basis. However, anything requested after the zone change is approved is more of a requirement than a negotiation. The Commission has the full right to require everyone to pay their ‘fair share’ of needed improvements due to a development project. He stated that is typically handled at the subdivision application stage of a project because it is not possible to know the total impact until the subdivision is designed and the unit count is determined. A traffic impact study will be conducted based upon that information.

Chair Shuman asked if it would be fair to request a round-about at the four-way stop as part of the approval of the zone change. Mr. Bateman stated that the Commission could make a recommendation of approval with that condition and the applicant has the ability to either accept those conditions or reject them. Chair Shuman asked Mr. Bateman if he agrees with staff’s assessment of the decision criteria for this application. Mr. Bateman stated he does agree; he briefly expounded on development impacts and opportunities for mitigating those impacts.

Commissioner Barber asked if there have been serious discussions about including a community center in this project that could be turned over to a local service district to operate it. Mr. Bateman stated he has had conversations with his client about that request; nothing has been finalized, but his client feels that type of improvement may increase the value of his development.

Commissioner Burton stated that he has heard presentations about enacting multi-use zoning to prevent sprawl; he asked Mr. Bateman if he is familiar with that concept and, if so, if he would explain how multi-use zoning for the subject property could minimize sprawl. Mr. Bateman stated that development is coming, and it is important for the Ogden Valley to prepare for it. He discussed the development of Park City and Heber, both of which are geographically similar to the Ogden Valley. The two have developed, but in very different ways and the Weber County Planning staff is trying to learn from those areas and avoid some of the negative aspects of the way those areas have developed. He stated sprawl is a problem and Mr. Ewert is trying to get away from those problems by urging wise planning to allow for services and desired land uses within a reasonable distance from a resident’s home. Sprawl increases the amount of parking needed as well as drive time and it has a significant impact on air quality. If the density can be centralized into village areas, these negative issues can be avoided.

Commissioner Montgomery moved to open the public hearing. Commissioner Johnson seconded the motion, all voted aye.

Before inviting public input, Chair Shuman reiterated the Planning Commission’s role as an advisory body to the County Commission. He asked each speaker to limit their comments to two minutes and avoid repeating the input of previous commenters.

Kelly Booth stated that Mr. Ewert’s staff report indicated he only found one component of the proposed development that does not comply with the General Plan, but she found 11, including the reference that the post office is the center of the New Town Eden Village circle as well as the quarter-mile distance being used to define walkability. She stated that there has been no evidence of a public vote, public notice, or agenda regarding the street regulating plan for the Ogden Valley. She suggested the County do what is right and allow for public due process on the street regulating plan. The fact that this information cannot be found in any public minutes for a public meeting violates State Law. This shows a lack of transparency. The Commission is considering amending the street regulating plan to allow form-based zoning, yet the public was not aware of the first action on the street regulating plan. The County Attorney’s advice conflicts with the information provided by Mr. Ewert regarding the ability to negotiate conditions placed on the subject property and subsequent development. She added that the General Plan commercial development principle 1.1 limits all new commercial development to resort and village areas as shown on map 8. This proposed development falls outside the designated area for commercial development and there are residential homes between the commercial zone and the proposed development, and this proposal has already been voted down. The General Plan also advises against rezoning property to commercial or manufacturing until such a time the community supports it. There is evidence that the community does not support the proposal tonight. She addressed other matters of non-conformity with the General Plan, including map 4, section 1.3, section 2.1, section 2.1.1, section 1.2, and section 1.2.4. She is concerned about the impact the project will have on nearby riparian wetlands and the increase in density resulting from the transfer of development rights (TDRs). She is opposed to the street regulating plan and the zone change to form based zoning because the community has been denied the opportunity to provide input. Her recommendation is that the Planning Commission encourage the County Commission to follow the General Plan and she noted that it likely needs to be updated.

Nickie Wolthuis stated that her family has been in the community for over 80 years, and she was raised here; her family has helped to build up the community and she is concerned about how this proposal will impact the community, especially due to the increase in short term rentals (STRs) in the area. She stated that the General Plan states that growth areas should be designed in a manner to compliment, not overwhelm or compete with the rural character of the Valley. She stated that is not the case with this growth area and she and many others are feeling very overwhelmed. The General Plan also states that as of 2017, Ogden Valley housing units have an approximate vacancy rate of 51 percent and if the growth trend continues, approximately 65 percent of housing units in the Valley will be vacant by 2024. She is not sure where these numbers came from, but she assumes it is related to the overall density estimate, which includes the resort areas of the Valley. She performed her own study of the area surrounding the Valley Market and found there are 240 homes in the area. Her neighborhood has 45 homes and just 43 of the homes are owner-occupied, and one is a long-term rental. This means that less than five percent of the homes are used as STRs. Owner-occupancy contributes to community building, and she is concerned about that being impacted by increased resort development in the area.

Talia Max stated she lives near the subject property, and she addressed water mitigation; her home flooded this year and when it was reported to the County, their response was that they knew exactly where the water was coming from. This is concerning to her because it means the County knows there are problems with the amount of water in the area, yet they are supporting development that will make it worse. Two ditches in the area funnel into her neighborhood and overflow and the County has done nothing to mitigate it. If 300 additional homes are allowed and all of them are pumping ground water into the ditches, the problem will only be worsened. She stated that in May she attended a Planning Commission meeting and she visited with a County Engineer about these water issues and TDRs, and she asked him if the zoning assigned to TDR units will be permanent or if it can be changed in the future if ownership of a project changes and the Engineer told her yes. She wants everyone to understand she heard that from Weber County and that TDR zoning is not permanent.

Hugh Shaw thanked the Planning Commissioners for their service. He stated he also attended the May 23 meeting and heard Mr. Ewert tell the Commission that Highway 166 would need to be expanded. He stated that to him this means imminent domain will be used and someone will lose some of their property. He stated that he looked out his back porch last night and it was a dark, starry night but if this project is approved, an additional 325 units will be built and there will be no more dark skies in the Ogden Valley. He referenced other uses included in the plan for the property, including a grocery store, hotel, retail space, a bank, condominiums, and single-family homes. He stated the Planning Commission has the power to say no to this development. He stated that in 2016 there was no form-based zone in Weber County; a professor from Michigan State University wrote that form-based zoning is not advantageous for rural zoning districts; it is only advantageous for urban areas, including downtowns. He cited results of the research that yielded that finding. He asked the Planning Commission to vote their conscience and he thanked them for their time.

Shane Phelps asked how many surveys have been conducted regarding the nitrate levels in the Pineview Reservoir. Commissioner Burton stated he only knows of one and the conclusion was that no septic systems had failed and that the increased nitrates were a result of a concentration of animals on dairy farms. Mr. Phelps stated that he has heard many people comment that the nitrates are from septic systems in the Valley, and he is looking for clarification. He asked if the applicant could move forward if he plans to use septic systems to serve the project. Chair Shuman stated that the Planning Commission does not have that question at this point. Mr. Phelps stated that issue is very curious to him and should be investigated.

Chair Shuman encouraged the Commission to wait to answer questions at the end of the public hearing.

Keith Hill stated he owns property next to the subject property; he also thanked the Planning Commission for their service and stated he does not believe any of them got into their position for personal gain; he cannot say the same for the applicant who has served on the Planning Commission in the past. It is obvious that the residents of the Valley do not want what has been proposed and many especially do not want it in their backyard, including him. He stated that he has lived on the hillside where the applicant has indicated the development rights will be transferred from and that is improper because there is no way any type of dwelling unit could be built in that area. He stated he feels the applicant is manipulating the system to bring development rights onto the Valley floor.

Stacey Phipps stated that she is hopeful the Planning Commission will take into consideration how these types of projects impact the daily lives of Valley residents. She is concerned about her children; school aged children are required to walk, bike, or be transported by their parents if they live within 1.5 miles of the school. They are encouraged by the State of Utah to bike or walk; there is a large population of children who either walk or bike to Valley Elementary School and Snowcrest Junior High School. She printed the safe routes map for these two schools and both maps show that children will need to walk right by the subject property. When she provided this information to Mr. Ewert, his response was that the applicant would need to widen and improve the roads and pathways; her concern is that kids will be passing heavy traffic and more distracted drivers.

Irene German stated she has owned a home in Nordic Valley for over eight years; she read a letter from Richard Snyder regarding his family’s past development efforts in the Ogden Valley and their relationship with Nordic Valley resort. The letter communicated that development is a must in order to keep the Ogden Valley from being left behind. They supported the Eden Crossing Development and feel strongly that now is the time to embrace the project and hammer out infrastructure upgrades that must happen here and on a larger scale throughout the Valley. Ms. German then stated that she agrees with Mr. Snyder; she also supports the Eden Crossing development after having studied it quite well. She has lived in many communities throughout the world, and she understands that growth is the natural order of things; nothing stays the same and the growth she would like to see in the Ogden Valley is the type of thing that has been included in this proposal; the Valley is missing retailers, cafes, and other services that could be a great asset to the Valley. A hotel is also needed, and she is delighted by the planned traffic routes; a walkable main street through the project would also be great. She lives near Osprey Ranch, and she appreciates the low-density development that has taken place there; it is a good example of the General Plan being implemented. She appreciates that local developers are proposing these improvements to provide greater living conditions and opportunities for the community. These are the people that understand the Valley and its needs.

Angela Dean stated that a critical goal of the village plan is to concentrate density by transferring development pressures from the Valley; while it is true that some of the proposed development will absorb TDRs, there is a large amount of commercial square footage that does not require TDRs and merely increases development acreage. As such, the proposal expands development in part without alleviating building pressures in the Valley. The definition of sprawl is unchecked growth radiating into rural areas; if this is approved, there will be no legitimate means to keep this scale of development from growing and growing. If sprawl is not controlled now, the County will not have grounds to deny future similar requests. The County has the opportunity to learn from other communities’ mistakes without following suit. She supports the General Plan statement that growth areas should be designed in a manner to complement, not overwhelm or compete with the rural character of the Valley. As an architect who is often held to design guidelines and form-based codes, she knows that style labels alone leave the door wide open for interpretation. Effective codes provide specific requirements targeting the desired end result; otherwise, unintended consequences are guaranteed. For example, the large amount of glass shown in the design of the buildings may be appealing on paper, but will result in beacons of light at night, with detrimental effects on night skies. The best plans are proactive, not reactive and they provide a vision for the future of the Valley and can be relied upon and trusted. The General Plan was developed with a great deal of collaboration and expertise and all development applications deserve critical analysis, especially those that deviate from the General Plan. The length of time spent on this application is a testament to the enormous impact such a decision will have on the future of the community in the near and long term. The applicant has been given fair consideration, but it is time to acknowledge that the proposal in its current form is not ready for approval. With a proposal to deny the application, the applicant will have an opportunity to revise their plans based upon the feedback received by the community and return with a viable proposal.

Trina White stated she attended a Weber River Partnership watershed planning conservancy meeting that was sponsored by the Weber urban area and an environmental company called Red Fish Environmental; there have been studies about the nitrates in the Valley and many have believed that it was related to dairy farms. However, the majority of the contamination is from construction sites that are not mitigating the debris exiting their sites during watershed/runoff. Red Fish would like to provide their presentation to the County Commission in the near future. If people would support the Weber River Partnership, the information that could be provided would be very helpful for the future planning of the Ogden Valley.

Sarah Roundy asked the Commission to consider the impacts of increased population in the Valley, especially the impact on safety and crime levels. Also, there is not sufficient parking for the potential increase in population. She asked if the entire Ogden Valley was informed of this meeting and noted she does not see representation from the entire Valley. She concluded she is also concerned about groundwater levels in this area; every year the area is flooded and that will only worsen when more ground water is displaced by this proposed project.

Robert Wadman stated he has lived in his home in Eden for 26 years and he supports the proposed project; increased property values and taxes have impacted him and many others in recent years and the Valley needs a tax base to fund needed services in the Valley. Specifically, he knows the cost of providing adequate public safety for a community and the quality of fire safety and law enforcement will be improved if the tax base is improved. He strongly supports the proposal for a hotel; he would like for his family to be able to visit and have a place to stay. He also agrees with that it is great that the project is proposed by a developer from the community who is familiar with the needs of the area; development is inevitable, and this is an opportunity to embrace a quality development from a local developer, rather than someone from New York looking to make money and leave.

Kirk Langford thanked the Planning Commission for their service and asked that they vote their conscience when forwarding a recommendation to the County Commission. He stated this project is ‘too much in one place’ and the Commission does not have enough information to make a decision. He recommended denial of the application and give the applicant time to revise his proposal before he appears before the Commission again. He stated that things like adequate parking and transportation improvements must be negotiated before a zone change is approved. He stated that this developer controls half of the Ogden Valley, but parks have not been improved and open space has not been increased. The major irrigation ditch in the Valley goes right across the subject property and was covered during the initial work that was done prior to the project being permitted. He stated that needs to be addressed. If the County approves a poor product, it will increase traffic, kill the local economy, and cause people to sell their farms and ranches to move. If the irrigation issues are not fixed, the Valley will die. The area is essentially a detention pond for Nordic Valley and water is being diverted east; the County needs to determine how the displaced groundwater will be handled.

Kate Ahlstrom stated she grew up in the Valley next to the property; she graduated from Utah State University and her architecture class studied the Ogden Valley regularly and she has seen a lot of concepts of what can happen in the Valley. She stated she agrees that development will come to the Valley no matter what and she wants the community to be involved in steering that growth to ensure that it blends in with the current conditions of the Valley. She is confused about allowing a village inside an existing village. She does not feel that the commercial development is located within the appropriate distance of the village center. Another issue she has observed is that renderings of the project have not been provided.

Chair Shuman briefly noted there will also be a public hearing regarding this application at the County Commission meeting on December 5.

Jessica Smith stated that she has heard many conflicts tonight; one was that the development will not turn the area into a city, but a statement was also made that the project will function like a city. She stated that people have come to the Valley to escape cities and she is concerned about the Valley being destroyed. She asked if any studies have been performed to determine how the project will impact the local wildlife; once that is lost, it cannot be regained. She is also concerned about the economic impact; she asked how the project will impact the Valley Market that has supported the Ogden Valley for so many years.

Eric Langvardt read a statement from Roger Terry, which voiced his project for the Eden Crossing project, and more specifically the street regulating plan for the project. Mr. Terry is the managing partner of Morgan Valley Foods and Terry Phillips Property, LLC and owns 12 acres of property in the Eden Village area just north of the four-way stop. Having reviewed the Eden Crossing plan, he came to the conclusion that creating a walkable main-street mixed-use district is an idea that he can support. A well planned off-highway commercial and mixed-use development with well-planned infrastructure and feeder roads will help the Eden community to avoid some of the traffic problems and congestion that will be coming with the inevitable growth of the Valley. He supported the location chosen for the project as well as clustering around sewer infrastructure. The project will create opportunities for future community events and will become an important gathering place moving to 2030 and beyond.

Sawyer Monson stated that he is struggling with the change of the Valley after having been raised here; he understands that the Valley will be much different for his own children. He does not believe that anyone here is saying they are completely opposed to growth, but they want the growth to follow the guidelines provided in the General Plan. A lot of this proposed development is commercial in nature, and this will not help to achieve the desire of allowing future generations to live in the Valley or the current generation to retire here. He also does not see how the Valley can support so much new commercial without a significant population or tourism increase. There is already a hotel in Huntsville, and it is empty nearly the entire year. There are multiple restaurants that close for several weeks throughout the year because they cannot afford to pay their staff. He is confused about how more retail and commercial space will thrive when the existing commercial development is not being supported. He discussed businesses that have closed permanently because of a lack of commercial space and concluded by asking the Commission to consider how the proposed infrastructure will impact current businesses that are locally owned and have operated for many years.

Tina Allred stated she runs a Facebook page called Ogden Valley Civil Defense and she has a good relationship with the County Sheriff; currently there are two deputies patrolling the Valley and she monitors the scanner and is aware of their response times. Even with the increase in population over the last several years, the Valley has not received additional law enforcement support. To make the argument that improving the tax base will solve the problem is not accurate. The Sheriff has indicated he has had a very difficult time Officers because of the national public sentiment regarding law enforcement. She also addressed the existing development of the area and indicated that information cited by the applicant regarding the water and irrigation infrastructure in that area is not accurate. She referenced House Bill (HB) 349 passed by the State Legislature, which prohibits the reuse of water from a sewer system. Eden Waterworks has enacted policies that prevent the reuse of water for this project. She advised the Commission to investigate whether the water and sewer approvals that the applicant has been granted were issued prior to the adoption of HB 349. She added the current commercial property on the opposite edge of the proposed development is being shifted; if the quarter-mile radius circle is drawn from the post office to the far edge of where the existing commercial is located, it is problem that the center is the post office. Adding commercial in the opposite direction will negatively impact those existing businesses.

Kelly Roundy asked the Commission to consider how far they have strayed from the General Plan; he has heard from many who live in the Valley, but he has also heard input from those that do not live in the Valley, and it is mind boggling to him that they will have an impact on the future of his children. His father has been a rancher in Cache Valley for decades and when he discussed this project with him, his comment was that this developer will begin trying to purchase as much water as possible now that he owns so much land. If the County continues to let this happen, the applicant will continue to take as much as he can.

Shanna Francis reiterated the point that the County has approved much commercial development, but it has been largely unsuccessful. The ski resort areas have included commercial uses, such as restaurants and retail, in their future plans and if the Valley tries to compete with those plans, that is not smart because it is wiser to push tourism to the resort areas rather than neighborhoods. She stated the applicant already has a resort area in the Valley and he should focus on development in that area. The General Plan identifies five village areas in the Valley and the applicant is essentially asking for a whole new commercial center. She stated many have said that growth is inevitable, but the County has the ability to control it to ensure that the current and future generation can afford to live in the Valley.

Laura Warburton stated she is a member of the Weber County Board of Adjustments, but she is representing herself. She has also served as a member of the Planning Commission and as its Chair. She appreciates the staff and also Mr. Bateman, who has provided her with a great amount of training. Her signature is on the General Plan and before it was opened, she insisted that the County hire a public relations (PR) firm to ensure adequate information upon which decisions could be based. She stated the PR firm helped to increase public participation in the process to update the General Plan. She stated someone asked why the entire Valley was not notified of this application and that is proof to her that the public does not understand the laws and requirements for public noticing; the County was not required to provide notice to everyone about this. She stated that there are many things the Planning Commission understands that the public does not. She encouraged them to consider the term “Not In My Backyard” (NIMBY) when considering this application. Her husband built an unsightly barn in her backyard, but she is pleased that she did not need to get permission from a committee to build the barn because the County has adopted appropriate administrative rules. Property owners have rights and development should be allowed so long as it complies with laws and regulations. She stated that if the Planning Commission says yes to this application, they are also preserving the rights of other property owners in the Valley. She stated that the applicant has spent or lost thousands of dollars per day due to the amount of time he has had to wait for a decision on this application. She believes a lot of lies and misinformation has been spread about this application and she understands the position that has put the Planning Commission in. She stated she knows this will be a very difficult decision, but she encouraged them to not be swayed by public clamor and to keep the County out of a lawsuit. There will be a time when applicants are pushed so far that they lose their patience and choose to sue the County.

The meeting was recessed briefly at 8:24 p.m. and reconvened at 8:30 p.m.

Heather Mercer stated she and her family moved from Layton four months ago to escape the city and increasing density around her former home. She stated that just because there is a law, does not mean it is right. She does not understand all the information that has been presented and discussed tonight, but she has a feeling that this project is not right and approving it would not be right. She stated that the community is present tonight because they do not want it. The voice of the community should count and honoring the community is not violating anyone’s property rights. The first speaker spoke about how the proposal violates the General Plan and the law.

Jerry Allred stated that for a number of years he worked on the Community Emergency Response Team (CERT), and he learned that the Valley will be isolated if a significant earthquake occurs during a ‘wet’ year; the Ogden Canyon, Trappers Loop, and North Ogden Divide will be closed. He noted that there is marshland on both sides of the highway where he lives, and it takes an act of Congress to deal with any kind of development in marshlands.

Jake Pantone stated he has been a Valley resident since he was 14 and he is also a big proponent of private property rights. When he bought his acre of land in the Valley, he understood what he could do with it based upon the zoning of the property. Someone in the development business should be expected to understand what they can do with their property when they buy it rather than try to change the land’s designation. The applicant is trying to sell everyone on this project being good for the community, but he struggles to see how that can be. Most residents drive outside the Valley for employment and certain services, and they accept that because they want the Valley to stay how it is. His family has built multiple houses in the Valley, and they understand growth is inevitable, but the County needs to carefully consider how this project will impact everyone else in the Valley. Residents have chosen the rural nature of the Valley because that is the kind of place they wanted to raise their kids. He has also travelled the world, and nothing feels better than coming home to the Ogden Valley.

Matt Cardon stated that he and his family have lived in the Valley for eight years and they own 800 acres and farm about 1,500 acres in Huntsville. They have been approached several times about selling their property or selling their development rights. He stated that he has firsthand knowledge that the TDR model does not work; it is not one that he, as a large property owner, sees being beneficial to the Valley in the long term because the zoning of the land is not locked permanently when the development rights are transferred. Also, the TDR benefits the initial property owner, but not subsequent property owners. It also encourages accelerated property development. He noted that his land is waterlogged and is not developable, so it is not appropriate to transfer development rights from it. He encouraged the Planning Commission to think about finding ways for property owners to achieve agricultural pursuits. There is not a proactive effort to encourage agricultural uses in the Valley.

Bruce Warburton stated that he is a huge property rights advocate and a constitutionalist, and he believes the County must follow the law; if the applicant follows the law, he will improve the community. If he can address the issues voiced by the public and the County, he should be able to do what he wants to do with his own land.

Brian White stated that he is opposed to the application, and he believes the Commission should oppose it as well; there are just a few people that are supportive of the project, but they are not acknowledging that the project does not conform with the General Plan. He stated that when the applicant purchased the property, he knew what it was zoned, and he understood the rights under that zone. Many people have moved to the Valley for freedom; he knows that people like the applicant will continue to take and take from the Valley without caring about the impact of the other residents and that is why he is opposed to this application.

David Carver discussed the differences between the Ogden Valley and the Park City and Heber City valleys; both of those areas have a freeway running through them. He stated he opposes form-based zoning because it lacks stability. He also opposes the street regulating plan that has been proposed. He stated the applicant does have property rights, but those are the rights afforded in the AV-3 zone. He noted that before he came to the meeting tonight, he drove through the area where the subject property is located and there are 27 commercial uses in that area and 11 of them are vacant; this is a 41 percent vacancy rate. He hopes that the Commission is not allowing someone to build something on the idea that businesses will come.

There were no additional persons appearing to be heard.

Commissioner Montgomery moved to close the public hearing. Commissioner Torman seconded the motion, all voted aye.

Chair Shuman asked if the applicant would like to provide a rebuttal to the comments made during the public hearing. Mr. Bateman declined the opportunity to provide a rebuttal.

Chair Shuman asked if staff had additional input. Mr. Ewert stated he is willing to answer questions that the Commission has. Commissioner Johnson asked Mr. Ewert to respond to the comments made by the first speaker and her claims that the application violates the General Plan in 11 different ways. Mr. Ewert stated that his answer is that the document is a guiding document and is general in nature; it can be read and interpreted many different ways and it is not a surprise that someone can find that the application does not comply with their interpretation of the Plan. He stated that his staff report has addressed each of the points raised by the speaker specifically. He encouraged the Planning Commission to also read the General Plan, take into consideration the input of staff and the public, and draw their own conclusions. Commissioner Johnson stated that the speaker provided a map identifying sensitive lands and he asked if staff has analyzed that matter. Mr. Ewert stated that is something that will be evaluated as a development application moves forward; he communicated in his staff report that he is not aware of any ecological concerns related to the property.

Chair Shuman asked Mr. Ewert to address the claim that the New Town Eden map was approved without a public hearing or public input. Mr. Ewert stated his understanding is that there may be pending litigation regarding that matter, and it may not be appropriate to discuss it publicly; however, he feels the County is on solid ground and he is willing to have a conversation with anyone who feels differently.

Commissioner Wampler stated that Mr. Ewert indicated that any sensitive areas would be addressed at the development stage, but the Commission is being asked to recommend approval or denial of a rezone that would take land that is zoned AV-3 and change it to a much busier area. If the land that will be impacted is truly a sensitive area, she wondered if the Commission should be aware of that at the time of the rezone. Mr. Ewert stated that is not a requirement, but the Commission can ask for information regarding sensitive lands at the time of rezone. He described the process for determining if an area is actually a wetland as well as opportunities for mitigating or relocating the wetlands. He stated that if the Commission is certain the area is sensitive or is comprised of wetlands, that could be a finding supporting a recommendation of denial. Commissioner Johnson stated that he is familiar with the process for determining if a property is a wetland; it can be a lengthy and expensive process for a developer to navigate and they may not want to pursue that process without understanding if they are able to secure the desired zoning.

Chair Shuman asked Mr. Ewert to address the comments regarding HB 349 and the use of water at the property. Mr. Ewert deferred to the applicant. Mr. Bateman stated that he is familiar with the legislation but has not performed an analysis of this property’s compliance with the law. He stated that the law relates to the flow of water into the Great Salt Lake, not a prohibition of the reuse of water as mentioned by the speaker. Mr. Ewert noted that the applicant will be required to provide evidence of water and sewer service to the property.

Commissioner Barber referenced another item on tonight’s agenda regarding TDRs; never in the history of the Valley has a development right been transferred other than between internal or related parties. He has always wondered what the value of a transferrable developed right would be, and this applicant and another developer have assigned a value of $1,975 per acre for the rights. It does not seem that prime land will be saved at that price point and for that reason he feels the TDR element of the General Plan is flawed and that must be fixed before the County proceeds with allowing TDRs. He added that he is also concerned about County’s codes being insufficient to regulate rental units in tight spaces where there is no overflow parking, and he feels the future for this kind of project could be brighter if the Ogden Valley General Plan were reevaluated and perhaps updated.

Commissioner Burton acknowledged this is a very complex issue and a difficult decision; he has been concerned about what TDRs have morphed into since the concept was first introduced. He noted there are conflicts within the General Plan that must be reconciled in order to proceed with meaningful development and appropriate buildout and density. However, the General Plan does call for density to be transferred to specific areas of the Valley and that has created expectations for those that have understood the directives of the Plan for the past several years. He acknowledged that many want the Valley to stay how it has been since they have lived here, but that is not reality, and everyone has their own property rights. It is un-American to try to strip someone of their property rights. This applicant has spent a significant amount of time and money to put forth an application in a reliance on the General Plan and it would be improper to tell them they cannot proceed.

Commissioner Wampler stated that existing property owners have also relied upon the General Plan for several years; they have held onto their commercial property and paid commercial tax rates with the expectation that their commercial property will eventually be developed, and they will benefit. However, this application will create additional commercial property in close proximity to their own and will create unexpected competition. Additionally, residents have relied upon the zoning identified in the General Plan, but this zone change will negatively impact them. She noted she is a staunch defender of property rights, but the applicant bought this property with the understanding of the zoning and the rules and regulations of that zoning. They have the right to ask for the zoning to be changed, but they are not entitled to approval of the zone change. She added she shares Commissioner Barber’s concerns about TDRs, especially the fact that it is unknown where the transferred development rights will come from. If the Commission does not know where the TDRs are coming from, they do not know if the application is compliant with the General Plan. She could see supporting a zone change, but not the street regulating plan at this time. She noted the FB zone could be allowed within the current street regulating plan, but changing the street regulating plan is unfair to others that have relied upon the General Plan. She addressed sewer service; the claim was made that the current commercial area has not been successful because they did not have access to sewer service, but the sewer improvements are coming, and they will be able to connect to it. This should not be an argument for approving the zone change. She concluded that each time this project has been discussed she has communicated that it is ‘piece meal’ and ‘back to front’ and this encourages mistrust and makes it difficult for the Commission to do their job. The vote to change the zoning would help ensure support for the street regulating plan in the future. This is a non-transparent process and meaningful public participation has been denied.

Chair Shuman reminded the Commission they are making a recommendation to the County Commission and any recommendation should be based upon findings and the decision criteria included in Mr. Ewert’s staff report.

Commissioner Barber moved to forward a negative recommendation to the County Commission for application ZMA2023-09 amending the Weber County Zoning Map, rezoning approximately 20 acres of land at approximately 5204 East, HWY 166, from the AV-3 Zone to the FB Zone with the findings that the proposal is not adequately supported by the General Plan. Given the uncertainty of the TDR Valuation process and whether that aspect will be valid with respect moving density to the valley corridors and open spaces. The proposal is not supported by the general public. The proposal runs contrary to the health, safety and welfare and other general public aspects of the concern that the county parking requirements are not adequate to address a facility like this. The short-term rental aspect of this area under current code provisions does not represent what the public wants to see for this area and the road issues be addressed and negotiated in advance of projects such as this.

Commissioner Torman offered a friendly amendment to include additional findings:

1. that the proposal fails to meet the implantation strategy of the Master Plan in part by adding significant commercial zoning; and
2. The proposed rezone adversely affects the surrounding property owners.

The Commission accepted the friendly amendment.

Commissioner Burton reviewed the decision criteria that the Commission must consider, and he disagreed with Commissioner Barber’s findings on those decision criteria; he provided a brief explanation supporting this sentiment and reiterated he feels the rezone can and should be approved in conformance with the General Plan. Commissioner Johnson agreed; Commissioner Barber’s motion is based on feelings and beliefs rather than facts and the decision criteria; he noted there is a property very near the subject property for which FB zoning has been approved and that should be taken into consideration. Commissioner Wampler stated that the FB zoning for the other property was approved with the understanding that it would be governed by the existing street regulating map. She added that if the proposed development were going to be within the area where high density has been specified, it should be allowed according to the General Plan. However, this is a request to change the street regulating map, and therefore the density of this specific area, which has been zoned for large lot and estate lot homes for the most part. She stated that if the application were allowed based upon the General Plan, she would support it, but she does not believe that is the case. The other FB zoning approval was much different than this FB zoning application.

Commissioner Montgomery seconded the motion. Commissioners Barber, Montgomery, Torman, Shuman, and Wampler voted aye. Commissioners Burton and Johnson voted nay. (Motion carried on a vote of 5-2).

Commissioner Montgomery stated that he wished that this application would have been accompanied by the current street regulating plan so that he would have known exactly what he was voting for. If the zoning were going to work with the current street regulating plan, the Commission would have a clear understanding of the implications. Commissioner Johnson stated that is why he voted in opposition to the motion. Commissioner Torman added that he voted to recommend denial; this is not taking property rights away from someone but is asking for something different than what the applicant has asked for. Commissioner Burton stated that he voted in opposition because he is trying to follow the General Plan as it was written. Commissioner Barber stated that he disagrees that the TDR element of the proposed project does not comply with the General Plan. Chair Shuman stated that he feels more time is needed for the public and the Commission to consider this application. Commissioner Torman agreed; the Commission received the packet for this meeting yesterday and that was not enough time to digest all of the information included.

**2.2 ZTA2023-03.1: Action on proposed amendments to the architectural theme requirements and standards of the Form- Based Zone to allow a wider range of style options. Planner: Charlie Ewert.**

Planner Ewert explained the County adopted a Form Based zone in January 2022. The applicant is requesting to amend the zone to allow architectural standards that are different than was adopted. The text amendment and proposed example images are provided herein. The Planning Commission considered this item in work session on May 2, 2023. After due consideration, the Planning Commission desired to make larger amendments to the architectural standards of the FB zone. The amendments include allowance for the applicant’s theme, but also extends additional design flexibility for others developing in the FB zone. The Planning Commission then heard the item in a public hearing on May 23, 2023. At the time, this item was combined with a proposed amendment to New Town Eden’s street regulating plan. The Planning Commission recommended denial of the proposal primarily based on the street regulating plan proposal. On June 12, 2023, the County Commission considered the Planning Commission’s negative recommendation. At that time, the County Commission requested the two components of the proposal be divided into two separate amendments. The County Commission then remanded the proposed architectural standards back to the Planning Commission for further consideration. On August 22, 2023, the Planning Commission considered the architectural amendments again. In that meeting the Planning Commission desired to table it until after the street regulating plan amendments are made, if ever. On October 8, 2023, the applicant, through a representative, requested a final decision on the proposed architectural standards. Under State law, if a reasonable amount of time has lapsed since the submittal of an application, then the applicant may request a final decision be made within 45 days of the request for the decision. The County has received a request for a final decision from this applicant. This request was received on October 28, 2023. This text amendment application was initially received by the County on April 5, 2023 and the application fee was receipted on the same day. In other words, this application was received approximately seven months ago, which should be a reasonable amount of time to make a final decision.

As a result, the final decision on this rezone from the County Commission must be given by December 12, 2023. Given the Planning Commission’s calendared meetings, in order to meet this 45-day period the Planning Commission will only have one meeting in which it can consider this item, so the decision on November 14 cannot result in the item being tabled.

Mr. Ewert then summarized staff’s analysis of the proposed text amendment, which is fairly straightforward, but the application of the amendment has broader effects on the New Town Eden Area. The applicant is proposing a second set of architectural design standards that can be used for commercial and multifamily buildings in the New Town Eden area. If approved, a landowner within the New Town Eden area can choose between the existing architectural theme (Agricultural) or the new theme (Mountain Modern). The applicant has suggested that a mix of these themes within one village area may make for an overall complimentary community outcome that celebrates the history of the area while also looking to the future; and doing so without inducing so many different themes that the community looks hodge-podge. When reviewing the proposed new theme with the planning commission, it seemed the planning commission supported it. The planning commission also expressed concern over the current agricultural theme, suggesting perhaps that it is an ill-conceived style for street-front commercial buildings. To explore a way to allow multiple themes within one area, staff assembled an architectural matrix. It is included in the attached proposal. In the matrix, each village area has at least one theme allowed. In the Eden area, staff is suggesting perhaps allowing multiple themes to blend. However, in certain areas, such as the square around Eden Park, the matrix only lists one theme as appropriate. The matrix enables ease of amendment as new themes are considered in the future. It also allows multiple themes to be shared by multiple village areas. In the proposal, staff included both the applicant’s requested “mountain modern” theme as well as a new theme titled “mountain rustic.” The differences between the two can be reviewed in the exhibit. He provided illustrations of the Mountain Modern design theme being proposed:







When reviewing the proposed amendments, it is important to keep the considerations within the context of the General Plan. The land-use vision written in the general plan is as follows:

* Commercial Development Goal 2: A goal of Weber County is to ensure that the design of retail and commercial development is consistent with Ogden Valley’s rural character.
* Commercial Development Principle 2.1: Require new commercial development to conform to community design standards to ensure compatibility with the character of Ogden Valley and to provide for aesthetic and functional transition to surrounding residential and agricultural areas.
* Commercial Development Implementation 2.1.1: As part of small area planning, revise County design standards to adopt more detailed and specific commercial design standards that specify building materials, style elements, colors, dark sky lighting, walkability, landscaping, signage, open spaces, public features, and building height and orientation. Acceptable style elements may include agrarian architecture, Old West or mine-town architecture, or mountain rustic architecture elements that are prevalent in Ogden Valley (Figure 16).

Implementation 2.1.1 specifically lists “agrarian, old west or mine-town, and mountain rustic architectural elements. Mountain modern is not listed on this list. It is also important to note that this sentence uses the permissive “may.” The Planning Commission should determine whether “may include” is intended to be permissive and open ended in this context, as in “may include, but may not be limited to…” Or if it should be restrictive, as in “may only include…”

Mr. Ewert presented the ordinance document that has been reviewed by the Commission in previous meetings; it includes highlights to reflect the changes made by staff based upon the input provided during the last work session meeting with the Commission.

Commissioners debated whether the proposed amendments are appropriate and whether a property owner will be limited to just one choice of architectural design. Mr. Ewert clarified that the proposed amendments are only applicable to the form based zoned areas and there are multiple architectural design choices in each of the areas for which FB zoning may be applied. Commissioner Burton stated he would rather allow an applicant make recommendations regarding the architectural design that is appropriate for their project based upon the location of their property and its surroundings.

Chair Shuman invited input from the applicant.

Eric Langvardt, Langvardt Design Group, stated that he was looking for options within the New Town Eden village areas; diversity is good, and he is asking for a few more options for the development he is pursuing.

Commissioner Burton stated that approval of the proposed amendments will create conflicts between existing and future architectural design of buildings in the Village areas.

Commissioner Johnson moved to forward a positive recommendation to the County Commission regarding ZTA2023-03.1, proposed amendments to the architectural theme requirements and standards of the Form-Based Zone to allow a wider range of style options, with staff option “D”. Motion is based upon the following findings:

1. The changes are supported by the Ogden Valley General Plan.
2. The proposal serves as an instrument to further implement the vision, goals, and principles of the Ogden Valley General Plan.
3. The changes will enhance the general health and welfare of Ogden Valley residents.
4. The changes are not detrimental to the general health, safety, and welfare of the public.

Commissioner Burton referenced the statement in Mr. Ewert’s staff report regarding implementation 2.1.1; the Planning Commission should determine whether the term “may include” is intended to be permissive and open ended in this context. Commissioner Johnson stated he is comfortable with the term “may include” and indicated he feels the land use authority can be trusted to interpret it in the appropriate way. Commissioner Burton asked if that should be included in the motion.

Commissioner Johnson amended his motion to include the term “may include” instead of “shall include”.

Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, Shuman, and Wampler all voted aye. (Motion carried on a 7-0 vote).

Chair Shuman moved to item 2.4 given that it has been noticed as a public hearing and some have attended this meeting for that reason. He indicated item 2.3, application ZDA 2022-02, will be continued to the next meeting.

**2.4 ZTA2023-02: A public hearing and possible Planning Commission recommendation on a proposal to amend the Weber County Code. The amendments pertain to the standards and regulations for agritourism operations, allowance for agritourism operations in the S-1, F-10, and F-40 zones, and allowing certain limited agricultural sales in agricultural zones. Planner: Charlie Ewert**

Commissioner Johnson declared he is the co-applicant for this matter, and he recused himself from discussing and voting on this application.

Planning Director Grover explained decision on this item is a legislative action. When the Planning Commission is acting on a legislative item it is acting as a recommending body to the County Commission. Legislative decisions have wide discretion. Examples of legislative actions are general plan, zoning map, and land use code amendments. Typically, the criterion for providing a recommendation on a legislative matter suggests a review for compatibility with the general plan and existing ordinances.

Planner Ewert explained the County has received an application to amend the Shoreline Zone (S-1) to allow agritourism as a conditional use in the zone. In reviewing the request, the Ogden Valley Planning Commission became concerned with the significant flexibility of the currently codified Agritourism Ordinance, citing concerns about potential loopholes that could introduce undesirable land uses. The Ogden Valley Planning Commission seemed desirous to expand the allowance of the agritourism use into the S-1 zone, but only after tightening the language of the ordinance. Since the inception of the Agritourism Ordinance in 2012, an agritourism operation has been required to obtain a conditional use permit. The Agritourism Ordinance was initially adopted during a relatively transitionary time as it relates to the county’s understanding of conditional use permits. At the time, condition use permits were understood as being fairly discretionary in nature. With this discretion, it seemed as if the county had wider flexibility when approving or denying a conditional use permit. This perception was based on longstanding practices prior to the mid-2000’s. Since then, however, the county has become more aware of court rulings which strip most of the discretionary decision-making out of the issuance of conditional use permits. Simply stated, a conditional use permit is a permitted use with conditions. As a result, in 2015 the county updated its Conditional Use Permit Ordinance to omit the discretionary language and focus decisions on objective facts and written standards. Changes to the Agritourism Ordinance were not proposed at the time, and thus the more flexible-appearing ordinance language is still present in codified code.

According to State code, if more than one reasonable interpretation of the code can be made, the county must read the code in a manner that favors the landowner. This means that flexible code language will always be required to be read in favor of the landowner, giving credence to the Ogden Valley Planning Commission’s concern about potential unintended loopholes.

After review of the ordinance amendments suggested by the Ogden Valley Planning Commission, the Western Weber Planning Commission seemed tentatively in support of tightening the ordinance language. However, there was discussion about concerns over making the ordinance too restrictive to those farmers who want a simple alternative to earning supplemental farm income. To provide for this concern, staff is suggesting the addition of a couple of by-right permitted uses into the agricultural zones that allow certain types of sales to occur on farm-property without the need to obtain a conditional use permit for an agritourism operation. This should simplify access to those uses.

Mr. Ewert concluded staff is recommending approval of the proposed ordinance amendments. In addition to amending the Agritourism Ordinance and inserting it into the S-1 zone, staff is recommending inserting agritourism into the Forest Zones (F-10 and F-40 zones). Staff is also recommending taking this opportunity to standardize the formatting of the S-1, F-5, F-10, F-40, FR-1, and FR-3 zones to add clarity and better match the formatting, administration, and efficiencies of other zones in the Land Use Code. He facilitated a review of the proposed ordinance, which was also presented to the Western Weber County Planning Commission at their last meeting. He highlighted changes that the other Planning Commission body requested to the ordinance, as well as changes that have been made at the request of the Ogden Valley Planning Commission since their last review of the document.

He then noted that in general, land use code changes should be vetted through the filter of policy recommendations of the applicable general plan. In 2022, the Western Weber General Plan was adopted after a significant public involvement process. In 2016, the Ogden Valley General Plan was adopted, also after a significant public involvement process. The proposed amendments helps implement numerous goals and objectives of each general plan including the following for the Ogden Valley:

* Community Character Vision: The rural character of Ogden Valley is defined by its open fields, agricultural lands, stands of trees, peace and quiet, dark skies, clean air and water, abundant wildlife, and small villages; …
* “Residents generally support the continuation of viable agricultural operations in Ogden Valley as one of the most significant contributions to the rural character of the Valley.” (p. 5)
* Dark Sky Preservation Principle 1.2: Promote […] and encourage astro-, agri-, and ecotourism development.
* Land Use Goal 2: A goal of Weber County is to support continued agricultural operations in Ogden Valley.
* Resource Management Vision: The Ogden Valley community desires responsible and sustainable growth while conserving the natural and social character of Ogden Valley. With this vision, Weber County in Ogden Valley is prepared to shape its future by preserving character; promoting sustainability; supporting agriculture, wildlife, habitat, and scenic vistas; and recognizing the importance of management of public lands.

Staff recommends that the Planning Commission consider the text included as Exhibit A and offer staff feedback for additional consideration, if any. Alternatively, when or if the Planning Commission is comfortable with the proposal, a positive recommendation should be passed to the County Commission.

Throughout Mr. Ewert’s presentation, there was input from the Commission regarding technical adjustments to the text of the ordinance; permitted uses versus conditional uses.

Commissioner Burton moved to open the public hearing. Commissioner Wampler seconded the motion, all voted aye.

A resident, no name given, stated that the original goal of this ordinance has been lost in the discussion of proposed amendments. He stated that it is important to enact ordinances that will make it possible for people to retain ownership of large agricultural properties and make a profit on that property. This will help to reduce density, which seems to be a large concern in the Valley. He stated that each agritourism application could be considered on a case-by-case basis to determine if it will negatively impact neighboring property owners and if the answer is no, the application could be considered and permitted, even if the use is not necessarily complimentary to the primary agricultural use of the property.

Commissioner Burton moved to close the public hearing. Commissioner Torman seconded the motion, all voted aye.

Chair Shuman invited input from the co-applicant. Mr. Johnson stated the intent of the proposed ordinance amendments was to encourage those who have farm ground to preserve it by pursuing other opportunities for generating a profit at their land.

Chair Shuman stated that the reason this issue was raised was that there are loopholes in the current agritourism ordinance; there were instances where the existing ordinance was not strong enough to determine commercial uses of agricultural properties in manners never intended. Mr. Ewert stated that is correct. He noted that the ordinance amendments will place additional restrictions on overnight stays on farm properties, but it actually increases the number of uses that meet the definition of agritourism to give property owners additional opportunities for generating a profit on their land.

Commissioner Burton moved to forward a positive recommendation to the County Commission for application ZTA2023-02 amending the standards and regulations for agritourism operations, allowance for agritourism operations in the S-1, F-10, and F-40 zones, and allowing certain limited agricultural sales in agricultural zones, with the following conditions:

1. Proof of production requirements be amended to be consistent with the requirements of the Farmland Assessment Act and Urban Farmland Assessment Act; and
2. Language regarding ‘farm sales’ be amended to not require the parcels from which the products are produced to be contiguous or of the same ownership, but of the same farm operation.

The motion is based upon the findings listed in the staff report. Commissioner Barber seconded the motion. Commissioners Barber, Burton, Johnson, Montgomery, Torman, Shuman, and Wampler all voted aye. (Motion carried on a 7-0 vote).

**2.3 ZDA 2022-02: Consideration of an applicant driven request to amend the development agreement between Weber County and CW The Basin to allow short term rentals and transferrable development rights. Property located at 947 E Old Snow Basin Rd, Huntsville. Planner: Steve Burton**

This item was not heard due to the late hour of the meeting.

**3. Public comments for items not on the agenda.**

There were no public comments.

**4. Remarks from Planning Commissioners.**

There were no additional remarks from Planning Commissioners.

**5. Planning Director Report:**

Planning Director Grover reported the work session item that was listed on tonight’s agenda will need to come before the Commission during their December business meeting as a public hearing because the County must take action on that issue by February 11, 2024.

**6. Remarks from Legal Counsel:**

There were no remarks from Legal Counsel.

**WS1 Discussion on amending the Subdivision Ordinance to reflect State Code requirements on Land Use Authority, Financial**

**Guarantees and Releases and Required Subdivision Improvements. Planner: Bill Cobabe**

This item was not discussed.

 **Meeting Adjourned: The meeting adjourned at 10:29 p.m.**

 **Respectfully Submitted,**

**Cassie Brown**

**Weber County Planning Commission**