
Minutes of the Western Weber Planning Commission meeting of September 10, 2019, held in the Weber County Commission Chamber, 2830 Washington Blvd. Floor 1. Ogden UT at 5:00 p.m.

Members Present: Bren Edwards-Chair
 Andrew Favero-Vice Chair
 Wayne Andreotti
 John Parke
 Gene Atkinson

Members Excused Jannette Borklund
 Greg Bell

Staff Present: Charlie Ewert, Principle Planner/Long Term Planner; Matthew Wilson, Legal Counsel

Pledge of Allegiance

Roll Call

1. Approval of May 14, 2019, and July 9, 2019, Meeting Minutes. Minutes approved as presented.

2. Public Comment for Items not on the Agenda. None

3. Remarks from Planning Commissioners. Commissioner Atkinson asks if they can get more information on the feasibility study. Mr. Wilson states that the Lieutenant Governor's Office. Chair Edwards notes that there will be a meeting on September 30, 2019, at West Weber Elementary at 6 pm. There is one on October 15, 2019, at 6 pm located at 1400 N 5900 W. He adds that if they want more information on that, they can subscribe on the State website to receive notifications. They are planning to hold four meetings. Commissioner Favero asks if the issue will be on the special election ballot. Mr. Wilson states that it cannot because there is not enough time. Mr. Atkinson asks if staff can keep the Planning Commission updated on this matter. He notes that he would like any information from anyone who knows the process.

Commissioner Favero asks Mr. Ewert how far he got on the water provisions. Mr. Ewert states that is what he will discuss in the work session. He notes that it is just an update on the last meeting. It will also be on the October work session. Chair Edwards asks if is the committee that was put together going to review that as well. Mr. Ewert states that he will ask the County Commission. Chair Edwards states that he would like to discuss the Terakee Village decision at the County Commission meeting. He notes that the County Commission overturned the Planning Commission because of the way the Planning Commission's decision was presented, He states that he has a discussion with Director Grover about getting more information in an open public meeting on the County Commission. Chair Edwards states that they are the face with the community and this makes the Planning Commission look bad. He adds that they had a lot of discussions and put a lot of effort into that decision. Mr. Ewert states that he will discuss with Director Grover to find a way to get the County Commissioners all the information.

4. Planning Director Report-None

5. Remarks from Legal Counsel-None

6. Adjourn to Work Session- 5:14 PM

WS1: Discussion regarding proposed rezone procedures text amendment.

Mr. Ewert states that there might be some confusion in the rezoning ordinance. The ordinance seems to almost ask for an engineering level of information when rezones are done. The ordinance has been crafted because jurisdiction wants to see what the

outcome will be before they make any kind of legislative decision. He adds that once something is allowed or conditionally allowed, it becomes a right and it needs to be approved if it complies with the code. It is not something that can be taken away without being compensated for. It has to be approved if it complies with the law. Rezoning is changing the law; this can include changing the colors of the map, the polygons. Written law effects that land, so it is changing the law. Legislative has a wide-open breadth of decision-making discretion as long as the findings are objective and in the interest of the public, health, safety, and welfare. Mr. Wilson warns that the Planning Commission should not give in to the public clamor concerning administrative and legislative items; this can lead to trouble with the courts. Mr. Ewert states that they need to pay attention to legitimate public interest. He notes that concerns such as, the traffic speed, affects on the community, anything that is tied to objectivity, it doesn't have to be high objectivity. It would be considered a fundamental change to the face of the community. He adds that it is important to have back up for this in the General Plan and the ordinances. Findings are important. At some point in time, the rezone was modified to ask for the exact locations of the buildings and building design. It might not be necessary to go to this extreme in all cases. He notes that they might have gone overboard when this was changed in 2009. He adds that he would like to make some tweaks to the 2005 version. At this point, it is cumbersome. This is concerning the rezones done in the past 2 years. All of these should have come with concept development. Mr. Ewert states that when looking at rezones in some cases if the change is not going to make a huge impact, staff can be general.

Mr. Ewert states that concerning unanimous Planning Commission decisions, it takes a unanimous vote from the County Commission to overturn the vote. He adds that his recommendation has changed. The Planning Commission should not have this level of legislative control to bind the hands of the County Commission. He doesn't recommend that any elected official delegate that kind of power. All it takes is one County Commissioner to say they are opposed or to put Planning Commission authority over any County Commission recommendations. He adds that he does recommend the County Commission should yield to the Planning Commission. Commissioner Favero asks if this is just on legislative changes. Mr. Ewert states that it is only on legislative changes and the paragraph is in an odd spot it might have gotten jumbled. He is working with the attorney's office. It seems like it is misplaced in the code. Commissioner Favero asks if it put the County in any kind of liability. Mr. Wilson states that if the County Commission starts to delegate that kind of authority to other bodies, the County can run into some liability issues. Mr. Ewert states that there is a provision in state code that states that a body cannot defer or delegate. He notes that he is not sure if this would fall under that restriction. As a practice of government, one that should foster democracy through voting there shouldn't be an authority at a higher level than the elected officials. It setups unnecessary conflict.

Mr. Ewert states that concerning the implementation of any plan adopted such as General Plans. There is a requirement in a section in the code that states that the Planning Commission cannot recommend approval of a rezone unless it complies with the General Plan.

Regarding concept design, he recommends it not be required unless it is a commercial development, planned residential development, or Cluster subdivision. He adds that concerning residential development the market should govern that. One thing that the old rezone code did that might cause struggle with the courts, is conditional zoning. Anything conditional is administrative zoning is legislative. He adds that the zoning should not be granted unless they like what is being proposed unless they are will to make the changes voluntarily. The developmental agreement should come with a rezone. Some attorneys will say that a developmental agreement should be in the administrative realm because it is contract law, but because most commonly in these cases it runs with rezones it should be tied to a legislative decision. This way a developer cannot construe that they are administratively tied to a mutually negotiated contract. There is a lot of flexibility that is built into contract negotiations. There have been several court cases concerning referendum and initiative. If a legislative decision is made state constitution protects the citizen's right to refer that decision to a vote on legislative decisions not administrative. If you want the decision to stick it needs to be administrative. There are a lot of different nuances to administrative and legislative ideas that affect a lot of different things. Mr. Ewert states that he would like to change it so states that concept development plans are not required unless they are needed. Commissioner Favero state that regarding the concept development plans he feels it is important to be about to see the roads on new subdivisions being developed and what the impact is going to be. It is important to be able to see how all the lines are going to match up and that is where the conception reading the planning standpoint. He asks if they are going to be able to maintain half-section roads. Mr. Ewert states that they should add some legislative discretion to require a concept plan. Planning Commission should be able to say if they need a concept plan. If there are solid ordinances that require good connectivity. He adds that hopefully, they can get to that point soon so that they can make more administrative decisions with finding that comply with the

law. It makes it predictable for the developer and it will make it nice for the County because they can make it through the process without a lot of conflicts. Commissioner Favero states that he doesn't want to write an ordinance that leaves them begging for information. Mr. Ewert agrees and states that they would write it in as " a concept development is required unless the Planning Director deems it routine enough that it is not needed. He adds that if they are going to require a concept plan it should only be done with a development agreement. He asks if there is any other information that should be included concerning rezoning. He notes that every jurisdiction does this differently. From the Planning perspective if it is a routine thing and completely complies with the General Plan it can be made simple. He adds that the nonroutine things that fundamentally change the community, this is where they should take more time to take a step back.

WS2: Discussion regarding proposed amendments to the second kitchen regulations.

Mr. Ewert states that this is something that has posed some challenges. He notes that this is because people take advantage of what is there and build multiple homes in one building. This is concerning the standard for detached single dwellings. One or more additional kitchens are permitted in the detached single-family dwelling if all of the requirements are met. One or more additional kitchen shall be connected by an open and common living area with outdoors or other obstructions. If they are going to add another kitchen it can not be closed off. He notes that it should be kept open because in some cases they have been quartered off into accessory dwelling units the density goes up and there can be owner tenant issues. It should be kept at a single-family. The primary reason for the changes is mostly additions. There have been cases where the public wants to put a kitchen in the add on which is over the garage. It is still part of the house. In some cases, it is really easy to turn them into an apartment. There is a process that they can go through to build an accessory apartment it would be lawful if they went through that process.

Commissioner Atkinson asks if this is about density or safety or is it about both. Mr. Ewert states that he believes it is mostly about density. It fundamentally affects the intent of the code. He adds that he doesn't see the market turning any accessory apartments. This comes up a lot when reviewing new house plans and house plan additions. Mr. Ewert notes that a single-family dwelling is for a family. A family is defined as lawfully related people and their support staff. Matt Wilson notes that the legislature just passed a new statement that you cannot impose any fines or prevent anyone from listing a residential unit on a short term rental site. He adds that a short term rental is anything less than 30 days. Anything longer than 30 days is not considered short term. He adds that it can be rented for half a year as long as it's not consecutively and they might run into issues renting it to the same person longer than 30 days. Mr. Ewert states that they do regulate nightly rentals and they are not allowed except for in certain zones. If a homeowner accepts money for someone to come live in their space it is a nonwritten contract. That contract is good for 30 days and the tenant cannot be kicked out without notice for 30 days.

WS3: Discussion and update regarding water provisions in the subdivision code.

Culinary water needs to demonstrate paper and water before plat recording. Wells need to be drilled and pump tested. Someone needs to prove they have the water rights or shares to access that water. For wells, it would have to be an approved well, or the plat is not going to get approved, otherwise, it would mean putting in a community system. Chair Edwards states there are two separate situations and in the Ogden Valley and Western Weber it might be worth developing two separate codes. He adds that the only way to make this code clear would be to do it separately. He notes that there are 4 different water systems in Western Weber and Ogden Valley has 86 different individual companies. Mr. Ewert agrees that this could be a problem. Chair Edwards states that the state is not going to allow someone to come in and drill a well and get a well permit. He adds that it was good to get all the Planning Commissioner together but it's like talking about apples and oranges to the issues faced in Western Weber and Ogden Valley. Mr. Ewert states that concerning his comment about the wells he was not aware that the state would not permit wells. Chair Edwards states that not for culinary water because it is in such proximity to the culinary water system. It's like regionalizing wastewater systems. Commissioner Favero notes that getting a permit to drill in Western Weber is more difficult than in the Valley. The impact that the wells have on the aquifers is tremendous. He agrees that there are differences between the Ogden Valley and Western Weber. Mr. Ewert states that he is hoping to make a single unified code. If it doesn't apply in one area it can apply in the other. He adds that they may need to carve out exceptions where it doesn't make sense. He notes that if this could be minimized it could save tax dollars and having to hire more people. Chair Edward states that the issues that concern water in the code are very complex. It is going to be convoluted. Mr. Ewert agrees that it is very complicated and he is trying to find the patterns of commonality, addressing,

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and regulating those. He adds that diving too deep into the differences is where it gets more complicated. Commissioner Favero notes that there is more complexity to the secondary water than there is to the culinary water. Mr. Ewert agrees and notes that this is because the culinary water is a life source and it has to be worked out long before development got there. Commissioner Favero states that the use for culinary isn't as vast, the use for secondary was established for agriculture. He adds that the complexity concerning secondary water and knowing how it all works is where a lot of people don't want to delve into it to sort some of that out. He notes that they have overpopulated what the old codes and laws state in a certain area. Agriculture is not as big of a concern. This is where it gets difficult because you have to divide the water up to determine how much water is going to be utilized for watering the lawn. It is going to take expertise and patience to go through that. Concerning the number of water companies in the Upper Valley, he asks if it is for secondary and culinary. Mr. Ewert states that it is just culinary. Commissioner Favero asks what they have for canals and secondary water. Mr. Ewert states that they have some ditch systems and some gravity flow ditch systems. Most of the ditch systems are pressurized. He adds that the valley floor was farmed all the water was attached to the valley floor but it but the valley floor is not what is developing out there. Wolf creek the benches and the mountaintop are the ones that are being developed. The rights and shares that exist all have to be moved the point of diversion, they are all going somewhere else. He adds that he sees this issue from few different points, aquifer, rainfall, and access. It is important to look at what is going to affect the aquifer. Looking at the map that shows the Well map, it is so diverse and the wells are not very far away from each other, the geology gets weird. Rainfall is another issue, it's not as big of an issue if the plan is to regulate based on water availability. Rainfall is going to be based on what the state has already allocated in water rights. Concerning access, it would be the point of diversion, the flow, and how much is going to pump out of it. He asks if they are going to allow punching straws in the ground.

Chair Edwards notes that before moving forward Staff should contact the Rural Water Association. They work with more rural areas in the state and could provide more insight into the small system and regulation issues. He adds that they should not put too much into the ordinance concerning culinary water, because it is already being regulated. He adds that concerning the secondary water there is meter out there but he is not aware of there being a state agency to check the meters. He adds that recently there was a developer that got approved for a secondary water system, and there is no one out there to verify that meters are being installed. For example, Hooper has Hooper Irrigation to monitor and verify issues such as these. In areas like Western Weber where they are required to do it there is no one to monitor them, is it the County's Job to verify those things? Who should be doing it? Commissioner Favero asks if they can afford to do it? Are they willing to start charging to do it? Mr. Ewert states that they might be able to adopt an impact fee to charge the developer, not the customer. Commissioner Atkinson states that he was very concerned about the secondary water system approved last month because it was the long-term management of the water system. Commissioner Parke adds that there is no long-term management for that water system. Chair Edwards state that anytime an HOA has approved the people living in the area being charges double because they are paying their HOA fee and they have to pay to maintain the roads and there are no subsidies. He adds that those private roads are not usually built to County standards. Commissioner Favero states that he agrees that they should not be told what to do but to get the infrastructure people are going to have to look into it. Lots that have been sold to development the water goes with them, so there is water there that is for that ground, but now the gravity flow system has been taken away. People living in a 1-acre lot can't flood irrigate their property? The only way to get the water there is pressurized and that costs money. Commissioner Andreotti states that they are going to have to get an organized secondary water company in that area to regulate that. If Western Weber decided to incorporate this is one of the issues they are going to have to wrestle with. Commissioner Favero states that the problems are the same for that area is they are a part of the County or the become part of a city. Chair Edwards asks why it is the County's responsibility to dictate who has access if Hooper Irrigation is out there. He states that if Hooper Irrigation comes in and determines their area they can apply for funding or loans from the states then they can set the rules for that area. He states that Hooper Irrigation is trying to push the buck; it is not the County's job to dictate those things. Hooper irrigation needs to become a special services district; this would solve the whole problem with secondary water in the area. Commissioner Favero state that it would only solve issues for that part of the area. The Warren part of the area doesn't have a pressurized system and Hooper is not going to develop their water beyond their boundaries. the water shares that the canal company controls are for an area and those should be turned into secondary shares. They all agree something has to change. Mr. Ewert states that a few years ago West Haven tried to annex up quite a bit of Taylor. Chair Edwards states that West Haven is still trying to annex part of Taylor. Commissioner Favero states that there is only one place out there to get the money because there is no room for commercial development. Chair Edwards states that it is growing out there and they are going through another culinary set right now. The same thing is happening with the secondary water. He adds that he does not feel it is the County's job to regulate that. Commissioner Favero states that he agrees that but the County does need to be a part of the

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permitting process. He adds that he feels they have run amuck out there with everything that has happened. He states that have experienced this there was a source but there. There were two phases of the subdivision and the first phase felt they were more important than the second. The second phase did not know what was going on other than they were not getting the water. He adds that he was a part of the HOA and when he had had enough he left and it fell apart and everyone hooked up their yards to the culinary water. Chair Edwards states that when he was at Plain City there was no culinary system Bona Vista served the area. There were two secondary systems and they had to get a will serve letter for culinary, and Bona Vista had to sign and verify that water was there. For secondary, the City engineer had to get a letter from them that verified that the system has been approved that there is enough water. Mr. Ewert states that this is written in the plan but it doesn't put it on the County Engineer. It covers the fact that the secondary water provider is covered until Hooper or someone creates a district out there. Chair Edwards states that it is a lot easier for Hooper to do it. people are already going to have the shares instead of people having to go get them. Commissioner Favero asks if they are considering a district out there. Mr. Ewert states they have talked about it, but they need consent from the people that they serve and so far there is no consent. They have not tried it yet. Commissioner Favero asks if the pressurized side of that business could not and leave the agricultural side split off and make a district. Mr. Ewert states that he was talking to Ryan from Taylor West Weber and he stated that the district is already there and that component is already there. Ryan said that secondary is different and they don't want to be in the second district business. Mr. Ewert responded to the County is not in any the Water business, but somebody should, and since Taylor West Weber is already there and Hooper is a private company why not just absorb that. Chair Edwards states that Weber Basin would likely go to with Hooper Irrigation before Taylor West Weber. He adds that they share a pond.

Commissioner Favero states the price of the hook up has gone up beyond the price of the water. He notes AG. Water is two times the value of pressurized irrigation water. Mr. Ewert asks who regulates that. Commissioner Favero states that this is what is required by Hooper Irrigation but there is some common sense to this, it is one share of water per one acre lot. It was not based on greed. Chair Edwards notes that it doesn't have to run through the land. Commissioner Favero agrees and notes that it is a separate entity but the property is not worth as much without the water. Mr. Ewert asks if all that is transferred without any negotiation with Weber Basin. Commission Favero states that it can. He adds that the water should stay where the water is now. In areas that are developable but do not have water on them, they should have the opportunity to xeriscape to a certain point. He states that he understands that certain percentages have to be irrigated, but that allows them to hang on to some of the water. Commissioner Favero states the economics is going to drive this. He states that the water going with the property gives the best yield. Chair Edwards state that he does not feel that the County should dictate how many water shares the land is sold with. Mr. Ewert states that there is something in the code that states that if you have assigned rights they have to stay there. This is a condition of approval for the development. Commissioner Favero states that once the water goes out of agriculture it should go-to title The water should go with the title too. There have been instances where the person who buys the property doesn't know they don't have secondary water until they go looking for it and they realize that it would cost them close to 15,000 dollars. Mr. Ewert states that if it is a secondary system the Commission doesn't want to require long stretches of trenches that developers have to build to install the systems. They are willing to consider 300ft multiplied by the number of lots if its within that distance of a secondary system that currently exists they can build a system on the property that meets the standards. If it is built to a standard it is a isolated stand-alone access to a source. He asks if at this point those shares should go into the water company. Chair Edwards states that it would need to stay with the HOA because the water company won't want to take it on because they don't want to lose the assessment. At this point they need to pay and assessment for each share of water which helps maintain the canal. They are not going to want to take on owning that water. They are not going to want to take it on because it's part of a private system, it doesn't matter if it is built to their standards. Someday it might be the water companies, but until then they are not going to want to take on that responsibility. Mr. Ewert goes over his notes, it goes all the way to title, stick to the covenant of the HOA, it not just water rights, it is contract that obligates them to consolidates into the bigger system at the time of the covenant, dead obligation should not be the responsibility of the existing bigger system the obligation would belong to the owners. Chair Edwards states that the it is essentially the owners impact fee. Commissioner Favero states he does not like the water go all the way to title, but there are a lot people who will take advantage. Once the property is developed the honest people are out of the loop. Mr. Ewert states that in these cases there people who have bought the problem and if the County wants to enforce they are enforcing against a victim. Commissioner Andreotti state that he does not want to have the situation where there is a lawsuit for secondary or culinary water or sewer. There has to be some way of oversight where the secondary water should be there. Commissioner Favero agrees and notes that in the

case where there is no water it could already be tacked on to the price of the lot. These are the nuances of the secondary water, culinary water is cut and dry. He asks how they ensure that they are built to standard. He asks who is going to do the inspection.

Mr. Ewert states that based on their discussion it seems to him it is still simplified it does not go into the bigger details of secondary water. He states that beyond the points they have discussed his recommendation would be to file for incorporation. Whether it be incorporation of a city or incorporation of a district. Chair Edwards states the city is not going to solve the secondary water issue. Commissioner Favero states that they will have to go through the growing pains and the cost of that as opposed to getting with a city that has already been through that. Chair Edward states that they will need to take on a sewer system that hasn't been well maintained. He notes that in the feasibility all the districts for parks, fire and sewer are not included. There are a lot of issue that are not addressed in the feasibility study. He adds that there a lot of issues that need to be addressed with the County and can't because it's not clear what is going to happen with the incorporation of West Weber. They need to be moving forward, in this time of growth. Commissioner Parke states that this is why it bothersome that the General Plan was put on hold, that could help guide Western Weber and the new city if it were happen. Chair Edwards states that there is so much diversity in that area. The community is so divided over the topic of incorporation that there is not going to be any good results from a General Plan update. Commissioner Andreotti states there are issues with participation, people only participate when there is an issue that concerns them and nobody shows up when it concerns the ordinances. Commissioner Favero agrees and states that if there are individuals who believe it will be much easier after a city is created than dealing with the County it's not going to be. Commissioner Parke states that nobody participates when they are putting the ordinance together, but they show up to complain when there is something going on in there back yard.

Work session Adjourned 7:25 PM

Respectfully submitted,

Marta Borchert