

## OGDEN VALLEY PLANNING COMMISSION

### MEETING AGENDA

**February 28, 2023**

**Pre-meeting 4:30/Regular Meeting 5:00**

- *Pledge of Allegiance*
- *Roll Call:*
  - 1 **Minutes:** 10-04-2022, 10-25-2022, 11-29-2022, 12-06-2022
  - 2 **Training by Chief Civil Deputy Attorney Chris Crockett**
  - 3 **Rules of Order**

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

##### **4. Administrative Items:**

**4.1 2023-03** - Consideration and/or action on a conditional use permit for the Mcleod Bed & Breakfast Dwelling. **Planner: Felix Lleverino**

##### **5. Public Comment for Items not on the Agenda:**

##### **6. Remarks from Planning Commissioners:**

##### **7. Planning Director Report:**

##### **8. Remarks from Legal Counsel**

##### **Adjourn to Work Session**

**WS1:** Discussion on Water Conservation Goals and the General Plan. **Planner: Bill Cobabe**

**Adjourn**

***The regular meeting will be held in person at the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.***

& Via Zoom Video Conferencing at <https://us02web.zoom.us/j/89637924468> Meeting ID: 896 3792 4468

**A Pre-Meeting will be held at 4:30 p.m.** The agenda for the pre-meeting consists of discussion of the same items listed above, on the agenda for the meeting. No decisions are made in the pre-meeting, but it is an open public meeting.

***In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8761***

## Meeting Procedures

### Outline of Meeting Procedures:

- ❖ The Chair will call the meeting to order, read the opening meeting statement, and then introduce the item.
- ❖ The typical order is for consent items, old business, and then any new business.
- ❖ Please respect the right of other participants to see, hear, and fully participate in the proceedings. In this regard, anyone who becomes disruptive, or refuses to follow the outlined procedures, is subject to removal from the meeting.

### Role of Staff:

- ❖ Staff will review the staff report, address the approval criteria, and give a recommendation on the application.
- ❖ The Staff recommendation is based on conformance to the general plan and meeting the ordinance approval criteria.

### Role of the Applicant:

- ❖ The applicant will outline the nature of the request and present supporting evidence.
- ❖ The applicant will address any questions the Planning Commission may have.

### Role of the Planning Commission:

- ❖ To judge applications based upon the ordinance criteria, not emotions.
- ❖ The Planning Commission's decision is based upon making findings consistent with the ordinance criteria.

### Public Comment:

- ❖ The meeting will then be open for either public hearing or comment. Persons in support of and in opposition to the application or item for discussion will provide input and comments.
- ❖ The commission may impose time limits for comment to facilitate the business of the Planning Commission.

### Planning Commission Action:

- ❖ The Chair will then close the agenda item from any further public comments. Staff is asked if they have further comments or recommendations.
- ❖ A Planning Commissioner makes a motion and second, then the Planning Commission deliberates the issue. The Planning Commission may ask questions for further clarification.
- ❖ The Chair then calls for a vote and announces the decision.

## Commenting at Public Meetings and Public Hearings

### Address the Decision Makers:

- ❖ When commenting please step to the podium and state your name and address.
- ❖ Please speak into the microphone as the proceedings are being recorded and will be transcribed to written minutes.
- ❖ All comments must be directed toward the matter at hand.
- ❖ All questions must be directed to the Planning Commission.
- ❖ The Planning Commission is grateful and appreciative when comments are pertinent, well organized, and directed specifically to the matter at hand.

### Speak to the Point:

- ❖ Do your homework. Obtain the criteria upon which the Planning Commission will base their decision. Know the facts. Don't rely on hearsay and rumor.
- ❖ The application is available for review in the Planning Division office.
- ❖ Speak to the criteria outlined in the ordinances.
- ❖ Don't repeat information that has already been given. If you agree with previous comments, then state that you agree with that comment.
- ❖ Support your arguments with relevant facts and figures.
- ❖ Data should never be distorted to suit your argument; credibility and accuracy are important assets.
- ❖ State your position and your recommendations.

### Handouts:

- ❖ Written statements should be accurate and either typed or neatly handwritten with enough copies (10) for the Planning Commission, Staff, and the recorder of the minutes.
- ❖ Handouts and pictures presented as part of the record will be left with the Planning Commission.

### Remember Your Objective:

- ❖ Keep your emotions under control, be polite, and be respectful.
- ❖ It does not do your cause any good to anger, alienate, or antagonize the group you are standing in front of.

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for October 4, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/83042762116>, the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** Jeff Burton, Dayson Johnson, Jared Montgomery, Justin Torman, and Janet Wampler.

**Absent/Excused:** Chair Shuman and Commissioner Don Stefanik Commissioner Dayson Johnson

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

- **Roll Call:**

Commissioner Burton conducted roll call and indicated Chair Shuman and Commissioner Stefanik were excused.

**1. Work Session: WS1 – Transferable Development Rights Overlay Zone Discussion.**

Principal Planner Ewert conducted discussion among the Planning Commission and staff regarding the concept of transferable development rights (TDR) and the formulation of a TDR overlay zone; the group debated the manner in which the value of a development right can or should be determined, with Mr. Ewert indicating valuation is largely market driven. There was a focus on the need to identify the appropriate places in the Ogden Valley for development rights to be transferred to. Mr. Ewert stated there is already a mechanism for landowners and developers secure approval of a TDR action, if the development rights are being transferred into a form-based village project. However, there are other areas where TDRs may be appropriate, but they are smaller and entail the transfer of fewer development rights. Some TDRs have been executed based upon a development agreement for a certain project; this occurs due to the absence of a formal County ordinance/zoning that provides for TDRs. Mr. Ewert distributed a handout to the group that included a map of the Ogden Valley; the goal of the TDR concept is to preserve open space on the Valley floor, with density stepping up as development moves up the benches and hillsides. He discussed policies that have been implemented in other communities that are somewhat similar to the Ogden Valley but noted that the Valley is very unique and the County will be 'writing its own book' in terms of the best way to preserve desired open space in the Valley, while preserving private property rights in terms of development. Mr. Ewert stated he has contemplated three options for the Commission to consider in terms of TDR zoning, and he emphasized that these options should not be considered as being 'set in stone'. He discussed the creation of a map that identifies areas of valuable open space that can be classified as 'sending areas', areas that are suitable to be 'receiving areas', and areas that are in-between that may include corridors with existing infrastructure but could serve as both sending and receiving areas. The General Plan includes a guideline that should not be ignored; areas that are defined as valuable open space should only include development that can be clustered in order to preserve as much open space as possible (60 to 80 percent open space). The first option is to only allow sending from a sending area, receiving by a receiving area, and no development in a sending area; this is the most extreme option in terms of developing a TDR; Commissioner Wampler pointed out the current County Commission has no interest in this option, so it may not be a true option for the Planning Commission to consider. Mr. Ewert then stated that option two would be to allow property owners in a sending area to develop 50 percent of their development rights in a clustering fashion, and if they want to use their other 50 percent, it can only be transferred for development. Option three, which he feels is the option that would be best supported by the County Commission, is that sending areas can send or develop, including large lots or clustering, and receiving areas can receive. This option provides the greatest flexibility for property owners; some are interested in preserving open space, but some want to develop their property and possibly create a few lots for family but are willing to send their development rights to other locations. Commissioner Burton expressed concern about the potential for option two to be the same as a 'property taking'. Mr. Ewert stated there is a very specific legal definition of property taking; unless the County takes an action that completely devalues a property, it would likely not be considered a 'taking'. This led to high-level discussion and debate among the group about the appropriate way to incentivize a landowner to transfer their development rights to another area of the Valley, which led to a focus on the areas of the Valley in which they feel higher density development is suitable and/or will be accepted by the residents living in those areas. Mr. Ewert stated that he can use this feedback to adjust the three options and possibly flesh out an additional option four.

Discussion then shifted to the potential power of a TDR overlay zone; Mr. Ewert explained that if a TDR overlay zone were created, the guidelines of that zone would govern and supersede any guidelines or rules of the underlying zoning. This could create some unintended consequences and the Commission and staff needs to expend their best effort to determine those possibly negative unintended consequences to try to address them. This may include evaluation of the potential financial benefit of a TDR action,

the ability to perform infrastructure improvements in TDR receiving areas, and the ultimate impact a TDR could have on the density of an area. Mr. Ewert stressed that it would be beneficial to create a policy or program that is easily interpreted by the public and property owners relative to the conditions that must be present in order for a TDR action to be approved; this would alleviate the burden on staff and appointed Commissioners in terms of evaluating every single development application on a case-by-case basis. If clear guidelines and expectations can be communicated in a form-based ordinance and documented upon a sending/receiving map, the confusion and contention that has arisen in conjunction with past TDR applications may be alleviated. Commissioner Torman stated that in reality, there are already natural village areas that exist in Ogden Valley; if all property owners can send and/or receive, the majority of people that live in the village areas do not truly have the opportunity to send because they do not have enough property and he does not feel it would be too great a limitation to determine who can send a development right. Many are already naturally restricted due to their land size. Commissioner Burton stated that is true for the majority, but there are some unique properties to which that theory does not apply. Commissioner Torman agreed but noted it may be possible for those properties to be considered on a case-by-case basis. Commissioner Wampler suggested a two-tiered incentivization approach; anyone can send or receive, but when sending to a form based village area, proof of serviceability is not required. However, when sending to a rural area without infrastructure, proof of serviceability is required. This would create a natural incentive for a sender to look to sell their rights to a property owner in a village area. The landowner would still have rights, but there may be more economic sense in sending the rights to a village area that is already improved. The Commission debated this concept and examined areas of the Ogden Valley that are already established as village areas, the number of development rights that have already been transferred, and the existence of or need to create a database that will serve to track the number of approved development rights in the Valley.

Mr. Ewert stated that he would like to refine the map of the Valley to include riparian corridors and identify properties that may be suitable for open space preservation to create better opportunities for the Valley at buildout. This led to brainstorming among the group regarding the areas that are prime for designation as open space, as well as suitable receiving areas; they suggested a public open house be held to allow for those currently living in or owning property in the Valley to provide input that would inform the map. They discussed individual unique parcels in the Valley, noting it will be difficult to develop a 'one-size-fits-all' approach to TDRs; Mr. Ewert emphasized that property owners and developers can already apply for approval of a TDR, which would be accomplished through a development agreement for a specific property; the basis of tonight's discussion was to consider whether it is possibility to develop an administrative process for approving TDRs. In order for administrative approval to be an option, clear rules, allowed uses, density, etc. must be clearly identified. There was continued discussion regarding the public process required for proceeding with consideration of creation of a TDR overlay zone; Mr. Ewert stated that a great deal of public involvement is needed and warranted for this matter since it has the potential to have a great impact on the Valley; there are some areas of the Valley that are prime for development of additional villages, but this will not be popular among existing residency due to the assumption of increased density in a village project. Mr. Burton stated he will used the feedback provided by the Commission this evening to adjust the options that he presented for consideration tonight along with a map that will include shading to identify sending and receiving areas, properties suitable for cluster development, and minimum lot sizes for development within sending areas. He also invited Commissioners to complete their own version of a color-coded map and send those to him for incorporation into future proposals for Commission discussion.

**Meeting Adjourned: The meeting adjourned at 8:29 p.m.  
Respectfully Submitted,**

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**Weber County Planning Commission**

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for October 25, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/89595999398>, the time of the meeting, commencing at 4:30 p.m.

**Ogden Valley Planning Commissioners Present:** Trevor Shuman, Chair, Jeff Burton, Jared Montgomery, Don Stefanik, Justin Torman, and Janet Wampler.

**Absent/Excused:** Commissioner Dayson Johnson

**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 Commissioner Dayson Johnson was excused from the meeting.

Commissioner Wampler declared a conflict of interest relating to agenda items 1.1 and 2.2; she has a family member who is involved with those applications.

Commissioner Burton stated that during the Commission's last discussion of the Parkside Subdivision, he recused himself because his wife owns a lot in the neighborhood. However, he does not believe this will keep him from being impartial and he would like to participate in discussion of the project this evening. Chair Shuman called for a vote of all in favor of allowing Commissioner to participate in the discussion of agenda item 1.1; all Commissioners present voted aye.

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

##### **1. Administrative items:**

##### **1.1 UVP080922 Request for a recommendation of final approval of Parkside Phase 3 PRUD Subdivision, consisting of 16 lots.**

**Planner: Tammy Aydelotte**

Commissioner Wampler excused herself from the meeting at this point.

Planner Aydelotte explained the applicant is requesting a recommendation of final approval of Parkside PRUD Phase 3 Subdivision in the RE-15 Zone. The proposed development consists of 16 lots with common area surrounding each lot. The Parkside PRUD Phase 3 is part of the master planned community within the Wolf Creek Resort known as "The Bridges PRUD" which consists of a multi-phased development including six communities (364 units) with a variety of housing options and approximately 143 acres of open space. The proposed subdivision "Parkside PRUD Phase 3" is one of the three phases (72 units) in the Parkside community. The Uniform Land Use Code of Weber County (LUC) §106-1-8(f) identifies the approval process for final subdivision approval. The proposed subdivision exceeds the number of lots that can be administratively approved as part of a phasing process; therefore the final plat must be considered and approved by the County Commission after receiving a recommendation from the Planning Commission, at final approval. The proposed subdivision and lot configuration is in conformance with the current zoning, the approved PRUD and the Zoning Development Agreement Conceptual Land Use Plan as well as the applicable subdivision requirements as required in the LUC. She summarized staff's evaluation of the request, including compliance with the General Plan and zoning regulations; Ogden Valley Sensitive Lands Overlay districts; common areas; Natural Hazards Overlay zoning; culinary water, irrigation water, and sanitary sewage disposal; additional design standards and requirements, and tax clearance. She briefly summarized the recommended preliminary conditions of approval and concluded staff recommends final approval of Parkside PRUD Phase 3 Subdivision, consisting of 16 lots located at approximately 4843 Howe Dr., Eden, UT, 84310. This recommendation is subject to all review agency requirements and based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan
2. The proposed subdivision complies with applicable county ordinances.

Chair Shuman invited public input.

Commissioner Burton moved to grant approval of application UVP080922, final approval of Parkside Phase 3 PRUD Subdivision, consisting of 16 lots, based on the findings and subject to the conditions listed in the staff report. Commissioner Torman seconded

the motion. Commissioners Burton, Montgomery, Shuman, Stefanik, and Torman, and all voted aye. (Motion carried 5-0). Commissioner Wampler was not present for this discussion due to recusal.

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

#### **2. Legislative items:**

##### **2.1 ZTA 2022-02: A public hearing for consideration of a county-initiated text amendment to the Subdivision Ordinance to exempt lot adjustments from preliminary and final subdivision review. Planner: Steven Burton.**

Commissioner Wampler rejoined the meeting.

Planner Burton explained the Weber County subdivision code currently requires all subdivision amendments to receive an administrative subdivision approval at a formal meeting. This process can add several weeks to the approval timeline once an application is submitted to the county. There is currently no expedited process for individuals who are proposing to amend lot boundaries with adjacent lots, or who propose to remove plat restrictions that are no longer applicable. This proposal will exempt lot line adjustments and plat restriction removals that are no longer applicable from the formal preliminary and final plat approval meeting. Under the proposed subdivision code change, a lot owner can submit a lot adjustment to the county for review and receive formal review comments, print a mylar plat, get county signatures, and record the plat without a formal approval meeting. He summarized staff's evaluation of the request; this proposal is not anticipated to impact the Western Weber General Plan. The proposal will shorten the review period for lot adjustments, the fee of which will be less than the normal subdivision review fee. This proposal can be considered to be a benefit to lot owners who simply want to adjust boundaries or remove irrelevant plat restrictions. Staff recommends that the Planning Commission forward a positive recommendation to the County Commission for the proposed text amendment ZTA 2022-02. This recommendation may come with the following findings:

1. The proposal is an additional subdivision option for lot owners.
2. The proposal is not contrary to the goals and principles of the general plan.

Legal Counsel Erickson facilitated a review of the proposed text amendments; there are a few additional minor adjustments he would recommend to ensure compliance with State Law. Mr. Burton stated that he accepts and supports the amendments recommended by Mr. Erickson relative to meeting requirements for lot adjustment applications.

Commissioner Burton presented a hypothetical situation where two landowners wish to adjust their lot lines responsive to the incorrect placement of a fence or structure; he inquired as to the process they would follow to complete the lot line adjustment. Mr. Burton stated that one or both property owners would complete an application, and both landowners would need to sign the plat and acknowledge the lot line adjustment.

Commissioner Stefanik inquired as to the catalyst for this proposed change. Mr. Burton stated that he manages planning projects and applications that move through the Planning Division office and he has noticed that some simple applications take a significant amount of time to move through the process and receive approval; for minor applications, he feels that shortening the process is appropriate and he believes the County Commission will support this change.

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

There were no persons appearing to be heard.

Commissioner Stefanik moved to close the public hearing. Commissioner Wampler seconded the motion, all voted aye.

Commissioner Torman moved to forward a positive recommendation to the County Commission regarding application ZTA 2022-02, county-initiated text amendment to the Subdivision Ordinance to exempt lot adjustments from preliminary and final subdivision review, allowing Legal Counsel Erickson to make minor edits to the text before it is presented to the County Commission. Commissioner Wampler seconded the motion. Commissioners Burton, Montgomery, Shuman, Stefanik, Torman, and Wampler all voted aye. (Motion carried 6-0).

##### **2.2 ZMA 2022-01: Consideration of a request for approval of a zoning map amendment to rezone property from RE-15, RE-20, FR-3, O-1, F-5, CVR-1 and AV-3 to the Master Planned Development Overlay zone. The areas are referred to as The Exchange, Eagle Crest, and Cobabe Ranch. Planner: Steven Burton.**

Commissioner Wampler left the meeting.

Planner Burton explained on August 23, 2022, the Ogden Valley Planning Commission tabled a decision on this application so that a work session could be held in September of 2022, in which the Cobabe development would be discussed to better understand how it relates to the county’s Form-based zoning and small area plans. During the work session held on September 27, 2022, the Planning Commission discussed with the applicant how the proposal relates to the county’s small area planning. The Planning Staff pointed out that the proposal takes place in what will be the Wolf Creek area boundary for small area planning. The applicant showed an exhibit that included a plan that could be platted under the existing zoning and compared it to the proposed layout, which includes 70 acres of open space, 68 townhomes, and 33 single family lots (2 to 3 acres in size each). He reviewed the maps of the subject property, which were included within his staff report. He identified development option one, proposed by the applicant, and noted that after the August 23 work session, Planning staff have met with the applicant and have discussed creating another optional layout that brings the townhomes further south, away from Trappers Ridge development. Mr. Burton identified development option two on one of the maps and also presented a map from the General Plan, which was the focus of the discussion during the work session. Planning staff has added several recommendations for the Planning Commission to consider in making a motion to forward a recommendation to the County Commission. Mr. Burton then summarized the development history; Wolf Creek Resort has been a Master Planned Resort Community since the early 1980’s. In October of 2002, the developer of Wolf Creek Resort petitioned the County to rezone certain development areas, within the resort, and amend the original master plan and agreement. The 2002 Wolf Creek master plan amendment was approved as Contract# C2002-139 and recorded with the Weber County Recorder’s Office as Entry# 1883524. In March of 2016, an amended development agreement was approved and recorded that clarified the density rights of certain developers, including John Lewis, of property in the boundaries of the Wolf Creek resort. This agreement was recorded as Entry number 2784398 and is used as a basis to understand John Lewis’s development rights as they pertain to this application. There are three areas that are proposed to be rezoned to the Master Planned Overlay zone. The developer refers to them as The Exchange, Eagle Crest, and Cobabe Ranch and is proposing to transfer existing density to these areas so that there is no increase in density units. The developer will use their existing entitlements from the wolf creek development agreement as well as other entitlements outside of the development agreement. The Exchange will include 144 units, Eagle Crest will include 192 units, and Cobabe Ranch will include 101 units. A total unit count of 437. Out of these 437 units, the developer is proposing to transfer 80 units from outside of the Wolf Creek Resort and to include them in the Eagle Crest development plan. These units would come from the Ogden Valley Floor and the developer would not be able to plat these 80 units until they show the units have been successfully transferred in accordance with the land use code. The remainder of the proposed Master Planned Development units (357) come from the developer’s existing entitlements. Out of the 357 units, 216 come from the developer’s pot of units outlined in the Wolf Creek Resort development agreement (Entry # 2784398). These are known as Wolf Creek Resort entitlements. The exhibit below shows the hi-lighted units owned by John Lewis that will be assigned to the three Master Planned development areas proposed. As part of the rezoning to MPD overlay zoning, the developer will enter into a development agreement with the County that clarifies that the hi-lighted units from E# 2784398 are now part of the MPD overlay and can no longer be developed elsewhere. The agreement will include maps of The Exchange, Eagle Crest, and Cobabe Ranch to show what will be developed. He then summarized staff’s evaluation of the request, including compliance with the General Plan and zoning regulations; architecture design; cluster development; open space; street configuration; general uses; short-term rental uses; and transfer of density. In reviewing a proposed development agreement, the Planning Commission and County Commission may consider, but shall not be limited to considering, the following:

1. Public impacts and benefits.
2. Adequacy in the provision of all necessary public infrastructure and services.
3. Appropriateness and adequacy of environmental protection measures.
4. Protection and enhancements of the public health, welfare, and safety, beyond what is provided by the existing land use ordinances.

Staff has developed three recommendation options; under option one, staff recommends that the Planning Commission forward a positive recommendation to the County Commission regarding ZMA 2022-01, based on the layouts of Eagle Crest, The Exchange, and Cobabe Development option 1, as represented in this report. The recommendation is based on the following condition:

1. The O-1 area be preserved as O-1 and not rezoned to MPD overlay zoning.

This recommendation is based on the following findings:

1. The proposal implements a meaningful element from the general plan, specifically the transfer of density rights and providing important public street connections that allow for pedestrian and vehicle connectivity.
2. The proposal was considered by the Legislative Body, in conformance with Chapter 102-5 of the County Land Use Code.

Under option two, staff recommends that the Planning Commission forward a positive recommendation to the County Commission regarding ZMA 2022-01, based on the layouts of Eagle Crest, the Exchange, and Cobabe Development option 2, as represented in this staff report. The recommendation is based on the following condition:

1. The O-1 area be preserved as O-1 and not rezoned to MPD overlay zoning.

This recommendation is based on the following findings:

1. The proposal implements a meaningful element from the general plan, specifically the transfer of density rights and providing important public street connections that allow for pedestrian and vehicle connectivity.
2. The proposal was considered by the Legislative Body, in conformance with Chapter 102-5 of the County Land Use Code.

Under option three, staff recommends that the Planning Commission table the proposal, so that a more specific plan, based on development option 2, can be presented to the Planning Commission. This recommendation is based on the following findings:

1. A more detailed concept plan has not yet been provided for development option 2, to know how the lot and street layouts would fit into the area.

Commissioner Torman asked Mr. Burton to expound on his understanding of the definition of the term 'development rights'. Mr. Burton stated that a developer does not have a right to have their property rezoned; they have a right to build a home and use their property according to its current zoning, but they are not necessarily entitled to a zone change. A zone change is a legislative decision.

Chair Shuman invited input from the applicant.

John Lewis, Eden, stated this is a very large application and trying to accomplish overlay zoning of the entire area is fairly complicated. He stated he feels it would be smart to focus on the Cobabe Ranch area and some of the changes that have been made since the Commission's last review of this project. He believes the new plan makes more sense for the surrounding community as well as himself. Cobabe is made of up of two halves; there is a lower area and upper area. For the lower area, according to options one and two, nothing would be rezoned to allow for anything smaller than three acres. For the upper area, he would switch the locations of the townhomes and the two-acre lots; this would provide a greater buffer for the Trappers community. He feels this is a reasonable compromise and he met with several members of the Trappers community today to discuss possible parameters that he can abide by when redrawing the plan for the project and the things that both sides have agreed to include the following:

1. Two acre lots (15) will be above the townhomes, but below the powerlines – no homes will be above the powerlines.
2. Anything built in the less dense area must be at least 200 feet away from another structure or home in the Trappers community.
3. Barns will be constructed of wood rather than metal; no more than 25 feet tall with a gabled roof. No barns can be used as accessory dwelling units (ADUs). Barn cannot be larger than the footprint of the primary dwelling.
4. Fences will be existing barbed wire or buck and rail fence that he has used at his other projects.
5. Green-belt space will be maintained in option two; it is important to maintain the trails and open space connectivity in the area.
6. Where Cobabe road connects to the Trappers community, he would like to install a crash gate and advertise the road as accessible in emergencies only rather than as a pass-through road.
7. The parcels, once developed, will be prohibited from further subdivision.
8. Three night minimum for short term rentals.

He stated that these parameters will be used to develop the covenants, conditions, and restrictions (CCRs) for the project and he advised the Commission to condition their approval of the application upon these parameters. He then noted that he feels this project is meaningful as it will 'start the ball rolling' for upper valley sewer; this project, coupled with the Osprey development, will provide the 200 connections needed to spur future sewer infrastructure improvements at no cost to the average taxpayer. He stated that he also feels the project will improve transportation connectivity in the area, while not increasing the overall density. There will be approximately 50 acres of open space, as opposed to no open space if the property were developed according to the current zoning designation; he feels good about the compromises that have been made responsive to the concerns expressed by the Trappers community and he asked for the Commission's support of the project.

Commissioner Stefanik thanked Mr. Lewis for locating the larger lots in the upper area of the project; he asked if all of them will be two acres in size. Mr. Lewis answered yes; the houses will be below the power lines, but their backyards will extend to the



fence. Commissioner Stefanik stated that two acres is not very large; he asked if there is any way to include language in the CCRs to prohibit the owners of those lots from driving motorcycles/all-terrain vehicles/snowmobiles on their property. Mr. Lewis stated that he has done that in his other developments, and he would do the same in this project.

Commissioner Torman asked Mr. Lewis if he is attempting to transfer development rights to this project in order to achieve the proposed density. Mr. Lewis answered no; his development rights are coming from the core for the subject property. He noted he actually has excess development rights that he will eventually transfer to another area at some point in the future.

Commissioner Stefanik asked for confirmation that the zoning for the lower lots will not be changed as part of this application. Mr. Lewis stated that is correct; the lower lots are three-acres in size and the zoning will not change; however, there will be some improvements to the open space and connectivity in the area.

Commissioner Burton thanked Mr. Lewis for his willingness to work with neighboring property owners and residents to address their concerns regarding his original application. Mr. Lewis stated this has been a good lesson for him, and could be a good lesson for other developers as well, that compromise is a good thing and sometimes people have good ideas that can benefit all parties. Chair Shuman echoed Commissioner Burton's gratitude to Mr. Lewis.

Commissioner Stefanik moved to open the meeting to public comment and to limit each speaker to two minutes. Chair Shuman seconded the motion. Commissioner Stefanik and Chair Torman voted aye. Commissioners Burton, Montgomery, and Shuman voted nay. The motion failed on a three to two vote. Commissioner Wampler did not vote due to recusal.

Commissioner Montgomery asked if the County is willing to accept the recommendation of a crash gate on the road that connects from Cobabe to the Trappers community as mentioned by Mr. Lewis. Planning Director Grover stated that matter would be addressed by the Engineering Department when the subdivision review is being considered.

Commissioner Shuman asked Mr. Grover to expound on Mr. Lewis's explanation of the development rights being transferred within the project area. Mr. Grover stated that development rights are being transferred within the project area; this is essentially a transfer of development rights (TDR) action, but it is administered through a development agreement for the project.

Commissioner Burton moved to forward a positive recommendation to the County Commission regarding application ZMA 2022-01, option two, zoning map amendment to rezone property from RE-15, RE-20, FR-3, O-1, F-5, CVR-1 and AV-3 to the Master Planned Development Overlay zone. The areas are referred to as The Exchange, Eagle Crest, and Cobabe Ranch. Motion is based on the findings and subject to the conditions listed in the staff report. Commissioner Montgomery seconded the motion. Commissioners Montgomery, Shuman, Stefanik, and Torman, all voted aye.

The Commission briefly discussed the differences between the optional layouts included in the staff report; Chair Shuman indicated options one and two appear to be very similar, though the layouts are slightly different. Since the zoning will be the same under either option, the Planning Commission is basically communicating to the County Commission that they like option two better than option one. Mr. Burton stated that is correct; if the Commission would like to include a finding that the option conforms with the General Plan, that would be reasonable. Commissioner Burton asked if the motion should include findings that the applicant has given testimony that he prefers option two. Mr. Grover stated that he feels the four findings included in the staff report are sufficient, but the Commission can include additional findings as they deem appropriate.

Commissioner Burton amended his motion to include an additional finding that the applicant prefers option two. Commissioner Montgomery seconded the amendment. All voted in favor. (Motion carried 5-0). Commissioner Wampler did not vote due to recusal.

Chair Shuman called for a vote on the amended motion. Commissioners Burton, Montgomery, Shuman, Stefanik, and Torman voted in favor. (Motion carried 5-0). Commissioner Wampler did not vote due to recusal.

Commissioner Wampler rejoined the meeting.

### **3. Public comment for items not on the agenda.**

Ron Gleeson, Eden, stated he has been attending Planning Commission meetings for well over 15 years, and this is the first time he can recall that public comment was not allowed for an item that was advertised as a public hearing. He finds that personally offensive; he wasted his time and money to attend the meeting in person and he was not allowed to provide input. Staff and the applicant were able to review all materials and provide their input; he has also reviewed the project materials, but he was not given the ability to ask questions and provide input. In the future, when a public hearing is advertised, the public should be allowed to speak; if they are not going to be allowed to speak, that should be stated up front so that people do not waste their time.

**4. Remarks from Planning Commissioners.**

There were no additional remarks from Planning Commissioners.

**5. Planning Director Report.**

During the pre-meeting, Planning Director Grover reported that the County’s Code Enforcement Officer received the “National Code Enforcement Officer of the Year” award during a recent code enforcement conference; she was recognized by the County Commission for her receipt of that award. He also briefly reported on the recent land use actions of the County Commission. He concluded by summarizing the Planning Commission’s meeting schedule for the remainder of 2022.

Mr. Grover then noted that on tonight’s agenda, there was only one item that was noticed as a public hearing: item 2.1, application ZTA 2022-02. The Planning Commission did open the public hearing for that item. The item referenced by Mr. Gleeson, ZMA 2022-01, was not advertised as a public hearing; a public hearing for that application has already been held.

**6. Remarks from Legal Counsel.**

Mr. Erickson had no additional remarks.

**Adjourn to work session: WS1 – Discussion on Moderate Income Housing Report. Planner Bill Cobabe.**

Planning Director Grover introduced Planner Cobabe, who was hired to fill the vacancy created by Scott Perkes’ resignation. Mr. Cobabe has been working on long-range projects and one of his first assignments was the Moderate-Income Housing Report. Mr. Cobabe was previously employed by the State of Utah and was charged with overseeing all moderate-income housing plans submitted to the State.

Mr. Cobabe stated the proposal is to adopt the Moderate-Income Housing Report as an addendum to the General Plan; he provided an overview of the history of legislative changes relating to affordable housing. Due to laws enacted in 2018 regarding affordable housing, cities and counties must develop a moderate-income housing plan and select three options from a menu of 26 options for addressing the lack of affordable housing in a community. The most recent changes to that law require action oriented plans and there are now penalties for non-compliance with the law. The County must review its current moderate income housing plan and adopt new language to comply with the updated law; the County must also develop implementation strategies for the menu options selected. He has reviewed the menu options that were previously selected by the County and he has developed draft implementation strategies that, once adopted, can be incorporated into the General Plan. He then provided a high-level overview of the draft Report; during the State’s review of the Report that is ultimately submitted to them, they will focus on the implementation strategies and associated timelines. He facilitated discussion among the group regarding components of the Report, noting he is looking for input and feedback regarding the implementation timelines; the Commission and staff discussed and debated the deliverables of the draft Report and indicated they feel most timelines should be based upon when zoning decisions are made. They also discussed previous actions taken by the County regarding the regulation of accessory dwelling units (ADUs), noting that changes to those regulations should likely be reviewed to determine if they are being complied with or if adjustments would be appropriate.

There was then comparison of previous drafts of the Report and the current draft of the Report for the purposes of identifying the changes to the document since the Commission’s last review of it; Commissioner Burton expressed concern that some of the deliverables of the Report are incompatible with the General Plan. This led to high level discussion of matters such as transfer of

development rights (TDRs), density, and ADUs, and whether a General Plan amendment is needed responsive to the commitments made in the Moderate-Income Housing Report.

Additionally, the group discussed the definition of the term ‘affordable housing’ and whether housing affordability is attainable in the Ogden Valley. Commissioner Wampler asked if government entities that own pieces of land can place restrictions on those lands to ensure the future development of affordable housing. The Planning Commission debated this concept, noting they are more comfortable allowing the market to dictate development in the Valley.

Mr. Cobabe discussed the drivers behind the State Legislature’s focus on housing affordability, after which he asked the Commission to take the week to review the document and be prepared for continued discussion of the Report at a future work session.

**Meeting Adjourned: The meeting adjourned at 6:28 p.m.  
Respectfully Submitted,**

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**Weber County Planning Commission**

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for November 29, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/87243966732>, the time of the meeting, commencing at 4:30 p.m.

**Ogden Valley Planning Commissioners Present:** Jeff Burton, Dayson Johnson, Jared Montgomery, Justin Torman, and Janet Wampler.

**Absent/Excused:** Chair Trevor Shuman

**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:**

Commissioner Burton conducted roll call and indicated Chair Shuman was absent. He noted that Commissioner Stefanik recently resigned, and the County is working to fill the vacancy created by that resignation.

**1. Approval of Minutes for August 2 and 23, 2022.**

Commissioner Wampler cited a few typographical errors in the August 2 meeting minutes as well as a content error in the recording of a vote on a motion made in that meeting; a vote was recorded as 5-0 but should have been 5-2. For the August 23 meeting minutes, she also cited incorrectly recorded motions and lack of a statement about her recusal to participate in discussion and voting on a few items.

Planning Director Grover indicated he will reach out to the individual who transcribes the Planning Commission’s meeting minutes; he is concerned about the number of errors in the minutes and would like for completion of the minutes to be turned around sooner as it is difficult to recall discussions that took place three months ago. He added that the recording of the meeting can also be considered to be part of the minutes of the meetings, and those recordings are full and complete.

Commissioner Wampler moved to approve the minutes of the August 2 and 23, 2022 meetings, as corrected. Commissioner Torman seconded the motion. Commissioners Burton, Johnson, Montgomery, Torman, and Wampler all voted aye. (Motion carried 5-0).

Chair Shuman asked if there are any corrections to be made to the minutes as presented. No corrections were offered, and Chair Shuman declared the minutes approved as submitted.

**2. Approval of 2023 Calendar.**

Planning Director Grover reported staff would like to hold some of the 2023 meetings in the Ogden Valley to make it easier for residents to attend in person; the only issue with that plan is that it is difficult to provide Zoom participation for those meetings, so agendas for Ogden Valley meetings will indicate that electronic participation via Zoom will not be an option.

Commissioner Burton called for a voice vote for approval of the 2023 Meeting Calendar for the Ogden Valley Planning Commission. Commissioners Burton, Johnson, Montgomery, Torman, and Wampler all voted aye. (Approved 5-0).

Commissioner Wampler then stated she will recuse herself from discussing and action on agenda item 3.1 due to a family relationship associated with the project.

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

**3. Administrative items:**

**3.1 UVM080922 – Request for a recommendation of final approval of Mountainside Phase 2 PRUD Subdivision, consisting of ten lots in the RE-15 zone, located at approximately 4554 N Seven Bridges Rd, Eden, UT, 84310. Planner: Tammy Aydelotte**

Planner Aydelotte the applicant is requesting a recommendation of final approval of Mountainside PRUD Phase 2 Subdivision, consisting of ten lots, in the RE-15 Zone. The proposed subdivision and lot configuration are in conformance with the applicable zoning and subdivision requirements as required by the Uniform Land Use Code of Weber County (LUC). The following is a brief

synopsis of the review criteria and conformance with LUC. She summarized staff's evaluation of the request, including compliance with the General Plan and zoning regulations; review by pertinent districts; culinary water, irrigation water, and sanitary sewage disposal; additional design standards and requirements, and tax clearance. She concluded the Planning Division recommends final approval of Mountainside PRUD Phase 2 Subdivision, consisting of ten lots located at approximately 4554 N Seven Bridges Rd, Eden, UT, 84310. This recommendation is subject to all review agency requirements and based on the following recommended preliminary conditions of approval:

1. In order to provide clear site standards, staff recommends adding the minimum yard setback standards on the final subdivision Mylar including the "Side; facing street on corner lot" setback.
2. A note providing adequate notice of the Important Wildlife Habitat area and the development standards that are required will be added to the final subdivision Mylar.
3. The dedication language on the final Mylar will need to include language to grant ownership of the common area to the applicable ownership.
4. A cost estimate for the improvements and a draft copy of any CC&R's will be required prior to receiving final approval from the County Commission.
5. Prior to recording the final Mylar, all lots that are impacted by a geologic hazard will be identified on the final Mylar a note to provide notice that the final geologic and geotechnical reports are on file with Weber County Planning Division. A "Natural Hazards Disclosure" document will be required to be recorded to provide adequate notice of any geotechnical and geological recommendations for future property owners.
6. A construct permit from the State of Utah Department of Environmental Quality Division of Drinking Water must be submitted to Weber County prior to approval by the County Commission.
7. If the applicant desires, a note will be added to the final Mylar to provide notice of the approved nightly rental option.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan
2. The proposed subdivision complies with applicable county ordinances.

Commissioner Burton invited input from the applicant; the applicant did not provide any input.

Commissioner Burton invited public input.

Jan Fullmer, Eden, stated The Bridges is a lovely development, but the conditional use permit (CUP) being requested is to allow for short term rentals (STRs); upon total buildout of the project, there will be a total of 330 single family homes that will all be used as an STR, and an additional 40 'glamping' cabins that will be used as STRs. This information is according to Eric Stanzic, who is part of the Wolf Creek project.

Commissioner Burton asked Ms. Aydelotte to address Ms. Fullmer's comments. Ms. Aydelotte stated that STRs are an entitlement that were approved as part of the CUP in 2016. Commissioner Montgomery asked if the applicant is still in compliance with the CUP, to which Ms. Aydelotte answered yes.

Commissioner Johnson moved to grant approval of UVM080922, final approval of Mountainside Phase 2 PRUD Subdivision, consisting of 10 lots in the RE-15 zone, located at approximately 4554 N. Seven Bridges Road, Eden, UT, based on the findings and subject to the conditions listed in the staff report. Commissioner Montgomery seconded the motion. Commissioners Burton, Johnson, Montgomery, and Torman all voted aye. (Motion carried 4-0). Commissioner Wampler recused herself from voting on this application.

Commissioner Wampler rejoined the meeting.

#### **4. Public comment for items not on the agenda.**

Jan Fullmer, Eden, provided an updated spreadsheet for all short-term rental (STR) in the Ogden Valley, noting they make up more than 25 percent of all dwelling units in the Valley. She stated she has also provided the spreadsheet to the County's Code Enforcement Officers. She then referenced a PowerPoint presentation that was used at a community meeting regarding STRs and fractional ownership; Commissioner Burton attended that meeting, and she thanked him for that. There were 120 people at the meeting and 32 people raised their hands to indicate issues they have experienced with STRs in the Valley; the land use is a

problem that has literally destroyed towns, neighborhoods, communities, and economies in different places. She cited examples of positive things that different communities in the State have done to combat the problem. The use is driving up the price of housing units and there are truly no affordable units in the Ogden Valley. One problem that is systemic in many organizations is disparate databases; she has submitted Government Records Access and Management Act (GRAMA) requests to several different divisions of the County and information about STRs was not readily available from some divisions or the information provided was incomplete. She stated that the County Commission discussed the issue yesterday and is considering hiring a third-party consultant to develop a STR ordinance; allowing STRs in all zones in the Valley will 'kill' the Valley. She then pointed to the current issue of Ski Magazine; it discussed a scenario in White Fish, Montana, which has nearly an identical population to the Ogden Valley and they have a medium ski resort that is near the entrance to Glacier National Park. They could not operate all their ski lifts last year to a lack of workers; super markets could not be staffed due to the same problem. People are leaving because they can no longer afford to stay there and the problem has killed occupancy in lodging businesses near the Park. The gist of the article was to alert ski resorts to this problem and the consequences of growth in the number of ADUs; a permanent population is needed to support a local economy. She added that transfer of development rights (TDR) actions are also problematic; there is no definition of what constitutes the 'Valley Floor' and what has been happening in terms of transfer to and from is being handled very 'loosey goosey'. She stated that she is not making up any of this data; she tries to get most of the facts directly from Weber County in order to support her statements.

Jim Bird, Huntsville, stated he had the pleasure of watching the Commission's October 4 meeting where they received a presentation from Principal Planner Ewert regarding transfer of development rights (TDRs); his main interest is a proposed development agreement for The Basin pertaining to selling 54 TDRs to John Lewis. The point of this transaction is to generate money to pay for the intersection improvements that the Commission failed to address before approving the developments in the area. He found the information about TDRs increasing, especially when Mr. Ewert indicated it is important to incentivize developers so they can receive 20 percent or more on their investment due to keeping TDRs affordable. He would like the Commission to consider whether the County incentivizes other businesses in the Valley, such as the grocery store that needs more money to pay employees because of the increase in STRs in the area. He is amazed that there is no health care facility in the Valley and he asked if the County will incentivize such a project. There are three ski resorts and a reservoir and when injuries occur there, people must be transported down the canyon to get medical attention. The question he has for the Commission to think about is whether developers are the only entity the County is concerned about incentivizing or if they will help to address increases costs for other businesses due to the increase in STRs.

Kay Hogan also addressed STRs on the Ogden Valley; she noted that she will build upon what Ms. Fullmer has said. She stated Ms. Fullmer is data driven, but she is a lawyer and she tends to be more argumentative, but the data indicates that 'we don't know what we don't know'. She attended a work session of the County Commission yesterday and they were discussing hiring third-party consultants to 'scrape' the internet to find STR listings for the Ogden Valley. The County had estimated there were maybe 400 STRs in the County, the Code Enforcement Officer estimated there were possibly 1,000, but the third-party consultant believes there are 700 to 800. As a corporate lawyer, she would not move ahead without having the necessary data and she would encourage the County to be more cautious when adopting new regulations to replace old regulations. Before taking such an action, data must be available and she suggested in this case that the County use the third-party consultant to gather that data. She stated the Ogden Valley Planning Commission was very foresightful last year when they authorized a proof of concept approach that would allow for an attempt at enforcement of STR regulations before the use was expanded. She suggested that license fees and penalty amounts could be increased as well. She stated there are a lot of best practices and benchmarking that can be done, but she is concerned that the current proposal the County Commission is considering is not data based or based upon any best practice. One element of the current proposal is that anyone can create a nightly rental at their property if it has been owner occupied for two years; she inquired as to the definition of owner-occupancy and noted there are several different definitions of that term at the State level and leaving the matter open and arbitrary could create an opportunity where outside investors with no long term interest in the Valley to buy properties and rent them on a long term basis for two-years before flipping them to STRs. This would destroy neighborhoods in the Valley, create transient populations, and erode schools. One of the unintended consequences of the two-year owner occupancy proposal is that the tax impact is unknown. She noted that County Commissioner Jenkins asked if someone who uses their home as a STR should be paying commercial taxes and she is grateful that he was being inquisitive and thinking of those types of issues. She likened the two-year owner occupancy regulation to an open door that investors can 'drive a semi-truck through'. She then stated that it would be very difficult for the County to enforce the regulation as well. She suggested that a testing period be implemented and that the third-party consultant be given time to gather data, determine prevalence of owner-occupancy, and then apply best practices that have been used in other communities to develop a STR policy that can be regulated and enforced.

Angela Dean, Liberty, stated she wanted to follow-up on Mr. Bird's comments relating to incentivizing individual businesses. She read from a document listing the expectations of the Ogden Valley Planning Commission, one of which is that the Commission is not to address the financial woes of those that become involved in bad business deals or other self-imposed difficulties. She stated she often hears developers claim that if they are not given certain concessions, their development will not be feasible. She stated that should not be an argument in their favor, but it does seem to be working for them in many cases. She is curious about why that would be the case given the very direct language in the Commission's expectations. Further, the Utah League of Cities and Towns (ULCT) has developed a handbook for Planning Commissions, which also discusses the role of individual Commissioners and that they should not represent a specific neighborhood, business, or interest, but should be responsible to protect the public good as defined by the General Plan. She stated she cannot find any duties that require Commissioners to consider private property rights that would override the public good. She also attended the October work session in which TDRs were discussed and it seems there were more incentives to trade for increased density in certain areas; one Commissioner asked if that would actually increase the overall density in the Valley and the answer from staff was 'no', but she is not sure how that can be true if the Commission were to consider a three to one trade in terms of TDRs. She encouraged the Commission to consider the greater good rather than private business interests, which seem to take precedence sometimes.

#### **5. Remarks from Planning Commissioners.**

Commissioner Wampler referenced the fact that there is one vacant position on the Commission, leaving current membership at an even number. She asked if there may be items on the next meeting agenda for which a tie vote could be possible and if staff takes that into consideration when setting the agenda. Planning Director Grover stated that one difficulty with appointing a new Commissioner immediately before scheduling action on issues that have been discussed over several months is that it can be difficult to educate that new member on the matter and expect them to vote. He noted that Planning staff would suggest holding a few more work session meetings on STRs and TDRs before asking the group to vote. He stated that many of the current Commissioners were not part of the Commission the last time action was taken on both issues and it will be necessary to educate those new members on the history of the issues.

#### **6. Planning Director Report.**

Planning Director Grover indicated he nothing additional to report.

#### **7. Remarks from Legal Counsel.**

There were no remarks from Legal Counsel.

**Meeting Adjourned: The meeting adjourned at 5:44 p.m.  
Respectfully Submitted,**

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**Weber County Planning Commission**

Minutes of the Regular Meeting of the Ogden Valley Planning Commission for December 6, 2022. To join the meeting, please navigate to the following weblink at, <https://us02web.zoom.us/j/83052170443>, the time of the meeting, commencing at 5:00 p.m.

**Ogden Valley Planning Commissioners Present:** Trevor Shuman, Chair (arrived at 5:50 p.m.), Jeff Burton, 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; Courtlan Erickson, Legal Counsel; Marta Borchert, Office Specialist.

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

Chair Shuman conducted roll call and indicated Commissioner Johnson is absent, but all other Commissioners were present. He asked if any member had ex parte communications or conflict of interest to declare. Commissioner Wampler stated she will recuse herself from discussing or acting on any item related to Wolf Creek; this includes the administrative actions relating to The Bridges project and the work session item relating to the rezone of 2720 N. 1500 E.

### **1. Approval of Minutes for October 27 and November 17, 2020.**

Planning Director Grover indicated that his staff was reviewing past records to determine if all meeting minutes have been approved and posted; they discovered that there were no minutes for the October 27 and November 17, 2020 meetings and that the employee that was responsible for minutes at that time is no longer employed with the County. He asked a staff member to listen to the recordings of those meetings and transcribe the minutes.

Commissioner Burton stated he is the only member of the Commission who was part of the group during these meetings; however, he asked if there are any corrections to be made to the minutes as presented. No corrections were offered, and Commissioner Burton declared the minutes approved as submitted.

Commissioner Torman then moved to adjourn to the work session at 5:05 p.m. Commissioner Montgomery seconded the motion, all voted aye. (Motion carried 5-0).

### **WS1 Nordic Valley Rezone Discussion Revisitation**

Principal Planner Ewert reported the Nordic Valley rezone was presented to the County Commission last week in a work session and there were two items they would like the Planning Commission to reconsider; they did not ask for a formal motion from the Commission, but a straw poll on a both items. Question number one relates to the property to the south of Viking Drive. The Planning Commission's recommendation was based upon an understanding of very little development above Viking Drive and the concept that was included in the staff report identified seven or eight homes on a cul-de-sac. He identified the area on a map and stated that the applicant has asked that a greater amount of development rights be preserved in that area based upon unknowns in the future. Their intention is to keep development low and within the minimum acreage rights for the zone, but he noted that with clustering, they could achieve 28 development rights and they want the development agreement for the project to state that 28 units could be built on that property or could be transferred into the base of the project area. Question number two relates to the 2008 ordinance that was relied upon to make zoning changes for the property; he identified a polygon shaped area of property within the project area and stated that it was rezoned to FR-3, which allows 21 to 28 units per acre. However, in staff's reading of the ordinance they understood the landowner would retire 16 development rights from the hillside and move them into the polygon area. Staff's understanding is that the legislative action that was taken did not include the full number of development rights for the area, which is 77 to 80 units based upon acreage. Staff's belief was that the intent was to create 16 development rights within the polygon area despite the fact that greater density could be achieved. The applicant has provided an argument that has been hard for himself and Legal Counsel to refute; if they proceed with development of that parcel only, given the ordinance that was adopted, and they asked for 77 development rights and not 16, the County would not have the legal ability to deny that application. He stated that when he and Legal Counsel considered that claim, they feel that the ordinance can be interpreted to state that all of the development rights are preserved on the property. The reason that staff only entertained 16 units on the parcel is that they felt the public perception was that there was a restriction on the property for only 16 units.



However, if there is a way for more than one person to interpret an ordinance in a different manner, the error in interpretation of that ordinance must favor the landowner. He stated that he and Legal Counsel can find an alternative interpretation of the 2008 ordinance that is reasonable and they believe that denial of an application of a 77 unit development on the property could be litigated and the courts would rule in the landowners favor. The question before the Commission is whether they feel it is appropriate to take the risk of being sued by maintaining the 16-unit restriction; or would they like to state that the 77 units must stay within the polygon area or be allowed to transfer to other areas outside of the polygon area. He invited discussion among the Commission regarding the two questions. Discussion centered on the total acreage of the project area and past communications between the Planning Commission and the applicant, with Mr. Ewert noting that if the applicant were to choose to cut the polygon area out of the total project area, he would be entitled to build 28 units on it based upon the current zoning of the property. However, the applicant is asking for flexibility and the opportunity to move those development rights away from that area to appease those that live in the area.

Commissioner Wampler stated that the Commission took a vote based upon concept plans that were presented to them, but staff is now saying that the applicant has a right to 28 development units though that is different than what was approved. She stated this is somewhat confusing and she asked if the applicant or the County Commission are now asking the Planning Commission to indicate that the applicant has a right to 28 development units on the property. Mr. Ewert stated that is correct. Commissioner Wampler stated that the Commission approved between six and eight units on the property, but this change would give the applicant the ability to transfer the remaining development rights to other areas. Mr. Ewert stated that is correct.

Commissioner Johnson asked if a public hearing is required for the proposed changes. Mr. Ewert answered no and indicated a public hearing was already held. Commissioner Johnson stated the public hearing was for a different plan and he wondered if a new public hearing is necessary given the proposed adjustments to what was previously approved. Mr. Ewert stated that according to State Law, only one public hearing is required and once the Planning Commission has offered a recommendation to the County Commission, the County Commission has almost indefinite authority to make whatever changes they want to the Planning Commission's recommendations and then adopt such changes. The County Commission simply wanted to ask these questions because they did not want to do anything extemporarily different than what the Planning Commission recommended.

Commissioner Wampler stated that the Planning Commission represents the community and if the County Commission wants the Planning Commission to provide a new opinion, it would make sense to hear from the community that they represent. Mr. Ewert stated that the Planning Commission's role is to report to the County Commission and work at their behest; the Planning Commission does serve as a sounding board for the community and if the County Commission wanted them to seek additional community input, they can ask for that. However, they did not ask for that for this matter. Commissioner Wampler asked Mr. Ewert to identify the form-based village areas of the plan and to again highlight the areas in which the changes would occur. Mr. Ewert stated the form-based village area is contained within the polygon and he also identified open space areas nearby. Commissioner Wampler stated that her interpretation of the term 'open space' is that no building will occur within that area. Mr. Ewert used the aid of a map to identify the areas in which form-based village has been applied and noted that it is intended to cover areas where building is occurring.

Commissioner Torman stated that it was his understanding that there were certain development rights associated with the polygon property, but that the developer was willing to move those rights to another area because of concerns that had been expressed by existing residents in the area. He asked if that is correct. Mr. Ewert stated that is correct and reiterated that the developer already has certain development rights according to the current zoning of the property; they must meet the City's development codes, but they have rights to certain density.

Commissioner Montgomery asked if the developer has the ability to sell their development rights to have them moved to other areas of the Valley or if they must be kept within the resort area. Mr. Ewert stated that if another development area has been assigned the form-based village zoning, they do have the right to buy development rights and have them moved to their project area. If the Commission wants to restrict that action and keep the development rights within the resort area, that can be accomplished via a development agreement.

Commissioner Torman stated that he personally does not have an issue with transferring the rights, but would prefer that they be kept within the same resort area rather than another development in the Valley. It was his understanding that the rights would be transferred within the Nordic project area and he would like that to be memorialized in the development agreement. He stated that concept was also reviewed with the public and he does not want to make a significant change. Mr. Ewert asked Commissioner Torman if he would be comfortable allowing all 28 units to be built on parcel three rather than being moved to another area of

the resort. Commissioner Torman stated that the discussion among the applicant and the Planning Commission was that development on parcel three would be low density and he would prefer that be maintained and that some of the development rights be moved to another area; he would default to what was originally recommended, which was six to eight units. Commissioner Johnson added that he feels the developer is entitled to their development rights and he does not believe they intended to give up those rights as part of their development application.

Mr. Ewert stated that if for some reason it becomes more financially lucrative for the developer to build 28 units on parcel three, but the development agreement shows that the area has been designated as open space with the exception of six or eight units, he would expect the developer to come back to the County and ask for the property to be excluded from the development agreement and to be allowed to develop according to the FV-3 zoning designation. He stated that is a right that the developer has.

Continued high-level discussion among the Commission and staff centered on the vision for the subject property and any unintended consequences of restricting transfer of development rights outside the resort area. Commissioner Johnson stated that most of the residents who have provided input on this project have asked for the lowest density possible and he is concerned that requiring the density rights to stay within the project area would result in increased density or overdevelopment of the property. Commissioner Wampler asked if Commissioner Johnson is referring to the applicant's ability to transfer the rights to other village projects in the Valley, to which Commissioner Johnson answered yes. Commissioner Torman stated that his interpretation of what the Commission has said tonight is that they are comfortable moving the 28 units into the lower area of the resort as long as those actions follow the plans that were presented to the public. Commissioner Wampler stated that is correct, but the applicant is now asking to keep the development rights on the subject property rather than moving them to another part of the project area for which the form based village zoning has been assigned. Mr. Ewert stated that is correct. Commissioner Torman stated he understood the property was part of the form-based village zone. Mr. Ewert presented the zoning map for the area and highlighted the areas to which the form-based zoning has been applied; the plan that was approved would have allowed the applicant to build six or eight units on parcel three and move the remaining development rights to another area of the resort. However, now the applicant has asked to carve out enough acreage to preserve 28 development rights. He stated this is due to survey work that has been performed; the applicant would like to carve out a certain amount of acreage that will not be part of the form based zone or open space zone, but will be zoned FV-3. However, they would like for that area to still be part of the collective resort project area so that they can move development rights to the base of the resort.

Commissioner Wampler asked if this reduces the open space that was agreed upon when the Planning Commission voted to support the rezone application. Mr. Ewert stated that is potentially correct and that is why these two questions have been asked of the Planning Commission from the County Commission. Commissioner Wampler stated that based upon the information presented tonight, she is not ready to support the requested changes; she feels she needs more information and hard copies of the proposals.

Commissioner Burton referred to the original development plan for the subject property, which included condominiums in the lower area of the resort. He asked how many condominiums were included in that plan. Mr. Ewert stated that he cannot remember. An applicant's representative indicated that it included 80 condominiums and 35 homes. Commissioner Burton discussed the evolution of the original proposal for the project and noted that he understands that further changes will be made as the applicant begins to 'drill down' on what can actually be built on the property. Based upon that work, the applicant now believes that they can build 28 units on the area for which six to eight units was recommended for approval by the Planning Commission. The applicant is entitled to those development units, but there is still a significant difference in density from 115 to 28.

Chair Shuman joined the meeting at 5:40 p.m. He stated that Commissioner Burton's explanation makes sense, but for the residents and neighboring property owners who heard the previous discussions and agreements upon six to eight units on the property, an increase to 28 is a significant change. He stated based on the information that has been presented, he is not willing to change the decision that was made by the Planning Commission. Commissioner Burton clarified that the point he was trying to make is that as the details of the project evolve, the actual buildout of an area will become more clear; when the Planning Commission made its recommendation, the level of detail was much lower than it is now. Chair Shuman stated an increase from six to 28 is nearly a 500 percent increase and that is not small or insignificant. Commissioner Wampler added that the information that has been presented by the applicant at this point is not exact; the applicant is saying he does not know if he wants to build 28 units on the property, but wants to ability to do so if he chooses to at some point in the future. Commissioner Burton stated that the applicant is working to negotiate the terms of their development agreement, which will put memorialize those details.

Chair Shuman stated that he does not think the Commission should consider what was originally proposed by the applicant; negotiations dictated the final recommendation that was made by the Planning Commission, and he does not think that there should be drastic changes as the development agreement is negotiated. Commissioner Burton stated the Planning Commission is prohibited by State Law from reacting to public clamor. Commissioner Torman stated that the applicant negotiated the layout of the project with the public; the decisions made by the Planning Commission were not based upon public clamor and, rather, the developer changed their plans after working with the public.

The applicant's representative asked for the opportunity to address the Commission. Chair Shuman allowed the applicant to speak. Laurent Jouffray discussed earlier iterations of the proposed project plan and the manner in which plans have evolved; the applicant did agree to six or eight units on the parcel in question, but as they began negotiating the development agreement they wanted to determine what would become of the remaining development rights. They either wanted to transfer all or part of the development rights, but they would also like some flexibility to build more units in the parcel in the event it becomes feasible or practical to build 15 units rather than six or eight. The applicant will either leave the parcel out of the development agreement, or keep it in, but with a request for flexibility in terms of the number of development units to be built there and the number to be transferred. He stated that the applicant is not seeking to increase density or consume open space above Viking Drive, but if they could cluster units on the extreme southern end of the parcel, they want that possibility to remain intact.

Commissioner Burton stated he is supportive of offering flexibility because he feels flexibility is needed to ensure the best planning of the entire area. He feels the applicant is sensitive to the concerns of the neighborhood and he hopes that sensitivity will continue. He hates to tie anyone's hands so tightly, especially given that there are already 28 development rights associated with the property due to its current zoning.

Chair Shuman stated that he would like for Commissioner Burton to conduct the rest of the meeting as the Vice Chair.

Commissioner Burton asked Mr. Ewert to continue with his straw poll. Mr. Ewert noted that Commissioner Wampler and Chair Shuman have indicated they are not in favor of the changes. He added Commissioner Burton has offered support for the changes and providing some flexibility to the applicant. He then polled the remaining Commissioners. Commissioner Johnson stated that he is in favor of including the property in the development agreement, so he is in favor of providing some flexibility. Commissioner Montgomery stated that while he feels that this situation is a 'bait and switch', he does not believe the County should take their development rights and he is comfortable supporting the flexibility to move them or use them on the subject property. Commissioner Torman stated that he initially felt he would be opposed to the changes, but after hearing the explanations that have been presented, he is supportive of providing flexibility as requested. Chair Shuman stated that he wants to be clear that he is in favor of what was proposed, which is closer to six units or a small amount of development in that area. He is not in favor of the applicant 'getting it both ways'; he is in favor of allowing them to transfer within the development agreement area, but he is not in favor of them leaving the property outside of the project area in order to build all units on it. He is hopeful the applicant will honor the agreements they have made, which includes building approximately six units on the property. Commissioner Wampler agreed and stated that is what her position is also based upon. She noted that increasing the number of units from six or eight to 28 would be too significant. Mr. Ewert asked Commissioner Wampler if she would be comfortable with as many as 12 units in the area. Commissioner Wampler answered yes; she feels that it appropriate flexibility but jumping from six to 28 is too extreme. Mr. Ewert stated he will report this feedback back to the County Commission. Chair Shuman stated it would be his preference that the final development plan is as close to what was supported by the Planning Commission as possible. There was brief concluding discussion about the position of the Commission, centering on feasible and practical development of the area, including clustering to achieve the desired density while preserving the greatest amount of open space possible. Mr. Jouffray stated that the applicant is trying to preserve as much forest area as possible and would cluster on the south side of the project. Commissioner Wampler and Chair Shuman both indicated that their position on the matter has not changed.

Discussion among staff and the Commission moved to question number two, with Legal Counsel Erickson citing the Section of State Code that provides for plain interpretation of land use ordinances in a manner that favors the land use application. Mr. Burton stated that given the language included in the ordinance, Planning staff believes a court would likely support the applicant were they to make a request to develop all 77 units. Mr. Erickson noted that the concept plan that was attached to the 2008 ordinance clearly identifies 16 units, so someone could reasonably argue that the rezone was limited to 16 units. However, the issue is that it was not plainly enough stated in the ordinance that the remaining development rights would not be honored. He does not believe the intent of the ordinance is plainly enough stated and that is why staff is not comfortable restricting the number of developments rights to 16.

Commissioner Montgomery asked if the applicant wants to build 77 units or transfer them to another location. Mr. Ewert stated that he believes that the applicant's desire is to transfer the development rights; currently, County ordinance limits the number of units on a dead-end road to 15, so if the applicant wanted more than 15 they would need to provide a loop road. They own enough property to build a loop road, but that would become a financial issue for them to consider. They are considering building 15 units in the area and then moving the rest of the development rights to another area.

Mr. Ewert stated that Mr. Erickson is advising the County Commission and he should not have asked the Planning Commission if they are comfortable assuming any legal risk; rather, his question to the Planning Commission is whether they would like to restrict the total number of units (90+) to the subject property or to move them to another area with the form based zoning designation. Commissioner Wampler stated that a third option is to indicate that the 2008 zoning ordinance should stand as written, which means that the development of the property should be restricted to 16. Mr. Ewert stated that he believes that the 2008 ordinance was not clear enough to restrict the development to 16 units; this was unintentional, but he believes that the developer has the right to build over 90 units. Commissioner Wampler asked Mr. Ewert what changed his mind; she noted she spoke with both Mr. Ewert and Mr. Jouffray a few months ago about these discrepancies, and at that time Mr. Ewert indicated that while he was aware of the developer's proposal, he felt secure going with the lower and more conservative number included in the 2008 zoning ordinance. Mr. Ewert stated that after the applicant explained his proposal in a different manner, he recognized that the decision has shifted from legislative to administrative and the legislative rule is not clear enough to allow the County to restrict development to 16 units. He added that he has spent a great deal of time discussing this issue with Mr. Erickson and while it is not definite that the County would lose this argument if it were litigated, other jurisdictions have lost similar arguments when legal action was taken.

Chair Shuman stated that regardless of the risk, he feels that the Planning Commission has already made their decision and he does not think they should be asked to weigh in on this matter. It may be that the applicant has made a compelling argument that has changed staff's mind and will be presented to the County Commission with that disclaimer, but the Planning Commission should not be asked to reconsider their decision. Commissioner Wampler agreed.

Commissioner Torman stated that the thing that is concerning to him is that he believes the applicant was aware of this situation several months ago, but they waited until the Planning Commission made a recommendation regarding the form based village zoning for their project to raise the issue with staff. He stated he feels they got what they wanted before raising this point. Mr. Ewert stated he agrees and shares that same concern; he interpreted the 2008 zoning ordinance to restrict the development to 16 units and now it is being presented differently. Because of that, and also because of the opinion of Legal Counsel, he has been compelled to reconsider his original interpretation of the ordinance. Mr. Jouffray stated that he always looked at the parcel as being zoned FR-3, which allows 20 units per acre. His understanding has always been that he could get 93 units on the parcel. When he purchased the property, it was 4.65 acres in size with zoning that allowed 20 units per acre. The text of the ordinance does not reference the number of units that can be built; there is a concept plan attached to the text that identifies 16 units, but the text itself does not reference a number of units. He stated that during the meeting the Planning Commission had regarding the latest proposals, there were two different development numbers presented, with a difference of 77 between the two. Those 77 units are associated with this parcel. He stated that his opinion about the number of development rights has never changed, and he does not feel there is any other way to interpret the zoning ordinance.

Commissioner Montgomery stated he agrees with Chair Shuman about the Planning Commission's role in question number two; he does not feel the Planning Commission should be involved in evaluating whether to assume the risk associated with attempting to uphold the number of 16 units referenced in the 2008 zoning ordinance. Mr. Ewert stated that he should not have asked the Commission to consider the legal risk associated with imposing the 2008 zoning ordinance; however, he would like the Commission to weigh in on distributing those 77 units throughout the project area or isolating them to the parcel that they were originally assigned to. The Commission discussed and debated the appropriate location of the 77 additional units, after which Commissioner Wampler stated she feels a legal judgement may be valuable in this situation; she knows that it would be costly to litigate such a matter, but this is the second time since she has been appointed to the Commission that this type of situation has occurred. There is a great deal of value associated with these properties and allowing the developer do whatever they want is costly to the Valley and residents. Commissioner Burton stated he would agree if the issue were not as clear as this one is to him; the State Law indicates that when the land use ordinance is not clear, the land use shall interpret and apply the land use regulation to favor the land use application. Mr. Erickson added that he wants to be clear that he is only expressing an opinion and it may be that a court of law would find differently than him. He noted that the County Commission will make the final decision on this matter, but his job is to point out what the law says and to provide an predictions as to possible outcomes of decisions. He

recognizes there is not a clear answer, but the final decision should be left to the County Commission. Commissioner Burton stated it would be wise for the County to perform a cost benefit analysis regarding this matter; risking a great deal – perhaps a couple hundred thousand dollars – on litigation only to prevent the transfer of 77 units within the village project area does not make sense to him. Mr. Erickson clarified that he does not believe litigation of this type of issue would be that costly. Chair Shuman added that he can appreciate the appropriateness of a cost benefit analysis, but it is irrelevant to the Planning Commission and should not play into their decision. He acknowledged that it may be appropriate for the County Commission to consider it, but the better argument should be focused on the appropriate location of the additional 77 units. He stated he feels it would be very difficult to keep it on the 4.65 acre parcel given the impact that would have on surrounding property owners. He feels that the applicant should be allowed to move the 77 units to another area of the project. Commissioner Torman stated that if the question relates to the movement of the 77 units, he would favor moving them rather than keeping them on the 4.65-acre parcel. Commissioner Montgomery asked if the question truly relates to keeping the units within the Nordic Village or possibly moving them to other Village areas. Mr. Ewert stated that there is not currently a prohibition on moving development rights to other village projects, but at present this is the only form based area. Commissioner Montgomery stated he can support moving the development rights within the Nordic area. Commissioner Johnson agreed and noted he would be willing to allow them to move to other village areas as they are created. Chair Shuman stated he would like to communicate a desire for the 16 unit restriction, but if the decision is made that they are entitled to more units, he believes they need to stay within the Nordic village rather than being transferred to other villages. He would recommend the Commission support that position.

Commissioner Wampler stated that she is confused on what land use regulations will apply to the additional 77 units. Mr. Ewert stated that all of the regulations that were included in the original recommendation from the Planning Commission would apply to the additional units; the developer will need to figure out how to compress the 77 units into the form-based village project. Commissioner Johnson asked what would occur if the County Commission decided to keep the additional units on the 4.65 acre parcel. Mr. Ewert stated the applicant will need to figure out how to compress over 90 units into buildings that are no taller than 35 feet and provide multiple points of access. Commissioner Wampler stated that she is not comfortable providing support for the location of 77 development rights that she believes do not exist based upon the 2008 zoning ordinance. Whatever decision is made regarding the number of units, she would support those being transferred within the form based village areas. This position is based upon County ordinances.

Mr. Ewert polled the Commission to determine who would be in favor of taking the question to a judge and asking them to make a decision regarding the number of development rights that actually exist. It may be helpful for the County Commission to hear how passionate the Planning Commission is about this issue. It may also give him some room to negotiate the number of development rights with the applicant. Commissioners Burton and Wampler stated they do not believe that negotiation of that number is appropriate; the applicant either has 16 or 93 development units, not something in between. Mr. Ewert stated that if the applicant knows the Commission is passionate enough about the issue to ask the question of a judge, and if the County Commission agrees, the applicant may perform a cost benefit analysis and propose a compromise at somewhere in the middle that both parties might be comfortable with. Chair Shuman stated he feels that is absolutely what the Commission should do; he feels that a legal decision is necessary and could spur some compromise that would benefit both parties, however he would not be fully supportive of such a compromise. Commissioner Torman asked Mr. Ewert if he is suggesting actually litigating the matter or simply asking the opinion of a judge. Mr. Ewert stated that he is suggesting going before a judge. Commissioner Torman stated he thinks it is bad any time something is litigated. Commissioner Burton stated that it is the proper role of government to support landowners and citizens in the exercise of their private property rights; not to try to coerce them into giving up those rights, but figuring out what those rights are and helping them exercise their rights. He does not believe the Planning Commission should be trying to decide whether this matter should be litigated; but, they are in the position to make a recommendation regarding the transfer of the number of units that are associated with the parcel. Commissioner Wampler stated that she is not trying to get anyone to give up property rights; the argument is whether the rights exist and that is what a judge would decide. Commissioner Burton agreed and stated that what ever decision is made regarding the number of rights that are associated with the property, the Commission should only be making a recommendation based on the location of or transfer of those rights. He asked if the Commission wants to put a restriction on the location of the development rights. Mr. Ewert stated that based on the current language of the form based zoning ordinance, transfers can be made from most of the zones on the Valley floor into the form based zone or from one form based zone to another. If the Commission were to apply a condition that the development rights can only be transferred within the Nordic form based project, it would be unique to a development agreement for the property. He stated he feels it would be nice to allow transfer to other form-based villages because he wants to preserve the opportunity for transfers to happen based upon the market, but that is up to the Commission.

Commissioner Burton took a straw poll of the Commission regarding whether the development rights should be restricted to the Nordic form-based village or to other villages. Commissioner Montgomery stated that he can support moving the rights to other village projects but feels that the City’s Legal Counsel should be sure that the County would lose this fight before conceding to the 93 development rights. Commissioner Johnson agreed. Commissioner Torman stated he initially felt they should be kept within the same village, but it makes sense to locate more density in other village areas based upon infrastructure improvements and market demand. Commissioner Wampler stated that she would support transfer that is in line with the form-based village ordinance.

Mr. Ewert stated this discussion has been very helpful and he will communicate the Commission’s feelings about the legal issues surrounding the matter to the County Commission. He asked if the Commission wishes to entertain input from the applicant. Chair Shuman stated he appreciates Commissioner Montgomery’s comments about the importance of Legal Counsel being sure that the County would not prevail in a court of law before agreeing that there are 93 development rights for the property. He then referenced the issue of transferring development rights to other villages; if rights are transferred elsewhere, the Nordic village could be impacted in the long term and quality growth will not occur due to too few households to support commercial and service improvements. Mr. Ewert agreed that critical mass is needed to support a vibrant development; he believes the market will stimulate the applicant to use all of his development rights and possibly ask for the transfer of more development rights from other areas. The applicant has indicated an interest in creating a public improvement district to improve infrastructure in the area and in order to create a district and issue a bond, he must achieve a certain number of units to support debt service of the bond.

Commissioner Burton invited input from the applicant. Mr. Jouffray thanked the Commission for their discussion and debate of the matters before them. He stated he wishes to uphold agreements he has made in the past both with the Planning Commission and residents. He intends to transfer units from the upper area to keep the density low at approximately six or eight units. Relative to the second question, for the 4.65 acres he does not believe he is bound by the concept plan from 2008 and he shares the same legal opinion as Mr. Erickson. He feels that he has 93 development rights and thanked the Commission for communicating their feelings regarding the appropriate locations of those rights.

Commissioner Wampler then discussed the format of Planning Commission work sessions; for tonight’s work session subject matter, it would have benefited her and other Commissioners to have had information about what they would be discussing and asked to take a vote on. She was surprised by the agenda as it was different than what the Commission was led to believe would be on the agenda; she did not know Commission would be talking about this issue until she started getting emails from the public. She would have benefitted from having documentation supporting the discussion points. The reason for creating meeting packets is to provide the Commission with background information on agenda items and she reads through them thoroughly when they are provided. She would have liked to have more information in advance of the meeting. Mr. Ewert stated those concerns are noted; the County Commission only recently asked for this feedback from the Planning Commission and staff did not have time to prepare a thorough packet before the meeting. Planning Director Grover stated that he will try to ensure that Planning staff is more efficient in preparing materials that can be used for preparation.

Mr. Grover then provided an overview of the meeting schedule of the County Commission; they will be holding a work session on December 12 at 1:00 p.m. and they will discuss short term rentals (STRs) during that meeting. Later that evening, Planning staff will be holding an open house at the Huntsville Library from 6:00 to 7:00 p.m.; this is not a meeting of a public body, but rather Planning staff making themselves available to provide information to the public. The County Commission will meet on December 20 and may hold a public hearing to consider the Planning Commission’s recommendations regarding STRs. He stated that a press release will be issued about this matter and Commissioners are welcome to reach out to staff to get more information.

**Meeting Adjourned: The meeting adjourned at 7:25 p.m.  
Respectfully Submitted,**

\_\_\_\_\_  
**Weber County Planning Commission**



# Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** File Number CUP 2023-03 - Consideration and/or action on a conditional use permit for the Mcleod Bed & Breakfast Dwelling.  
**Agenda Date:** Tuesday, February 28, 2023  
**Applicant:** Kelly Mcleod, Owners

### Property Information

**Approximate Address:** 2653 Viking Drive, Eden, UT, 84310  
**Project Area:** 1.57 acres  
**Zoning:** Forest Valley - 3 Zone (FV-3)  
**Existing Land Use:** Residential  
**Proposed Land Use:** Bed and breakfast dwelling  
**Parcel ID:** 22-039-0004  
**Township, Range, Section:** T7N, R1E, Section 15 SW

### Adjacent Land Use

<b>North:</b> Ski Resort	<b>South:</b> Residential
<b>East:</b> Residential	<b>West:</b> Ski Resort

### Staff Information

**Report Presenter:** Felix Lleverino  
fleverino@co.weber.ut.us  
801-399-8767  
**Report Reviewer:** SB

## Applicable Ordinances

- Weber County Land Use Code Title 101 Chapter 1 General Provisions, Section 7 Definitions
- Weber County Land Use Code Title 104 Chapter 14 (FV-3 Zone)
- Weber County Land Use Code Title 108 Chapter 4 (Conditional Uses)

## Summary and Background

The applicant is requesting approval of a conditional use permit for a bed and breakfast dwelling located in the FV-3 zone at 2653 Viking Drive in Eden (see **Exhibit A**). Two single-family dwellings are located on the property. Both dwellings were constructed in 1968. The owner occupies the main dwelling, and the second dwelling is above the garage that sits in front of the main dwelling.

## Analysis

**General Plan:** As a conditional use, this operation is allowed in the FV-3 Zone. With the establishment of appropriate conditions as determined by the Planning Commission, this operation will not negatively impact any of the goals and policies of the General Plan.

**Zoning:** The subject property is located within the Forest Valley (FV-3) Zone. The purpose of the FV-3 Zone can be further described in LUC §104-14-1 as follows:

*The purpose of the FV-3 zone is to provide area for residential development in a forest setting at a low density, as well as to protect as much as possible the naturalistic environment of the development.*

A bed and breakfast dwelling is defined by LUC §101-2-3 as follows:

*The term "bed and breakfast dwelling" means an owner-occupied dwelling in which not more than two rooms are rented out by the day, offering overnight lodgings to travelers, and where one or more meals are provided by the host family, the price of which may be included in the room rate.*

The FV-3 Zone has specific standards identified in LUC §104-14-3 (b), that shall be met as part of the development process. The seven applicable standards for a bed and breakfast dwelling are listed below. Staff analysis of the proposed bed and breakfast dwelling per these standards is provided as *Italicized text* following each standard:

- 1) **Two parking spaces shall be provided for the host family plus one space for each guest room;**  
*The garage attached to the proposed B&B dwelling provides the required two spaces for the main dwelling. The applicant is providing one dedicated parking space. for the bed and breakfast dwelling within the side yard setback, and outside of the front yard setback, as shown on the site plan.*
- 2) **The proprietor or owner shall occupy the property;**  
*The owner lives in the main dwelling, behind the garage with approved living space attached.*
- 3) **Meals shall only be served to overnight guests;**  
*The owner will provide breakfast items to only overnight guests.*
- 4) **Signs are limited to a nameplate identification sign not exceeding two square feet in area per dwelling;**  
*The owner will not have signage.*
- 5) **Not more than two guests sleeping rooms per dwelling;**  
*Per the proposed floor plan, the main level above the garage will have a pull-out sofa, the second floor has a bedroom that is considered the one sleeping room.*
- 6) **Allowed only in existing dwellings with no exterior additions nor change in residential character;**  
*No exterior additions or alterations in residential character are proposed. The dwelling attached to the garage is considered an existing, legal dwelling.*
- 7) **A business license shall be obtained.**  
*The applicant will be required to obtain a business license as a condition of conditional use permit approval.*

**Conditional Use Review:** A review process has been outlined in LUC §108-4-3 to ensure compliance with the applicable ordinances and to mitigate anticipated detrimental effects. Thus far, the applicant has received approval from the Weber Fire District, for the proposal.

The following is an analysis of the proposal reviewed against the conditional use standards:

- 1) Standards relating to safety for persons and property.  
*The proposal is not anticipated or expected to negatively impact this property, surrounding properties, or persons. The Weber Fire District has conditioned its approval on the following:*
  - a) *Smoke and CO detectors must be properly installed and working.*
  - b) *The total occupancy load shall be kept at 10 or less including homeowners.*
- 2) Standards relating to infrastructure, amenities, and services.  
*The proposal is not anticipated or expected to negatively impact any existing infrastructure, amenities, or services in the area. There are several other B&B dwellings in this neighborhood and the staff is unaware of any negative impacts that those have had.*
- 3) Standards relating to the environment.  
*The proposal is not anticipated or expected to negatively impact the environment.*
- 4) Standards relating to the current qualities and characteristics of the surrounding area and compliance with the intent of the general plan.  
*The proposal is not anticipated to substantially impact the surrounding area. As a conditional use, this operation is allowed in the FV-3 Zone. With the establishment of appropriate conditions as determined by the Planning Commission, this operation is not anticipated to negatively impact the surrounding areas or be at odds with any of the goals and policies of the General Plan.*



**Design Review:** In addition to the conditional use review, a design review is required for Bed and Breakfast Dwellings, because of their commercial nature. The following design review standards were considered and an analysis of the project against the design review standards is in the italicized text below each standard.

Sec 108-1-4 Considerations in the review of applications

- (a) Considerations relating to traffic safety and traffic congestion.  
*Traffic safety concerns are not anticipated with this proposal. A recent issue in this neighborhood has been street parking. By prohibiting on-street parking, and requiring off-street parking to be outside of the front yard setback, this proposal will not contribute to the concern about on-street parking.*
- (b) Considerations relating to outdoor advertising.  
*The applicant has not proposed any outdoor advertising.*
- (c) Considerations relating to landscaping.  
*The commercial design standards require 20 percent of the site to be landscaped. The project consists of 20 percent of the site landscaped with evergreen trees and rock, as shown in the building elevation.*
- (d) Considerations relating to buildings and site layout.  
*The existing dwelling in which the B&B will take place meets the current zoning setbacks and site development standards.*
- (e) Considerations relating to utility easements, drainage, and other engineering questions.  
*The engineering division has reviewed the project and does not have any concerns with drainage or other engineering questions.*
- (f) Considerations relating to prior development concept plan approval associated with any rezoning agreement planned commercial or manufacturing rezoning, or planned residential unit development approval.  
*There are no prior development approvals or rezoning development agreements that apply to the subject property.*

## Staff Recommendation

Staff recommends approval of this conditional use permit application subject to the applicant meeting the following condition of approval in addition to any conditions of the various reviewing agencies or the Ogden Valley Planning Commission.

Planning conditions of approval:

- 1) The owner shall obtain a valid Weber County Business License.

This recommendation is based on the following findings:

- 1) The proposed use is allowed in the FV-3 Zone and meets the appropriate site development standards.
- 2) The criteria for issuance of a conditional use permit have been met because mitigation of potential detrimental effects can be accomplished.

## Exhibits

- A. Application
- B. Narrative
- C. Site Plan
- D. Floor Plan
- E. Approved Building Plans

Map 1



**Project Name:** McLeod-Kelly-B&B Dwelling CUP  
**Address:** 2653 Viking Dr  
**Project Type:** Conditional Use Permits  
**Project Sub Type:** Conditional Use Permits  
**Created By:** Kelly McLeod  
**Created On:** 1/18/2023  
**Project Status:** Accepted  
**Status Date:** 1/20/2023  
**File Number:** CUP 2023-03  
**Project Manager:** Felix Lleverino

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**Application**

**Project Description:**

Approval for a Bed and Breakfast dwelling. We have a garage that has roughly 500 sq feet of livable space above that we would like to utilize as a bed and breakfast to sleep a max of 4 people.

**Property Address:**

2653 Viking Dr

**Property Owner:**

Kelly

248-514

kellymcleod02@gmail.com

**Representative:**

**Accessory Dwelling Unit:**

False

**Current Zoning:**

FV-3

**Subdivision Name:**

Silver Bell Estates (Nordic Valley)

**Number of Lots:**

**Lot Number:**

99 (land serial # 220390004)

**Lot Size:**

1.57

**Frontage:**

60 feet

**Culinary Water Authority:**

Nordic Mountain Water Incorporated

**Secondary Water Provider:**

Not Applicable

**Sanitary Sewer Authority:**

Health Department (Septic)

**Nearest Hydrant Address:**

2653 Viking Dr

**Signed By:**

Kelly McLeod

## Exhibit B

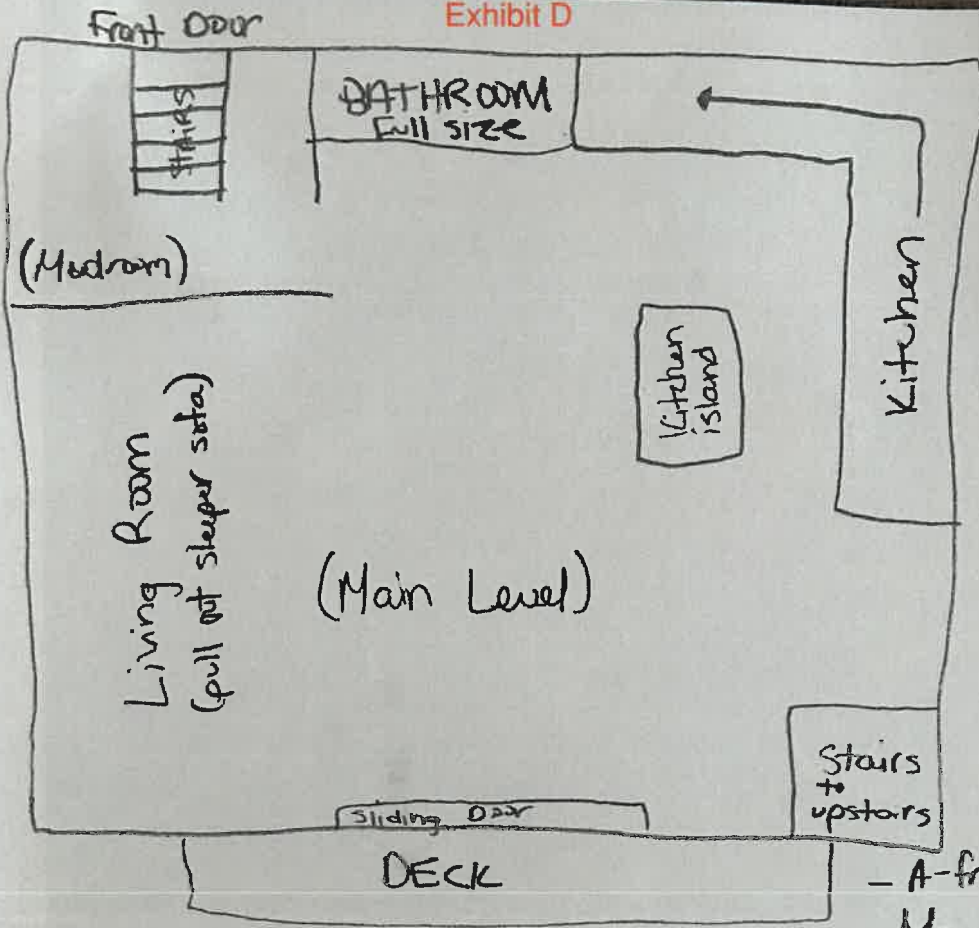
The below information is additional details to support the request for a Bed and Breakfast dwelling permit at 2653 Viking Dr, Eden UT 84310.

- Roughly 502 sq feet of living space
- Sleeps a max of 4 people
- There is designated parking for this request (on property, not on street) with up to 3 spaces for the bed and breakfast dwelling.
- This home is our primary residence, so it is owner occupied. We will greet, provide food, and clean the dwelling ourselves.
- We do not want or have any signage for the bed and breakfast
- We will provide breakfast items to overnight guests upon approval from County
- Garbage and recycling bins are accessible and easy to access for B&B dwelling guests

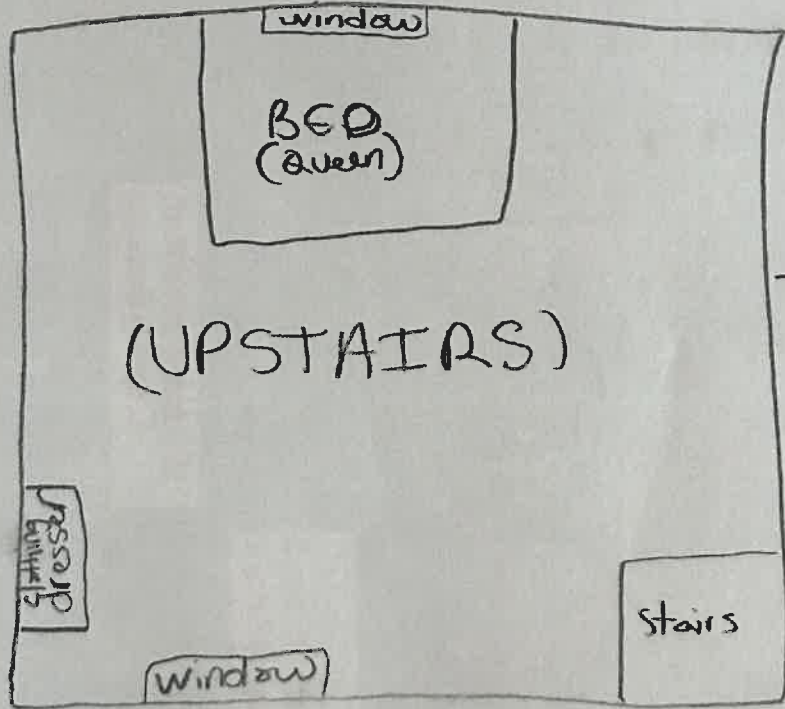


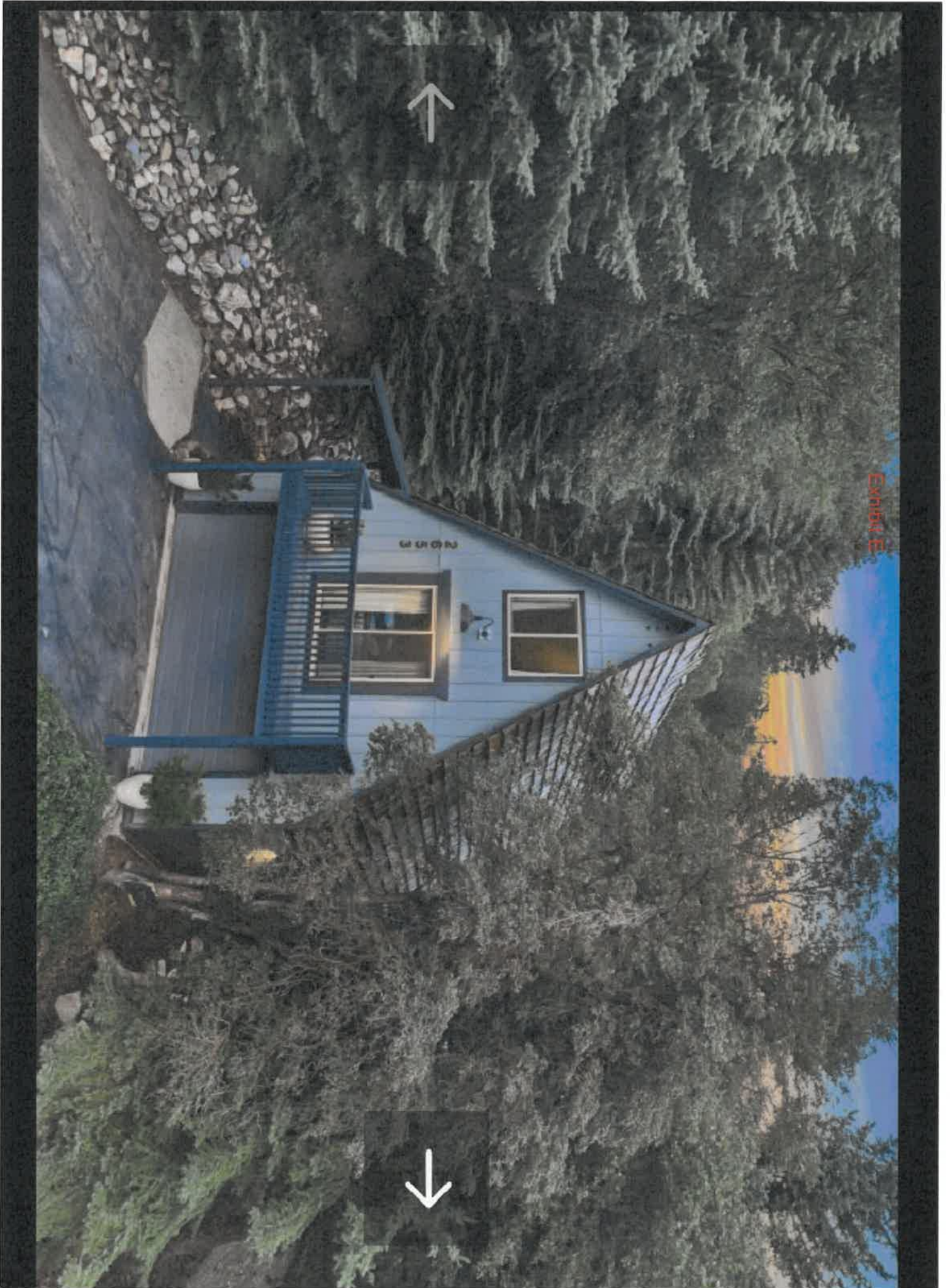
Exhibit C

Exhibit D



- A-frame
- Max of 4 guests
- 502 sq. feet of living/sleeping space
- loft set back from garage structure to front driveway



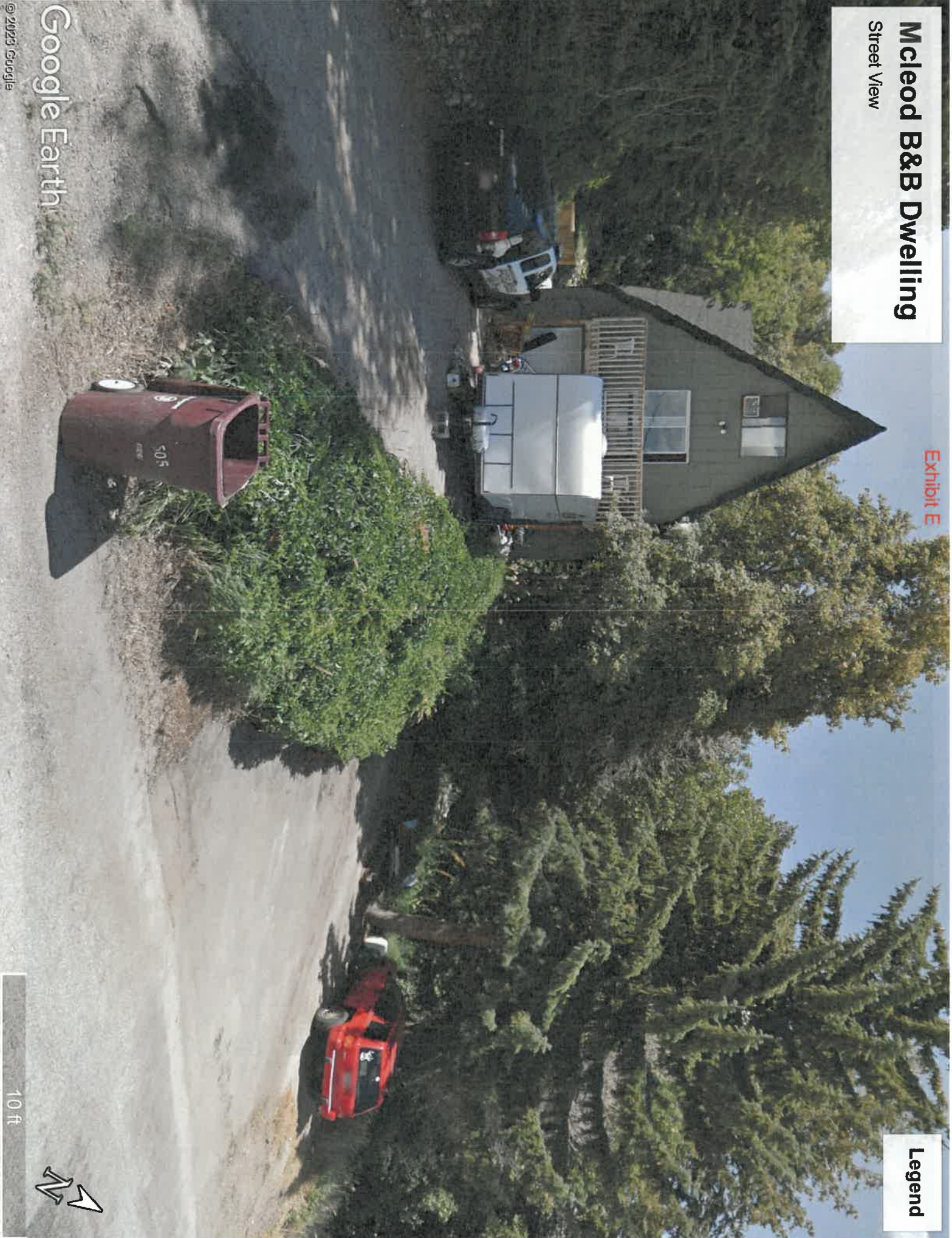


# McLeod B&B Dwelling

Street View

Exhibit E

Legend



Google Earth

© 2023 Google

10 ft







## Weber County Planning Division

### MEMORANDUM

To: Western Weber Planning Commission  
From: Bill Cobabe, Planning  
Date: February 21, 2023  
Subject: Water Conservation Planning in the Western Weber Planning Area

Planning Commissioners,

In the 2022 Utah State legislative session, the Utah State Land Use Development Management Act (LUDMA) was amended to include provisions related to water conservation. Specifically, cities and counties are required to amend their general plans to adopt water conservation plans as elements of those general plans, addressing the following concerns:

- (A) the effect of permitted development or patterns of development on water demand and water infrastructure;*
- (B) methods of reducing water demand and per capita consumption for future development;*
- (C) methods of reducing water demand and per capita consumption for existing development;*
- and,*
- (D) opportunities for the county to modify the county's operations to eliminate practices or conditions that waste water. (UCA Section 17-27a-403 (2)(a)(v)).*

Specifically, the Code requires consideration of the following:

- (A) water conservation policies to be determined by the county; and*
- (B) landscaping options within a public street for current and future development that do not require the use of lawn or turf in a parkstrip;*
- (iii) shall review the county's land use ordinances and include a recommendation for changes to an ordinance that promotes the inefficient use of water;*
- (iv) shall consider principles of sustainable landscaping, including the:*
  - (A) reduction or limitation of the use of lawn or turf;*
  - (B) promotion of site-specific landscape design that decreases stormwater runoff or runoff of water used for irrigation;*
  - (C) preservation and use of healthy trees that have a reasonable water requirement or are resistant to dry soil conditions;*
  - (D) elimination or regulation of ponds, pools, and other features that promote unnecessary water evaporation;*
  - (E) reduction of yard waste; and*
  - (F) use of an irrigation system, including drip irrigation, best adapted to provide the optimal amount of water to the plants being irrigated;*
- (v) may include recommendations for additional water demand reduction strategies, including:*
  - (A) creating a water budget associated with a particular type of development;*



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*(B) adopting new or modified lot size, configuration, and landscaping standards that will reduce water demand for new single family development;*

*(C) providing one or more water reduction incentives for existing landscapes and irrigation systems and installation of water fixtures or systems that minimize water demand;*

*(D) discouraging incentives for economic development activities that do not adequately account for water use or do not include strategies for reducing water demand; and*

*(E) adopting water concurrency standards requiring that adequate water supplies and facilities are or will be in place for new development; and*

*(vi) shall include a recommendation for low water use landscaping standards for a new:*

*(A) commercial, industrial, or institutional development;*

*(B) common interest community, as defined in Section 57-25-102; or*

*(C) multifamily housing project.*

In November 2022, Staff and other representatives from County service providers attended a workshop to discuss potential ways the County could incorporate these requirements into a meaningful guiding document that will address the State's concerns as well as those of our growing community. The purpose of tonight's work session is to discuss what was learned in that workshop and start the conversation needed to adopt the water conservation element of the general plan.

In order to prepare for the discussion, please watch the linked presentation here (please let me know if this doesn't work for you):

<https://drive.google.com/file/d/1aLuLWhBdzCLYkn9egCCrff-huQowZ1Uo/view>

and/or please review this document (we will not be discussing the entire thing at the meeting, and will not watch the entire presentation, so if you have time to review them before the meeting that would be ideal):

<https://www.lincolinst.edu/publications/other/incorporating-water-comprehensive-planning>

We will talk about some of the strategies we need to incorporate into our plan.

Please feel free to contact me with any questions.

Best,

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Weber County Planning Division