Minutes of the Ogden Valley Planning Commission Regular meeting February 26, 2019 in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** John Lewis, Chair; Jami Taylor, Vice Chair; John Howell, Chris Hogge, Shanna Francis

**Absent/Excused:** Robert Wood, Steve Waldrip,

**Staff Present:** Charlie Ewert,Principal Planner; Ronda Kippen; Principal Planner; Steve Burton, Planner III, Tammy Aydelotte, Planner I, Courtlan Erickson,Legal Counsel; Kary Serrano, Secretary

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

Chair Lewis asked if there were any ex parte communications or conflict of interest that the Planning Commissioners would like to declare. Commissioner Hogge said that he has had conversation regarding Shepherd Estate Subdivision with Brady Stoker; a property owner along Stoker Lane. Chair Lewis asked do you feel you have any bias or conflict of any sort? Commissioner Hogge replied no, I do not. Chair Lewis asked other Planning Commissioners if they felt that this had any bearing on our decisions tonight. Mr. Erickson said it would be more appropriate to get an explanation with some of the circumstances behind that contact, to allow a more informed decision. Commissioner Hogge said Mr. Stoke contacted me; he is on the north side of Stoker Lane in a new home that he has just completed. My understanding is that after the home was in construction; he was then advised that there was a potential for Stoker Lane to become a county road, a public right-of-way. Which would if that did occur at some future date, that would impact his front yard. I listened to those concerns and comments and expressed that I would pass that on to the County. Chair Lewis said I am okay with that and asked Mr. Erickson for his opinion. Mr. Erickson replied with the fuller explanation it is your call on this decision on Commissioner Hogge opinion that he can take part in an unbiased manner. The Planning Commissioners had a brief discussion and decided that Commissioner Hogge could continue in an unbiased manner.

1. **Minutes:**
   1. **Approval of the January 22, 2019 meeting minutes**

Chair Lewis moved to approve the meeting minutes as written. Commissioner Howell seconded. A vote was taken with Commissioners Taylor, Howell, Hogge, Francis, and Chair Lewis in favor of approving the minutes as written. Motion Carried (5-0)

Chair Lewis said there are two items on the consent agenda but there seems to be an issue with one of these. I propose that we take the Shepherd Estates Subdivision off the consent agenda and put this item on the regular agenda. We will have the Trapper’s Ridge on the consent agenda. Mr. Erickson said if the Planning Commission had an issue with Trapper’s Ridge, it would be appropriate to do that now. If none, it is appropriate to vote on that as part of the consent agenda.

**2. Consent Agenda:**

**2.1 UVT041718: Consideration and action for a new phasing plan and preliminary subdivision approval of the Trapper’s Ridge at Wolf Creek PRUD Phases 7a, 7b, 7c, and 7d at approximately 5800 East Big Horn Parkway in the RE-15 Zone. (Eden Village, LLC Applicant, Russ Watts, Agent)**

**MOTION:**  Commissioner Howell moved to approve consent agenda item UVT041718 for a new phasing plan and preliminary subdivision approval of the Trapper’s Ridge at Wolf Creek PRUD Phases 7a, 7b, 7c, and 7d at approximately 5800 East Big Horn Parkway in the RE-15 Zone. This approval is subject to all conditions and recommendations listed in the staff report; and all county and state agencies requirements, and is based on the findings listed in the staff report. Commissioner Hogge seconded. A vote was taken to approve consent agenda item with Commissioners Taylor, Howell, Hogge, Francis and Chair Lewis voting aye. Motion Carried (5-0)

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

**3.1. Administrative Items**

**a. New Business**

**2.2 UVS122418: Consideration and action on the application for final approval of Shepherd Estates Subdivision, consisting of 4 lots, located at 700 N 7800 E, Huntsville in the AV-3 Zone. (Jeff Shepherd, Applicant)**

Steve Burton said I did not prepare a report as this item was brought up previously; and received preliminary approval on January 22, 2019 with the same lot layout and same design. Staff’s recommendation is listed in the staff report and the findings and conditions are also listed in the staff report. Just needed to let you know that the applicant is here if anyone has any questions for him.

Chair Lewis opened up to public comment.

Sanford Moss, 7675 E 1075 N, said as far as I know we didn’t receive any notification through the mail that this item was going to be presented for tonight’s meeting. At the last meeting I had brought up how the description on the Shepherd Estates Subdivision plat doesn’t match the description of our shared property boundaries; in this case Great Basin Engineering on the center lines of Stoker Lane. I wondered whether or not the actual centerline on the ground has been determined where that is exactly. My last question, whether or not if Stoker Lane which currently is on private land; is not deemed a public road by the county, or by a court.

Steve Burton referred to Mr. Moss’s first question, and said we aren’t required to send notification for final approval so we didn’t in this case. As to the question about it being deemed a public road; the county is calling it a public road, and we haven’t been asked to do anything on that and it hasn’t been challenged at this point so we are moving forward with this subdivision. Chair Lewis asked what about the discrepancy between the plat boundary and the neighbor’s boundary. Mr. Burton replied if a neighbor had an issue with it, they would have to get their own surveyor and address that. At this point, there are some things that need to be uploaded on the plat; but we wouldn’t sign off on the plat that could affect the county surveyor, and the county engineer is not going to sign off on the plat until all of their requirements are met.

Chair Lewis said my understanding, if the county thinks there might be a need for a road there, and the applicant would need to give up enough property for an easement. A neighbor can challenge that if they wanted to; but it could be adjusted quite a bit on the county’s part if both neighbors worked together on something like that to avoid the houses if possible. Mr. Burton replied yes, and ultimately it would be up the County Engineer if he wanted certain areas narrower; and it would also be up to the neighbor that has an issue with it.

Mark Anderson, 7768 E 1075 N, Stoker Lane, said back in November, a gentleman by the name of Ralph Hansen made aware that on that particular piece of ground, that has very large secondary waterlines going through that property. I believe he said one is an 18 inch and the other one might be 30 inch; and they needed to be located and put a utility easement on them. If he needs to locate those and dedicate them; because on other subdivisions maps, it is on there as a dedicated easement. As far as Weber County having that as a public road; the ombudsman has been notified and has talked to the County Attorney’s about who owns what. It needs to go in front of a judge and only a judge can determine the width of the road, and how you gain by taking the right-of-way by access. He made it sound like if it was a foot path that you have a foot path. If it’s one truck wide, you have one truck. I don’t know you can claim legal with that road without a legal ruling by the judge.

Brady Stoker, 7748 E 1075 N, said my biggest concern is to the center lane of the road because whatever that is determined; it takes more property from me, or more property from across the street of the Shepherd Subdivision. I want to know where that is because there was no disclosure to this road widening when I built my house. If I had known that this was coming, I would have built my house back before any of this came up. I just want to make sure that I am treated fairly because I want to be able to keep my front yard because none of this was disclosed to me.

Collette Anderson, 7768 E 1075 N, Stoker Lane, said at our last meeting; I talked about the center line at Stoker Lane. In the description that Mr. Shepherd has in the subdivision it states, *“Part of it is east 1079.55 feet to the centerline of Stoker Lane, extended south westerly from the Poverty Plats Subdivision and Rose Subdivision. Both lines being the southerly boundary of the Wendy B Parker property.”* I think that needs to be taken off of there, and I think a lot of people on that road, that would resolve the concerns we have with that and I asked that be changed before he gets a final.

John Kimble, 1077 N 7800 E, said on the north side of my property line is Stoker Lane. There is about 600 feet of Stoker Lane that is dedicated already, and there’s an easement for development for utilities along that. I want to make sure that this is consistent with what is there, and what has been there and continues to be there. In the last meeting, you talked about developing a program in the valley that helps us look at roads, road development and where they are and aren’t, so when you start to talk about this the land owners along there would like to be a part of that discussion.

Chair Lewis closed for public comments.

Commissioner Hogge said my understanding of what’s before us, is the Shepherd Estates Subdivision and not so much with Stoker Lane or what might happen with Stoker Lane. The subdivision is, and I would assume and it was previously mentioned in the last meeting, there would have to be negotiations with the various properties owners. There would need to be surveys done and verified to come up with the best solution as far as Stoker Lane; and I believe that Shepherd Estates Subdivision is our responsibility tonight.

Commissioner Taylor asked Mr. Burton on the process; for example, how is that information submitted to the landowners for when they are building, how do they know about the potential with something like this? Mr. Burton replied I would say it is due diligence; if you are living on a dirt road, you would probably look at the county records and realize that it is not as wide as the other roads surrounding it.

Commissioner Taylor asked so there is no notification on that? Mr. Ewert replied if you look at what was possibly a wagon trail at one time, it has evolved into a full public street and highway. There is a process of evolution that goes with that; so when it comes to who has the responsibility of knowing what infrastructure may be possible in the future, it would be the buyer’s responsibility to explore that. We are a buyers beware state; buyers are responsible for doing the due diligence to find out what is and what isn’t. It should be noted that even though it’s uncomfortable to say when investing in land; this is certainly one of those risks, because if the county doesn’t know the centerline of that road is. How can we expect the landowners to know what the center of that road is, or what the potential future of that road is?

Commissioner Francis asked to clarify regarding Commissioner Hogge’s statement; if we approve this subdivision, what are we approving in regards to the road, by approving this subdivision? Mr. Burton replied this isn’t finalized until the County Commission approves it and signs it until its recorded. With your question, it takes this process to that step, to that County Commission step. It will be a few weeks when all of this information is prepared and finalized; and as you look at this plat, there would be a 30 foot, and Stoker Lane would be 30 feet wider.

Commissioner Howell asked if we approve this, would this prompt the county to move forward with the project; but prior to that, there would be a lot of things that the applicant has to complete before anything happens on this property. Mr. Burton replied this is final approval from the Planning Commission, it is a requirement to move it the County Commission. You are correct it will move this application forward.

Chair Lewis said we’re bound by pretty tight constraints with our decision making here. We get an applicant that jumps through all the hoops; they meet all the requirements, so there is certain discretion to move forward. The code says that if you are going to divide something, you have to dedicate a right-of-way. The question of where the right-of-way is; where the centerline is, and it is decided by the County Engineer. Whether you agree with him/her or not; we have a choice to not approve this tonight, because they’ve met all the requirements. I am sure that the county has stuck with what’s been done; and is bringing those things like setbacks through the entire lane. I would encourage everyone to go back to the county before the Planning Commission literally gives this to the County Commissioners; and talk to the County Engineers and what constitutes the centerline; and you have the rational and you have the ability in civil court to dispute that at any time.

Courtlan Erickson said I agree with the statement that was made earlier correctly; if there is a public road by use, if there hasn’t been any actual formal dedication, but the public has traveled on it, the county is not the final say on the width of that road, that would require a judge’s court order to determine the actual width of the road. So in the future, there would need to be further dedications in order for the final width to actually be adjudicated if people disputed it, disagreements with it, and it may end up in court. If everybody agrees or if nobody challenges the determination, then the county could move forward potentially in the future.

Commissioner Howell said just for the audience’s information; this board has to follow guidelines of Statutory Law, of the State, County, and local ordinances. These laws are designed to protect the individual’s property rights; and we have to go by these laws and make our decisions accordingly.

**MOTION:** Commissioner Howell moved for approval of UVS122418, for final approval of Shepherd Estates Subdivision, consisting of 4 lots, located at 700 N 7800 E, Huntsville in the AV-3 Zone, Jeff Shepherd is the applicant. This is subject to all recommendations listed in the staff report; and to all county and state agencies requirements. This motion is based on the findings listed in the staff report. Commissioner Taylor seconded.

**DISCUSSION:** Commissioner Taylor said I think you summed it up very well; I have seen roads going to those areas, and it’s hard to see buildings to into it, and having to deal with all of that. Based on the rules that we have; we’re bound to as a Planning Commission, I don’t feel there was any other direction to approve it at this point. It would have to be a different recourse that we would have to take to challenge it, to see what you could see about where the road is, and the length and the width of the road.

**VOTE:** A vote was taken with Commissioners Taylor, Howell, Hogge, Francis, and Chair Lewis voting aye. Motion Carried (5-0)

**1. UVS080118: Consideration and action on final approval of Sunshine Valley Estates Subdivision, a two phased subdivision consisting of nine lots, located at approximately 940 S 9270 E, Huntsville in the FV-3 Zone. (Lowe Properties, LC Applicant; Chris Cave, Agent)**

Tammy Aydelotte said this is a nine lot subdivision of the Sunshine Valley Estates in two phases. This is located in Ogden Valley off of 9500 East; Phase 1 is actually located off of 9275 East as outlined here. Previous concerns had to do with some wetlands, with some lots that were located in wetlands. I do know that the applicants are working with FEMA to classify some of those zones, and I am not sure if they have received documentation yet. With this nine lot subdivision, there are going to be wells and septic systems located on each lot. The applicant has secured an acre feet of water for each lot from Weber Basin for both culinary and secondary water. The Planning Division would recommend approval at this time as the applicant has met all of our requirements. Going forward, they still have a few more things that they’ve got to meet prior to recording; including obtaining a well permit from the State of Utah, along with meeting all other review agency requirements. I know that Engineering has a few of those listed with regards to the new road, dedication, and such.

Matt Lowe, representing Lowe Properties LLC, said Ms. Aydelotte did a good explaining what we’ve done. This nine lot subdivision is in two phases; the first lots are going to be kind of existing road that has been installed, and then we’re going to be putting in a road for other seven lots with the second phase.

Chair Lewis said I know we talked extensively about flood plains, perk, and that kind of stuff; and it sounds like from staff you have covered that and we will finish covering that before final. Mr. Lowe replied on the FEMA updated drawing was a bigger area; so that has been delineated and shrunk down dramatically. On one of first lots off our new road; there may be the requirement not to allow a basement. It needs to be built up and that’s when we submitted to FEMA, shrunk that up, and that is why that is neck down on the updated drawings.

Chair Lewis said I know that staff had some issues with secondary water, so what is the situation with the secondary water? Ms. Aydelotte replied initially the applicant was going to utilize some water shares or attempt to buy some water shares from the local ditch company. However, they have a signed contract from Weber Basin for the necessary irrigation water for each of those lots. The way the Water District has broken that acre foot down for each lot they get from the state, where they recommend .45 of that acre per feet for culinary use, and .45 for irrigation use. If any of the lot owners decided to irrigate more land, they would approach Weber Basin, secure a contract for the necessary acre feet of water to be able to irrigate whichever portion of their land they choose to irrigate. In regards to flood plain irrigation; Engineering has required that those be shown on the final plat, along with a note stating that any building not be excavated any closer than one foot above those base elevations.

Chair Lewis asked are they located near a water district? Ms. Aydelotte replied the subdivision is not located in a culinary water district, we consulted the section of code that addresses wells. They are not required to contract with any local secondary water district, because they are not located within a culinary water district. They are using a well to obtain their water to service their lots with water, they can use the same well to service their secondary water as well.

Commissioner Howell said the initial well that they put in; could they make that a commercial well? Ms. Aydelotte replied they do have some specific requirements for a public well. When you contact the state, the Division of Water Rights deals with individual wells; there is a separate division for public wells. I spoke with them and asked a few questions about the permitting process and they indicated there are more stringent requirements for public wells. We are requiring one well permit to mostly show that a permit can be obtained. Once the subdivision is recorded, a covenant will be recorded with each lot, indicating the amount of water that is allocated to them; they need to obtain a well permit from the state so that would show up in a title report during any due-diligence.

Opened up to public comment.

Paul Joyce, 1041 S 9150 E, said my house is adjacent to the Sunshine Valley Estates Subdivision. My concerns are regarding the secondary water and the comments already provided. That acre foot of water is carved up with .5 to the domestic unit; and .55 acre feet of water set up for irrigation. The problem in the valley as you know; water is cut 3 to 1 for irrigation; so that .55 acre feet of water actually irrigates .1833 acres of the lot. These are FV-3 Zone lots; which means are a minimum of three acres, which takes nine acre feet of water to irrigate a lot. It’s not .1833 or .55, it takes 9 acre feet of water. Those people that move into Sunshine Valley Estates are going to be required to irrigate out of their wells; and they are going to be required to take significantly more water out of those wells. I have a couple of concerns; even if Weber Basin will sell you the water, you have to go get the Division of Water Rights to give it to you. It would cost somebody $4000 a year on property taxes to obtain that water. My other concern is the stress that would put on the Aquifer. So at 9 lots, let’s just say it’s 8 acre feet of water that they would eventually have to get; that’s 72 acre feet of water. Now 72 doesn’t sound like a lot; that comes up to 23,461,272 gallons of water per year. Furthermore, the Weber Fire District requires that any house in the area; to put in fire suppressant systems, such as fire sprinkler systems. Those fire sprinkler systems are required to flow two heads; each head is 13.2 gallons per minute. That means my well has to produce 26.4 gallons per minute at a dedicated PSI which happens to be 40 PSI over the course of two minutes. If I have people 500 feet, a development 500 feet away from my house pulling 23 million gallons of water out of the Aquifer; that is a risk to my family, my neighbors, and to my community. These 6-inch 150-foot average wells that these people are putting in for residents to use, is not going to cut it.

Bill White, 6995 E 200 S, Huntsville said I am on the Town Council in Huntsville and also the Planning Commission. My property is directly adjacent because I own the Huntsville Monastery. As owner of the Monastery, I became the majority shareholder of the Co-Op Irrigation Company. The reason I got involved is because originally Mr. Lowe had pledged those shares of stock to provide the secondary irrigation water for this subdivision. There are two separate incidences, where the county has approved subdivisions surrounding the Monastery, and it created a huge problem that Huntsville had to deal with to a tune of a million dollars; and the second is that all these homeowners are having to deal with to try and get their irrigation water from Mr. Lowe. So now they have these three acre lots, and they are going to have to drill bigger wells, and take more water out of the Aquifer to provide their irrigation water. This land was historically irrigated with Co-Op from irrigation shares. Now all those people are going to have to follow the Aquifer; all these new people from the Sunshine Valley are going to have to follow the Aquifer. There are like 20 lots with one acre each that are already pulling out of the shallow Aquifer that’s really crappy. Huntsville town has drilled three wells in the last ten years, and two of them in the last two years. Directly south of that well is the Monastery Cove Subdivision; which Huntsville Town is hooked up. They have drilled multiple holes and a lot of them have come up dry holes. So now what those people in that subdivision are doing instead of relying on those wells; they are withdrawing Huntsville Culinary Water for their secondary irrigation, which has put us in a huge bind and caused us to drill a new well. In this situation you’ve got all these lots, all of these people pumping for wells; the irrigation water that historically was used to irrigate those, that replenished the Aquifer has been taken away by Mr. Lowe. Now you have the situation where all of these people are now going to have to drill, and pull water from a shallow Aquifer, that I know for a fact is insufficient. Right across the street we have exactly the same Aquifer, same well and drilled 400 feet, and same dry hole. I was in Henefer Town, teaching them about water laws; and David Church the attorney for the League of Cities and Towns was there with me, where he told that Planning Commission that the State Legislature has gutted consumer protection for lot purchasers. The only thing standing between an unsuspecting lot buyer and a disaster is you. If you approve a subdivision without them going through all the proper steps; you are just going to leave a huge mess for somebody else to clean up. In this case the two subdivisions previously mentioned; with the Monastery Cove the county left a giant mess for Huntsville to clean up. I am not opposed to this development; what I am opposed to is not going through the proper steps to make sure they prove they have sufficient water resources.

Commissioner Howell said before they get any permits, they have to prove they have water. Mr. White replied that’s right except that the planners are going to make them drill one well and pump test it for 24 hours. This is the standard; and determine whether that one well for 24 hours will produce 15-20 gallons of water for that one well. The reason that this situation works with all these lots right now is because these people are only using their wells for inside domestic use; which is less than one half of one-acre foot. The outside requirements are three-acre feet per acre. That’s why if you let the State’s Engineer Office, go through the approval part of the process, and have the protest period go through first, before you approve the subdivision, you’ll know whether or not this is a viable thing. If you pass this for final approval; people who buy these lots will end up unable to secure water; because there won’t be any water in the Aquifer.

Ronda Kippen said we need to redirect a couple of items; just so it is clear, Silver Summit and all surrounding subdivisions that have gone in this area have followed code. The code is what we handed out in the premeeting. This is not in an existing culinary water district service area; and does not require providing secondary water per Weber County Land Use Code. The State, nor the County, nor the Health Department regulate how much water is to be used for irrigation for a specific area. Ms. Aydelotte added what the state will not mandate, how much of your land you have to irrigate. So if you have three acres, they are not going to say you have to irrigate a minimum of this amount of your land. They do however have recommendations; if you decide you want to irrigate a portion of your land, they do have recommendations for how many acre-feet should be used.

Ronda Kippen said we will not be requiring a well to be drilled; and pump tested for 24 hours. We will require one well permit and what the code says, *“If individual well permits are issued by Utah State Division of Water Rights; one well permit must be obtained along with a letter of feasibility, from the Division of Water Rights and Weber Morgan Health Department which states the well permit can be used in the proposed area by the Division of Water Rights for exchange purposes.”*. We require one well permit per our code.

Chair Lewis said and the current code he has met in terms of the minimum acre feet of irrigation, and he can’t ask for two even if he has five acre lots. Ms. Kippen replied we don’t regulate how much water has to be per size of the lot.

Bill White clarified Ms. Kippen’s statement that the two subdivisions I mentioned were not served by a culinary water supply is incorrect. Monastery Cove was sent a will serve letter; by Huntsville Town to the county so they would serve culinary water only to the Monastery Cove subdivision. That then kicks the requirement that the county has to make sure they have sufficient irrigation shares, and they put in the infrastructure for the irrigation and they pump test the well, and none of that was done. So it’s not correct to say, that the county never requires them to provide irrigation shares.

Chair Lewis said we’re not here to talk about other subdivisions, before us is this subdivision. Mr. White replied I agree but this has a direct bearing on whether or not the county is following its code. Whether or not it’s going to leave these unsuspecting lot owners with no culinary water or irrigation water. Your own ordinance says, “If secondary water is to be by shallow well, then a copy of the approved well permit shall be submitted.” that’s the change application from the engineer. *“The shallow well shall be pump tested with a copy of the test results submitted for review, prior to the subdivision being recorded.”* That was the exact opposite of what she said. They are going to drill and are required to pump test a well before the subdivision is recorded.

Charlie Ewert said the shallow wells provision that shows up in our code; comes under the header of when the culinary water company provides service to that area, or the culinary district. Whether or not those services extend to the property in question, is something we yet have to explore. The fact that they gave a will serve letter to the neighboring subdivision; tells us that boundary division is closer than we thought it was. It’s entirely possible that this provision regarding culinary water and the necessary secondary water; that comes with the requirement that a culinary company may have, could be applicable to this.

Matt Lowe said this property isn’t within the Huntsville Town Culinary System; it’s not in their service district. In fact, my dad met with Mr. White on one of our other properties; which is in Weber County Unincorporated Huntsville, and he informed him that they weren’t allowing any other connections onto their system that weren’t in this service area. We were grandfathered in on this other piece of property, because my dad had a verbal agreement with Huntsville Town when they let a line go through there that he could have a connection in there. I can represent today that this is not part of Huntsville Culinary System.

Charlie Ewert said if we can verify that it is within that district or service area; but without that verification, it is what it is that you have in front of you. I do think that Mr. White’s and Mr. Joyce’s concerns are valid concerns; but there are risks and potentially calculated risks. Whoever wrote the ordinance and adopted the ordinance took into consideration when it was created. I do take exception that we’re not interpreting the ordinance correctly; we’ve sat down with our attorneys, Silver Summit attorneys, about the interpretation of our code and are confident that only the well provision code applies as long as there is no culinary water district in this area.

Courtlan Erickson said I may have missed it, is Mr. White asserting that this proposed subdivision is within the boundaries of one of those culinary districts. Mr. White replied this subdivision is not in our service area; we would not include it in our service area. So the provisions that kick in to them having to provide water shares; instead of shallow wells apply. If you’re using shallow wells; Paragraph M specifically says *“you have to drill the well, and pump test it, before final recordation.”* The rule is meant to protect the Culinary Water Agency like Huntsville Town; from having the issue about secondary water if you are using shallow wells, and having to pump test it, that does not apply to areas within culinary, it applies to areas outside of Culinary Water District.

Chair Lewis said we’re probably not talking about a district issue, but I am still not clear whether once you get kicked out the district, and you’re down to wells, it probably has a different direction whether it’s shallow or not. Mr. Ewert replied the way that we have interpreted the code; that entire Section M, and we can put that up. It starts with, *“where a subdivision is proposed within an existing culinary water district or service area of an existing water corporation or within a water district, or water corporation service area created to service the subdivision.”* Is essentially the header, the opening statement of that entire paragraph? So if we’re not in that, the interpretation that we would take, essentially this entire paragraph doesn’t apply. One of the reasons why we are confident because State Law says if there is any ambiguity and any error of interpretation in the ordinance, you have to find that in favor of the applicant.

Charlie Ewert said I will apply a little more on Mr. White’s and Mr. Joyce’s concerns. This section of code that applies to wells, it has the potential of creating dry subdivisions, and it has the potential of getting in the way of consumer protection. That’s one of the reasons why we do record that notice of property, and that’s one of the reasons why we put it on the plat that says you have to have water, and you need to demonstrate persons who purchased this, and you need to demonstrate water before you get a building permit. So the buyer is fully aware, there’s full disclosure on that issue, and there’s a risk and the buyer takes a calculated risk on whether or not they can get water.

Commissioner Francis said it does seem there is some ambiguity; regardless of the state law, that could be used and interpret it because there is a health, safety, and welfare issue. It’s just common sense, isn’t there room that it could be read the other way. Mr. Ewert replied where this is an administrative decision, and we’re looking at (CLUDMA) County Land Use Development Management Act of state law; to guide us on what the rights obligations, and the entitlements of the property owner is, and the obligations of the decision maker. The state code says when there’s ambiguity, you have to err in favor of the applicant.

Chair Lewis said all of this is very difficult to figure out; but we’re guided by those professionals; we rely on the county engineers, we rely on Legal Counsel, and others of the county for their legal take on stuff. Mr. White’s expertise is gladly received. My opinion on this; is it black and white, and if it is, what does the code say; did they meet code or not, and we can’t say no if they did. I would be more comfortable in interpretation issue for tabling it for one meeting; and give the applicant, and give Mr. White and others chances to talk with others in the county. We’ve had a chance to talk to others and we’ve given them one more chance to really make their case, and we still believe in this.

Courtlan Erickson asked Mr. Ewert a question and said I have had a chance to review this before with the Planning Staff, in relation to this particular application. As it was previously mentioned, we have had the opportunity to meet with the attorney for the Silver Summit homeowners, which is the group that he represented. We have had thorough discussions about it; I acknowledged Mr. White’s reading of that Section M before you, it is one that could be read the way he is interpreting it. Through discussions and that Mr. Ewert mentioned; looking at the intent of it, the way the county has applied it in the past, the way it is being asserted by the County Planning staff, is a reasonable one and is the way that the county has uniformly applied it. It is the way that I would recommend that the Planning Commission apply it. I do believe that in this case, that Paragraph M doesn’t apply because there is no existing culinary water district to service area of an existing water corporation; or water district or water corporation service area created to service said subdivision. This is all referring to culinary water providers; and if you can go to the end of that sentence there. Later in that sentence it talks about those districts, those companies, not allowing their water to be used for other than culinary purposes. It is talking about culinary water providers whose water cannot be used for other than culinary purposes. If you are going to get a connection here to our water; you have to furnish your own secondary water. That may be secondary water from a shallow well, so that’s what that’s talking about. The county’s reading of this makes sense and it is consistent with practice; with the evidence of the original intent of how this was to be interpreted. It all leads to the conclusion, in my opinion, that this paragraph doesn’t even apply at all.

Chair Lewis said so it’s the county’s position that you have thoroughly vetted this, and you think the applicant is in compliance. Mr. Erickson replied yes. Mr. Ewert said I would suggest that the process of getting a final understanding of what that section actually says; you could get to that point faster with a decision tonight. Making a decision tonight gets us to the next step, and all of these decisions are appealable. They can go to a quasi-judicial board, or to district court, and other reasonable minds can give us other opinions. We’ve made an interpretation that we believe can be defended; so the county is not exposed to excess liability to this.

Chair Lewis said again this either meets the code or it doesn’t. Personally I can say Mr. Erickson if you thought it met the requirements, then who am I to say no. I would probably not be in favor of tabling it; and would rather make a decision to move forward, but the County Commissioners hear the wrath of the other lawyers who don’t think it’s correct. I am not in a position to say no to that; and it’s the county’s position what it is.

Commissioner Francis said my initial thought was to table but I would only table if I knew that based on the information we have been getting, if that would make you reconsider the stance, otherwise there would not be a need to table.

Mr. Erickson replied from my perspective, I don’t want to say my mind is absolutely closed, and I wouldn’t say I couldn’t be persuaded one way or the other. Initially when I read this; I read this the way Mr. White was interpreting it, as being essentially three different topics kind of contained within Paragraph M. Through discussions about practice and intent, and through looking closely at the language including the parts where we talked about culinary water provider, the notice that the culinary water provider provides, the way it all fits together, and through discussions, I have come to the conclusion that the way that the Planning Staff has interpreted it, and has historically practiced it, is the correct reading, and it reflects the original intent of this ordinance section.

Commissioner Hogge said based on what we’ve been talking about; and what Mr. Erickson has mentioned. I don’t dispute that direction, but I have to admit I have some significant frustration with the secondary water application; on developing ground that obviously doesn’t have enough water. That’s difficult for me to swallow, that’s difficult to fathom that’s acceptable so I am struggling with that. Conceptually I understand where Mr. Erickson is coming from.

Commissioner Francis said I would like to table it, just because I would like to feel comfortable that I understand it completely. Even though I am not the attorney, and everybody else has already, but I would like to feel comfortable being able to approve it, and being able to look at both sides as to why they are making that decision.

**MOTION:** Commissioner Francis moved to table UVS080118, consideration and action on final approval of Sunshine Valley Estates Subdivision in order to further review the information that has been provided, and the question that has been raised because of the discussion this evening. Commissioner Hogge seconded. A vote was taken to table this item with Commissioners Francis and Hogge voting aye; with Commissioner Taylor, Howell, and Chair Lewis voting nay. Motion Died (2-3)

**MOTION:** Commissioner Taylor moved to approve UVS080118, consideration and action on final approval of Sunshine Valley Estates Subdivision, a two phased subdivision consisting of nine lots, located at approximately 940 S 9270 E, Huntsville in the FV-3 Zone. This motion to approve is subject to all conditions and recommendations listed in the staff report; as well as all county and state agency requirements. The motion decision is based on the applicable Land Use Code; as legal counsel has interpreted them, and the analysis and findings listed in the staff report. This is also based on the verbal recommendations tonight from staff, legal, and our interim director. Commissioner Howell seconded. A vote was taken approve this item with Commissioners Howell, Taylor, and Chair Lewis voting aye. Commissioners Francis and Hogge voting nay. Motion Carried (3-2)

**4. Public Comment for Items not on the Agenda:** None

**5. Remarks from Planning Commissioners:** Tammy Aydelotte said I know that a decision has already been made, is there any additional information that I can get to you as a Planning Commission. I recognize that this motion is technically approved, and we will post a notice of decision tomorrow to begin appeal period. Is there anything you would like from planning? Commissioner Francis said I have a request that we look at considering revising our ordinance of properties that are not in a water district. There was a lot of information that I was not aware of.

**6. Planning Director Report:** Charlie Ewert said we can get the information, and with the formal request from the Planning Commission tonight and I just want to make sure we get this on our list. I am very confident that I will bring some amendments to this code anyway. We’re working on the subdivision codes, and we have been for two years as time permits; and have been directed a week ago to get this done faster. We will be talking in work sessions about different provisions that we already have in the code; what’s working and what’s not. I would like to have Mr. White come back and impart his wisdom on water, because I feel that he knows more about water than the vast majority of people in the Ogden Valley. The Utah Geological Survey are done with their study, they told us they will be publishing in March. They will be coming to Huntsville Town Council Meetings as well as the County Commission, as well as to the public; with the Division of Water Rights to talk about their findings. Based on what I’ve seen so far, we might be surprised, and I think Bill White might be by what they found.

**7. Remarks from Legal Counsel:** Courtlan Erickson said there were some difficult issues that you dealt with and I think you did a good job. I am not infallible and I give my opinions and I respect your judgement on what you decide to. I would not begin to compare my water rights knowledge with Mr. Whites. As far as the county code that we were looking at tonight; I did take an extensive look at that. I felt comfortable providing my opinion on that; and I will always try my best to give you a reasonable opinion that is before you. I appreciate all the work that you do and it’s difficult to sift through all the points of view, and if you do vary I will respect that.

**8. Adjournment:** The meeting was adjourned at 6:55 p.m.

**Respectfully Submitted,**

**Kary Serrano, Secretary;**

**Weber County Planning Commission**