

Minutes of the Ogden Valley Planning Commission Work Session dated November 01, 2016, in the Weber County Commission Chambers and Breakout Room 108, commencing at 5:00 p.m.

**Present:** Laura Warburton, Chair; Will Haymond; Jami Taylor, John Lewis, John Howell

**Absent/Excused:** Robert Wood, Greg Graves

**Staff Present:** Rick Grover, Planning Director; Scott Mendoza, Assistant Planning Director; Ronda Kippen, Principal Planner; Ewert, Principal Planner; Courtlan Erickson, Legal Counsel; Kary Serrano, Secretary

**Guest:** Jordon Cullimore, Property Rights Ombudsman

**\*Pledge of Allegiance**

**\*Roll Call**

Chair Warburton said that Commissioner Lewis has a conflict of interest with the consent agenda item and will be excused during that item.

**MOTION:** Commissioner Taylor made a motion to change the order of the work session agenda to have the Land Use Law Training be heard as the first item, and have the Rules of Order as the second item on the agenda. Chair Warburton seconded. A vote was taken with Commissioners Haymond, Howell, Taylor, Graves, Lewis, and Chair Warburton moved to approve to change the order of the agenda. Motion Carried (6-0)

**1. Consent Agenda:**

- 1.1. Consideration and action for final subdivision approval of The Ridge Townhomes PRUD Phase 3, consisting of 12 units located at 5300 E Moose Hollow Drive, in the Forest Residential (FR-3) Zone. (Ridge Utah Development Corporation, A Utah Corporation, Applicant; Eric Householder, Agent)**

Commissioner Lewis left the meeting.

**MOTION:** Commissioner Taylor moved to approve consent agenda item UVR091516; The Ridge Townhomes PRUD Phase 3 consisting of 12 units. This motion for approval is based on the accompanied staff report with the recommendations, findings, and conditions listed there within. Commissioner Howell seconded. A vote was taken with Commissioners Haymond, Howell, Taylor, Graves, and Chair Warburton moved to approve consent agenda item. Motion Carried (6-0)

Commissioner Lewis returned to the meeting.

- 2. Remarks from Planning Commissioners:** Commissioner Taylor asked staff that she would like to have a discussion in the future on looking into having a tiny homes ordinance with applications and things of that nature.

- 3. Planning Director Report:** None

- 4. Remarks from Legal Counsel:** Courtland Erickson said he would like to bring up the annual requirements for Open Public Meetings Act Training to make sure they get that on an annual basis. That statute is not very detailed in that, so there is some flexibility on how they receive that training. They need to be thinking about how they would want that, and it is flexible in the rules of when they have that training. Chair Warburton said she had talked to the Ombudsman and he is going to cover that training, so that part is taken care of.

**5. Adjourn to Convene to a Work Session**

**WS1. TRAINING: Land Use Law Training - Office of Property Rights Ombudsman**

Jordan Cullimore, Property Rights Ombudsman said a lot of the time they spend talking to property owners; as well as government entities to discuss things; for instance eminent domain and the taking. They are happy to talk with anyone about what their rights mean and getting certain facts; beyond acting the role of a mediator and eminent domain scenarios. Such as private property owners whose land is being taken by the government; they help them ensure that the property owner's rights are being considered, and that they receive just compensation at fair market value. In the land use context they do advisory opinion; if it comes to an impasse between the government entity and the property owner or developer, and how a certain statute or law or local ordinance should be interpreted. They can get arguments from both

sides and then do a legal analysis and produce an advisory opinion. Here is the website that he is talking about; <https://propertyrights.utah.gov/> if they want to check out a lot of good resources. One of the things that they can look through and research is the advisory opinions they have done from the past; subject over the years with those in advisory opinions.

Jordan Cullimore said that's it in a nutshell of what they do, but he encouraged them if they have something that he could look into and do the research, and would be happy to do so. The other thing they do is come and do this training. If they already have questions and they already know what they want to talk about, let's get going. Cities have different issues than counties, and Weber County has different issues than San Juan County. So that's one of the reason they enjoy coming in and doing this training; so they can talk about the specific issues this commission is interested in. He can begin with the distinction between legislative administrative decision and move wherever they would like to go.

Chair Warburton asked if he could tell them what legal authority he has when he makes an opinion. Mr. Cullimore replied none, the role of the ombudsman to make recommendations. Technically they are an advisory opinion, as far as if they issue an opinion in a dispute, and then if the parties don't use their opinion to resolve the dispute. They then go to court and the court rules the same way that his office advised, then the prevailing party can be awarded the attorney fees, and that is built in the statute. That has actually happened two or three times; and beyond that frankly litigation and the land use has significantly gone down since they have given the advisory opinion. By reducing litigation and if the court rules on the same issues that they ruled the same way; then there will be attorney fees involved that causes some positive law, and that's as far as their authority goes. They also have the authority to bring government to the table and mitigate; and they are required if the court mandated mitigation to come to the table, and make a good debate after.

Jordan Cullimore said as far as an entity beyond mitigation, they also do arbitration but it's not landing arbitration, and it's infrequent to get to the arbitration stage. They look at the law, they do a legal analysis, and they give their honest opinion, and they don't have to represent any one party so they can provide a neutral independent review of an issue, and that's where their authority lies.

Chair Warburton said one of the things that she heard that she really liked; there's their opinion, there's her opinion that both can provide, but then there's the law. It's really helpful to have someone like the ombudsman doing legal work where they see people code all the time and know where the holes are at.

Commissioner Lewis asked when they arrive at their opinions based on facts; would that determine their analysis based on the opinion of the information that they have decided? Mr. Cullimore replied their opinion is relied upon the law as it has been decided by the US Supreme Court and Court of Appeals as applicable. Also the Utah Supreme Court, Utah Court of Appeals, and some land use issues haven't really been addressed by Utah Courts, so in those cases they look outside of Utah to other jurisdiction. They address the issue; they've looked at the minority and majority views, and decide which one most aligns with Utah's principals, because their advisory opinions don't have any legal authority, they don't set precedence with their opinion. The Ombudsman Office has taken legal positions where the law is vague in some regards, and other advisories have said it is vague and these are the options.

Commissioner Lewis said so even though it's vague, they still base it on the law. Mr. Cullimore replied definitely, they base everything on Utah Statue or Case Law; they usually take the conservative approach in every situation. If the law is clear then they say that it's clear, and then say what it is. They make a determination on how they think this should be applied for the specific case; and give an advisory opinion. If it vague or has not been addressed by Utah Courts, then they make sure to clarify that and provide a way forward for the parties involved.

Chair Warburton said that it doesn't have to be state law because the ordinances are here locally; and it often conflicts with state law, but it can be a stricter law in most cases. So they look at this law, people bring in a grievance, and they look at the laws first. Mr. Cullimore replied that's their requirement, they look at local ordinances first, and if it confines with State Law which in most case it does, that is what governs the local ordinances.

Commissioner Taylor asked in the future if they could create a new Transfer Development Rights (TDR) Ordinance; what they should look at in regards to private property rights (both sending and receiving areas). Mr. Cullimore replied that's the extent of it; in that they have rights in two different areas, the sending and receiving area. He didn't think that Transfer

Development Rights have been used extensively in Utah; but it is an interesting principal. Just make sure that whatever rights they are transferring; that they are transferring them in a way that they are being preserved, but not overlooked.

Jordan Cullimore asked if there was a specific issue that she had some concerns. Commissioner Taylor replied if they do go through the route of setting up a sending and receiving area; and the possibility of allowing it to be transferred to anyone's property. Her concern would be those in the receiving area, either in it or adjacent to it, if that would affect their private property rights, which that is something they don't want. Mr. Cullimore said it adds an element of unpredictability potentially for people, that now it's there, and it adds a layer of complexity to a land use ordinance.

Jordan Cullimore asked if they want to keep it simple for property owners, especially in county jurisdiction, it is a good idea in rural areas with fewer regulations makes sense in most situations. If that's what they want to do make it more predictable, there are arguments against TDR's. If they want to add an element of flexibility to their code it could work; by allowing the owners to have those sending and receiving areas. They could create reservation in one area and development in another area, and those types of things. Whether or not they want Transferable Development Rights is a legislative question; and they have a lot of discretion, depending on what they want for their community. Whether or not they want them is a political question with a lot of community value implication.

Chair Warburton asked if he would touch on the proper role of the Planning Commission. One of the issues that was brought up in their rules; if somebody on this commission wanted to speak to an issue, then they had to excuse themselves and go down to speak. Would he please discuss the property role of the Planning Commission and also the Planning Commissioners? Could he talk about the difference between Legislative and Administrative and Ex Parte?

Jordan Cullimore said the reason they have the Proper Roll of the Planning Commission is all in the name. They are citizen planners; and over the years it could be argued that the Planning Commission has become administrative approval commissions and conditional use permit commissions. While there is a place for that for Planning Commission, it's important to keep in mind that you're primary role is planning. When they were talking about the General Plan, it's a visioning document; that sets goals for their community, and what they want for their community to look like. It is important to make time for the General Plan, and reach out to the community, have public meetings, have public hearings where the community can come in, look at the elements of their General Plan. They can decide what they want for each element to look like, specifically what does the community want. The two primary roles they play as the Planning Commission in that capacity; they make legislative recommendations to the County Commission. They also make administrative decisions, or in some cases they make recommendations to the County Commission. As a reserve the role of the Land Use Authority; pending subdivision approvals and conditional use permits approvals and things like that.

Jordan Cullimore said in talking about the legislative and administrative path, he had looked it up in their website, and it sounds like they have a well informed commission, with a competent staff. In their staff report there is a line in there that states what type of decision; whether it's a legislative decision, or an administrative decision, that's how they approach those decision, and they are significantly different.

John Cullimore said in legislative decisions, it about getting law ordinances, so getting a text change to an ordinance, rezones, and in those cases, a lot of it is political and preference when creating laws. Both governments are given a lot of discretions to decide within the broad range of the police power, meaning the ability to regulate for the health, safety, and welfare of the community. They have a lot of discretion especially in that welfare realm; creating a community they think is appropriate. When a court looks at a legislative decision, the court presumes that the decision is valid; they are only looking to determine whether or not arbitrary, capricious, or legal. In the legislative realm it is arbitrary or capricious, as long as it is reasonably debatable that it serves the public welfare in some way. If they are making a legislative decision, it important when talking about public hearings and public meetings; that they hold a public hearing, gather public input, and learn what the community wants and make recommendations to the County Commission.

John Cullimore said when making administrative decisions once the law is in place; and this is about subdivision approvals, conditional use permits, and those types of issues. At that point, they are afforded discretion as far as their decisions are presumed valid, as long as they are not arbitrary, capricious, or legal; but arbitrary, capricious, and legal under administrative context means that their decision are supported by substantial evidence in the record.

Chair Warburton asked if he could talk about conditional use permit. Someone comes in and it's administrative, and there are things about it that has the whole room of people very upset about this conditional use permit. Yet it is permitted, and they just put some conditions on it, so let's talk about those conditions and evidence that relates to that.

John Cullimore said so dog kennels for instance; conditional uses are more or less for all intense and purposes are permitted uses. Back in 2005, the case law was pretty clear what a conditional use was; but the statute essentially said that the conditional uses may be approved, denied, or conditionally approved. So a lot of people started looking at conditional use permits, apply the uses that they would like in the zone, and when an applicant would come in, they would decide then. So in 2005, when the Land Use Development Matters of Act was passed and updated; it clarified that conditional uses shall be approved, as long as any detrimental impacts were identified of the use, could be mitigated through reasonable conditions. If they have a dog kennel for instance, they could figure if any reasonable conditions are proposed. It is important to realize that in this context; the burden is on the property owner, or even propose reasonable conditions that could potentially mitigate their use. They understand that there are certain characteristics in the use that in specific context may create detrimental impacts. They have the ability to add additional layer of administrative review, to impose additional reasonable conditions, based upon standards in their ordinance. Those standards, so we reserve the ability to add this additional layer of administrative review, to potentially impose additional reasonable conditions, based upon standards in their ordinance. Those standards in their ordinance are basically goals that they want in their community to be addressed. Such as traffic, noise, certain emissions, and as long as they have standards for those types of things, they can look at these conditional uses, and they can impose reasonable conditions. For dogs it would be noise mitigation, distance between requirements, odors, and those types of things.

Chair Warburton said to talk about evidence, what conditions that they could impose supported by evidence, and how could they get supporting evidence if it's too loud or too smelly. Could he describe that in more detail that applied to the law? Mr. Cullimore replied evidence in of itself is not opinion; it's not conjecture, such as *"I think this would be a problem."* In substantial evidence they hear about different standards like preponderance of the evidence, beyond reasonable doubt, and those are higher standards. Substantial evidence in the legal standard is more than just a little bit. It has to be supported by substantial evidence, whatever conditions they do impose, and we're talking from a factual standpoint. It's pretty factual that dogs bark and so that is evidence. Sometime evidence is common sense as well, and with dog kennels it is common sense but it's based on fact. With dogs barking, they can make a noise restriction, it's pretty well established that dogs produce certain smells; they can put additional restrictions about how far away they are. What he means by that, they need evidence that dogs are going to bark and they are going to be loud. If they are going to impose some sort of condition related to noise or smell, they do need substantial evidence. They could have two piles of evidence that the court is looking at, and as one pile is just a little more, it is still substantial that they can rely on that in making their decision. The court is essentially going to look at the decision and decide whether or not there was substantial evidence in the record. They considered the facts, they considered what is there, and they made a decision. They just didn't go off of public clamor, and public clamor is essentially just opinion, conjecture, not supported by factual determination.

Commissioner Taylor asked let's say in this scenario; that they didn't have to allow for public comments, but someone from the public comments, and they actually provide some sort of evidence. At that point, what do they do, do they take that into account? Could he give examples of what evidence that might be? Mr. Cullimore replied they would definitely take that into account. If it's something that already exists, and they could sell if from their house, that is definitely evidence against. They don't have to rely on it, but they can consider it. That is where the discretion comes from, because in most land use decisions, there is probably going to be evidence on both sides. That's where they have to make a decision; if it's supported by substantial evidence, and if it's the best decision that balances both public interests with property owner's right. If there is a conditionally use permit in the zone, then the property owner has the right to convey that use in a reasonable manner. They could impose a reasonable condition, keeping everything within that standard of reason, and then the public interest is served, property rights are considered and respected.

In response to Commissioner Howell's statement, Mr. Cullimore replied that's probably the right decision, and that's the conjecture part. In certain cases they can deny a conditional uses, and that's only if they cannot impose reasonable conditions to mitigate but potentially detriment those impacts. If people bring up these concerns, definitely listen to them, but don't use it as a basis by use it as a basis to impose those conditions. If they get a lot of people that don't want dog kennels in their area, then amend the ordinance and prohibit them and that sometimes is a way to kind of gauge whether or not something should or should not be permitted in a certain area.

Chair Warburton said they need to talk about open meetings, hearings, and define. Mr. Cullimore said public meetings are where the meetings is conducted in a public business in view of the public. In most cases it's beneficial to have those types of things done in a public meeting. Public hearings are required when due process or when people's rights are involved. They might be making decisions that are going to affect the legislative, that's primarily where public hearings are required. At the state law level, public hearings are not required for most administrative decision, but a lot of local ordinances do require public hearing. People come in with unrealistic expectations, they think they can bring in their arguments, and then they will win. With administrative decisions they can't consider public concern or conjecture, people often go away thinking they haven't been heard, and haven't been received due process. Potentially there is a rule in the administrative decisions, if they sufficiently educate those participating. Whether that's through a handout prior to considering it, they make a statement to be affected. They're having a public hearing but keep in mind they are receiving public comment, that the only thing we can consider is evidence. It has to be factual, it has to be credible, and it has to be relevant to the decision they are making. Often the public can bring evidence, because they live in these areas, so they know what's going on.

Chair Warburton said sometimes on a CUP issue; especially if it's an intense issue, even if it's administrative, they allow them to speak because people just want to be heard, because it is important to them and they are frustrated. It's difficult because they don't understand. Mr. Cullimore replied it's not an easy answer and we all have that innate and natural desire to be heard. Sometimes it's a lose/lose situation where they just have to pick the best option. There is not really a correct one; there are pros and cons to different decisions. All they can really do is give them all the information that sets the framework within what they can make their decision, and hope they understand the next morning after they sleep on it.

Commissioner Taylor said it mentioned briefly a tool they could use as a handout, has he seen that done before to help the public understand. What is the most effective way to get new people that come here, to get an understanding and what would be the most effective way? Mr. Cullimore replied that previously he worked as a City Planner for Lindon City, down in Utah County. On each of our agendas on the back it said "Welcome to the Planning Commission" and on there it said this is what they were doing, these are the types of decision they make, but they could refer them to staff if they have it on the back. That was always something they printed on the back of our notices. They could kind of tailor the handout to say what they want it to say, and he is sure that staff could come up with something really effective. Chair Warburton said that they already do that. They've had meetings statements by the Director, they've had the chair say them, and we're talking right now about having three minutes of education prior to every meeting with different topics, and it's a challenge.

Chair Warburton asked if Mr. Cullimore had anything he would like to add. Mr. Cullimore said they are here as a resource, and he could leave one of his cards, and they have their information; please do give them a call anytime. If they want to talk about a very specific issue, and they have specific questions, they are happy to help out.

Kim Wheatley, who resides in Eden, said that he had the same question that Chair Warburton had asked but he didn't hear the reply to it. When he was reading the Weber County Planning Commission Rules of Order, in the conflict of interest section, there is a section on Planning Commission members wishing to give comments. Historically, in the commission meetings they were able to comment; but apparently they are now allowed to do that. He thought since they have two attorneys present, that they could give some clarification on what this section means, and how that could change the behavior of the Planning Commission. Chair Warburton said she appreciated on him following up on that because that was an issue for her; and they are not here to drive their own agenda. Especially when it comes to administrative; they are held to the law in that they are like quasi judicial in a sense, and are bound to law as are conditional uses. They have to be very careful as commissioners not to let their emotions decide what should be done.

John Cullimore said when they talk about the political realm, and the elected appointed officials; elected officials there is a debate, is he a principal or is he an agent. As an elected official there is no specific law that says whether or not they have to take the principal or the agent approach. Is he just channeling to public's will, or did they choose him because he has an opinion that matters. As an appointed official, they are chosen by those elected officials to make decisions that they feel are going to be best for the community. To a degree they can kind of within their mind decide whether or not they are an agent or a principal, with the understanding that they are kind of a go between, and they're trying to make a decision that is going to properly balance the public interest with the rights of property owners.

Chair Warburton said they are not elected; they are responsible to the County Commission, they are not responsible to Ogden Valley citizens. That is a hard thing sometimes and yet they are the go between. So they go consult with legal

counsel to make sure the ordinances they come up with, because they might have to be changed at the state level before they can do them here, so they are constraint. Mr. Cullimore replied he is talking within the realm of their ability to make a decision, and have that discretion when making their recommendation to the County Commission. Ultimately the County Commission will make the decision based on what their philosophy and the Planning Commission's discretion. Even though they are appointed officials, and if they are talking about legislative decisions, they were picked because the County Commissioners felt that they represent in some way a segment of the county's preferences and their will.

Chair Warburton asked legal counsel if he had any questions. Courtlan Erickson, Legal Counsel replied not at this time and he appreciated the information provided and he has talked to them about an issue, and they are a very good resource to have.

**WS2. DISCUSSION: Rules of Order – Courtlan Erickson:**

Courtlan Erickson said lets continue with the question that was asked before, on the bottom of Page 3, titled Planning Commission Members wishing to give comments and it is within the Conflict of Interest section that starts on the bottom of Page 2. That is a complete word for word that carries over from the previous Rules of Order in the last couple of years. There haven't been any comments or suggestions for changing that; and he has always interpreted that as within the meeting of the Conflict of Interest section. If a Planning Commissioner has some sort of interest in an issue and would want to leave a comment, then they need to go down and comment as a member of the public. As he understood it, which he could see may not be clear with the rule that someone had a conflict; they need to leave the meeting during that time which the matter is being discussed and voted upon. If they actually want to comment as an interested person, they don't have to leave the meeting; but they can go down and make their comments. But it does say right after that, after commenting the member shall leave the commission chambers and not be here during the discussion or voting.

Chair Warburton said she had an example of when that happened. It was right before she was placed on the commission, and it was about Powder Mountain issues, and it was a very intent meeting with lots of people that were all the way back. There was a commissioner, Keith Rounkles who got up and picked all his stuff up, and he walked to the podium, made his comments as a citizen, said he was done and was fed up as a commissioner and walked out. To her that is a great example of someone who is not willing to speak as a commissioner and abide by the commission rules and he was done. So if they want to go down and speak as a citizen that would be what this is talking about. They couldn't by bi-partisan to have such a strong opinion that no matter what happens, and they could still stay as a commissioner, and make your opinion known based on facts. Mr. Erickson said even if they didn't quit the Planning Commission, they speak as a citizen, and at that point leave the room. He asked if this needed to be clarified.

Commissioner Lewis said he was sitting here and listening on remarks that people make about Powder Mountain, and in his experience and expertise about the resort, he has obtained a lot of information. At what point does it make sense to voice his opinion where he is at, versus leaving his chair to go down to the podium and sound off about an issue. Commissioner Graves replied all of us up here have various experiences and levels of expertise in certain areas. We often comment from this position based on that experience through expertise. In the past that has been viewed as a positive thing for the commission, because they've got not just opinion but expertise, with experience backing up what they are saying. It has never come up that they had to be down there and not up here, and it was never addressed.

Director Grover said that if they look where it is written, it's all under Conflict of Interest. If they have a conflict of interest, and they want to present something towards that, then they can present that and then they would have to leave the room. This is only if they have a conflict of interest that this falls on. Chair Warburton said she looked at that and for some reason couldn't put it together.

Commissioner Haymond said that he didn't think it was their place to discuss an item until after the motion has been on the table, at that point that's when they discuss and not prior to that. At that point they are asking questions, gathering information, and forming a decision of what they are going to make. Chair Warburton said again so if it's a conflict of interest for somebody, and they really wanted to make a statement about it, then they go down make their statement and excuse themselves.

Courtlan Erickson suggested putting this paragraph currently on Page; and put it under the conflict of interest at the bottom of Page 2. Down near the bottom where it says, *"what a commissioner needs to do if a commissioner has a conflict of interest."*

Where it states, *“they shall leave the meeting,”* maybe add a sentence or saying *“but if the commissioner wants to comment on that issue that is going to be discussed; the commissioner may comment and then must leave the meeting.”* Is that a better place for this to make sure that it is properly understood in the context where it should be? Commissioner Graves replied it would be very helpful.

Commissioner Taylor said even if it just says; they are wishing to do that refer to letter d unless they want to be more specific. Chair Warburton said while they are in this section; the issue with ex parte contacts can only come when they have an administrative issue before them. For example the neighbor wants to have a dog kennel; they go fill out an application, they then become the applicant. Then all the neighbors get upset. That’s administrative and if she goes and talks to the applicant, she now has ex parte communication and that is absolutely not okay. She still thinks they need to address the fact that if there are four of the commissioners in any given meeting, that creates a quorum, and that’s no okay. She thinks that they can somehow cause some problems, and she is uncomfortable with that three could go but the others couldn’t. She wants to find a way to tell the others they can’t go to the meeting without feeling uncomfortable and that bothers her.

Commissioner Haymond said that he was glad she brought this up because he wanted to speak on that also. It doesn’t bother him, but he does agree with her that if three go, the rest can’t go because those three are there and it’s not fair. He didn’t see a problem with reaching out to other groups and really just sitting and listening to what’s happening out there. All that discussion doesn’t go anywhere, and it actually gets brought to them at this meeting. He didn’t see a problem if he wanted to go learn more about a subject; he didn’t inject himself into their conversation, and just sat there and just listened. Chair Warburton replied that she thought he could be part of the conversation, because that was his job as a legislative aspect.

Commissioner Haymond asked but administratively couldn’t he just sit there and listen. Commissioner Howell replied as long as he was not expressing his opinion, and just gathering information. Chair Warburton said it’s the appearance that if he went to a meeting and it was legislative; there’s a group there talking about a petition and they plan to have an application before this commission. He is there listening to their conversation, they may have the idea that they are swaying his opinion. There are people that are against this application and they find out that one of the Planning Commissioners went to the meeting, and they have no idea that if he spoke or not, but the fact that he was at that meeting. So that just clouds everything about the commission; so in an administrative time no.

Commissioner Haymond said maybe he wants to go anyway, and goes out on a limb, and shows up for something, and they give their opinion and he doesn’t say anything, he brings it to the meeting and he declares the ex parte communication, and they all vote whether he can stay or go. Commissioner Howell said that he didn’t think he had ex parte communication when he didn’t say anything, he didn’t express an opinion, and he didn’t discuss anything. Chair Warburton said it would be extremely difficult in an administrative situation; let’s say a that group of developers have put in an application, and now they are going to have a meeting. There are five or six developers and they are having this meeting, and they just go and sit and listen, it could be extremely difficult to not show any opinion, but if he thought he could, then that would be up to him.

Commissioner Haymond said the principals of Summit held a lot of town hall meetings; most of that was related to administrative, and not legislative. Being a resident of Eden and living close to Summit; he felt that he could be affected by what they would be doing. So by him going to those town hall meetings; could possibly be ex parte communication, and is not allowed. Chair Warburton said that she didn’t go to one of them, she was really careful, and she couldn’t afford giving them the impression that they were special.

Commissioner Haymond said that he thought they did that when they went up there on field trip and had lunch with them. Chair Warburton replied that’s different, they were all there as a group. Field trips are allowed, they are healthy, and they did the same thing with Snow Basin. Commissioner Howell added that was just a fact finding project, to see what they were doing, to check out different things, and how they were progressing. Commissioner Graves said with Snow Basin it was different, they did a lot of talking as a group; and that’s how ended up with a park. Doing some talking and discussion as they were there, and they exchange of ideas. From these ideas, they ended up with some things they had hoped they could eventually get. Things could go from a legislative situation to administrative situation in one sentence.

Chair Warburton said when she got on this commission, she was told that she couldn’t talk to anybody, but she felt that it was important at the right time that they could be able to talk to people. There are people out there that think that things

are done behind closed doors and being dishonest. She felt they really needed to avoid that at all costs. There are times when she has ran into their neighbors, and they have an application, wanting to talk, and she would tell them not to talk to her about it and she declared it at the meeting. Commissioner Graves replied that they should have that ability to make the decision to go, and make sure that they declare it, and then it can be determined if they should disqualify themselves, and then let the group decide so at least it's clear. They still have the right to participate in stuff that is going to affect them, and just because they are in this group, doesn't mean that have now isolated from all issues in the valley, unless it comes from up here, and they should still be able to act as a citizen, do they give up to be the other.

Director Grover said that they are definitely allowed to go visit Summit or any of those, but if it's dealing with an administrative application they should try and stay away from engaging in communication relating to that application. If they do, then they need to disclose it. If it's a legislative that's a totally different situation; with legislative they want to go out, they want to get input from the public, and find out what their thoughts are about those things. When it comes to administrative, they do have a little bit of a different hat that they have to look at, and he would just think about, if there is an application in here, and they want to talk about that that is where they need to draw the line. But it's only to chat with Summit, or chat with the Snow Basin friends, Wolf Creek friends, or whoever that may be. If there is not an application on the table, that's okay; but it becomes ex parte when there is an administrative application in here.

Commissioner Howell that he has had people approach him with an item that is coming up, and he just tells them that he would love to talk about it, but they need to come to the meeting where they can discuss it, and hear what they have to say. Director Grover replied that is the best way to handle it, because does set the county up for some issue because they are representative now of the county, but they are also a citizen out there, so they just need to be very cognizant with the hat that they are wearing at that time. He would just keep that rule, and if there is an application that is before they, try to back off if it is administrative. If it's legislative, they can engage in those conversations because they can bring that input to the body. Chair Warburton said they just need to come here in the public forum; the public deserves to hear the public discussion, have input when appropriate, and be a part of it and it needs to be part of the record.

Commissioner Taylor said what was done the general plan, the intention was good. The intention and the reason for it was they wanted to hear from people who are not able to speak out in different situations, and who are not comfortable with that. For example; could they call a meeting at the library with the GEM, and still have it an open meeting. They go somewhere and maybe still get some kind of conversation, and it can be a little more flexible, and still be an open meeting without having any hostility. Chair Warburton replied they can't do that, it's not appropriate that it has to be an open meeting.

Director Grover said in a situation, where someone would like to do that, and they invite GEM or the Land Trust to come to the forum, and express their comments. That would be up to them and how they would like that to function. He could see some pros that came from that, and also negative that came from that too. He thinks all in all how that happened with the general plan; that majority of the interest of the citizens, but it did generate a few phone calls that staff had to address, and they finally did get some information that may have not been available to the commission.

Chair Warburton said the GEM is very active in the community, and on the things that she heard as a Utah Land Institute; is listen to the people that aren't so loud, and listen to the people that aren't talking. One of the reasons that they did get the people to help them is because they wanted everybody's opinion. GEM is very verbal, they sent letters, they came and they had representatives here for every single meeting. He sends out emails all over and he is the one person that is here all the time, and to turn around and have just a special meeting just for them. There are a lot of people that have issues with the GEM Committee; and if we were to make a special meeting just for them, then it would appear to them that we were bias. She thinks the way it was handled was very professional and very good and there were plenty of ways to contact us. In the two year process of the General Plan, she didn't see that the GEM was slighted at all.

Kim Wheatley said that he wanted to clarify something, their purpose is to engage the public and if they didn't put out those emails, and call different friends, there would have been less people here. To get people to engage, they know what their fundamental principle and vision was to engage comment. They are partners in that process, as opposed to saying bad things about people trying to do that process; but trying to maintain the public participation is an enormous task, and they need to be partners.



Scott Mendoza asked legal counsel about ex parte; and if he were a developer, and he came in with an application, and as an applicant or developer, he has proposed something and he finds out that a Planning Commissioner has been in a meeting and exposed the information, could he talk about something like that. Mr. Courtland replied that his understanding is that the reviewing court is just going to look at the decision that was made, the reasons on the record for their decision, look at the evidence, and as far as any allegations, that there was ex parte cut or anything like that. He was not aware of whether or not that could be something that could be used to overturn a decision that was otherwise supported by substantial evidence on the record, supporting what is a reasonable decision, and that is something that he would have to look into that. But his understanding right now, he didn't think the courts would overturn a decision, based solely on that. Commissioner Graves said the value when they make their motions, to give the reasons why they are making their motion, and that's the evidence they are looking for in the record in their motions.

Chair Warburton said on a consent agenda, they are not having a public hearing, why is she asking if any member of the audience wants to pull it, especially if the item is not something that she would have a public hearing on anyway. Mr. Erickson replied that was based on the letter g that was added after the last time they discussed this on Page 7. Chair Warburton said if any of the other commissioners would ask if there were anyone that would like to have the consent item be removed, that didn't make sense for them to come up and say something about that. Mr. Erickson replied that he only added this because it was discussed the last time, but the consensus was to add something like that. The one thing he can think of is it requires for discussion and explanation, at least in theory.

Chair Warburton said a consent agenda item, the director has already decided it should be on there, and it's difficult for a CUP to be on a consent agenda. But a consent agenda item does not have the obligation to have a public hearing. Mr. Erickson replied it is still a public meeting and if there is a desire, on the part of the chair to allow further discussion and explanation, then this gives that ability to grant the public wishes on this. Chair Warburton said then this needs to be reworded, that the chair has the option of allowing anybody other than the commission, the desire to have that removed. Mr. Erickson asked to restate the last item because what they said doesn't match to what he understood. Chair Warburton replied to have somebody in the audience, who is not a member of the commission, raise their hand and want to amend the agenda, by removing a consent agenda, and pulling the item to a regular agenda item is not an order.

Commissioner Lewis asked where that is in the rules though. Chair Warburton replied it says on Page 7, under g, if any person other than the commissioner asks for a consent agenda item to be discussed, the chair shall decide whether or not that item should be removed from the consent agenda. We have been doing that, if there is a consent agenda and we ask if anybody else wants that item to be removed. Commissioner Haymond said that's just an extra effort to have an item that is none controversial. It's just belief on the director's part that it is not controversial, then they can talk about it in the pre-meeting, if it is none controversial. Commissioner Graves said if there is some evidence that someone is aware of that it needs to be presented, that would change how that would be dealt with.

Chair Warburton said that just needs to be changed. Commissioner Lewis said doesn't it say the chair shall decide. Chair Warburton replied it say any person other than the commissioner, so they can ask and we decide. Mr. Erickson said so what they are saying, if the chair wants to, the chair may ask whether anybody wants this removed. So they're saying that we should clarify, that's not going to be something that anybody, only if the chair asks for the audience.

Courtlan Erickson asked if they should take that out and rely on the chair, if they are going to ask the question of the members of the audience, if that inherently means it shouldn't be on the consent agenda item because they anticipate some kind of controversy. Chair Warburton replied that's what she would think, and that was her position on the whole thing. Mr. Erickson replied if that is the case, and then why not just take this out and say, members of the audience, and maybe if somebody came here in advance and said he wanted to comment on this, and they could say let's take it off the consent agenda. Commissioner Haymond said do they remember the gentleman, after they had just passed the consent agenda with three items on it, and there was a development out in Huntsville, and after they approved the consent agenda and passed it, he stood up and walked up front. We gave him the opportunity for public to speak but he didn't understand it, but it's on record that we gave him the opportunity to speak. He got up and had questions on the development at that point.

Commissioner Howell said that in the past what they've done here, if something is on the consent agenda, and they have some people that want to be heard, then it would be changed to administrative by a vote. Chair Warburton said there is a developer behind every one of these applications, and they have a right to have a speedy trial so to speak. What they have

heard in all the education they've heard in the last two conferences that they've been to, and she gets accused of having the meetings too long, so let's shorten the meetings up by doing what they are required to do.

Commissioner Haymond said the only reason to ask is so they don't get public thinking that they don't understand. Commissioner Howell said that people don't think that they have input to anything as a public and they want to be heard. Commissioner Taylor said that she liked having it in there as written. She thinks the consent agenda item can move things more quickly, and having items on there that are administrative items is okay. There are people who come to the meeting to hear the item and know that their time was well spent.

Chair Warburton said as long as they do the changes, and just say that the chair just has the option to ask the audience, to anyone other than the commission. Mr. Erickson said so if someone from the public asks that without the chair asking first. Chair Warburton said as the chair, she would just tell to come on up, because she wants to pull that. Mr. Erickson replied that's the way it is written right now. If they raise their hand at the beginning, they then invite them up, if they make their request.

Commissioner Haymond asked if it was on an administrative item, not on consent agenda, they would give them the opportunity to speak to it. The only reason they say they don't on the consent agenda is because that's our opinion and the director's opinion that it's non-controversial. He just thinks that it's valuable for someone to be able to speak, to object the consent agenda if they have something to speak on. Commissioner Graves said and that would be after all the administrative stuff is done. In terms of phrasing it or express this, in the past when they have asked this question, it is not who would like to pull this. Is there anyone that would like to speak against this item? If there is somebody that is against it; now they have identified that there is a conflict here. If there is, then the chair is in a position to decide do we pull it or not pull it. The way it's worded changes that a little bit and it's just another way to look at it. It doesn't flat out imply that they have the right to yank anything off. All they are doing is asking if anybody has any objection.

Commissioner Haymond said that he like that was being said; instead of saying is there anyone here to speak to items on the consent agenda. Chair Warburton said would anybody like to pull it in with a problem on the consent agenda. Commissioner Graves said it started out originally the language that they had when they would follow stuff, if anyone would like to speak against any item on the consent agenda. The choice still remained here though, it never goes out, they are just asking for more information in making a decision here. Mr. Erickson said generally with the consent agenda, to his understanding, as soon as one member of the Planning Commission expresses opposition, there is no longer a choice, it comes off automatically.

Courtlan Erickson said the way he understood to be written right now; under g it says, there is no obligation to make any announcement or tell the members of the public that they can voice opposition or anything like that. But if anybody does, then the chair says yes they are going to remove it, or no we are not going to remove it from the consent agenda. The chair retains that discretion. Commissioner Graves replied that he is okay with the way it is, and let the chair decide how they want to handle it. They want to say something, or not say something. So if they don't say something, it just goes on through and the way we go. Chair Warburton said she was good and asked if anybody else had anything else to add.

Chair Warburton said on Page 7, under e, Order and Decorum. There is a new order and they want to do that to do that legally. They were going to do a new order where the applicant is going to present. Director Grover said they did include that, and what they have here is, the chair will introduce the item, after that being the director who would talk about the type of use, what decision will be made, who is it going to be reviewed under, what zone it's in, and then they would have the applicant, which is under c, present that, and then whoever is assigned, that individual staff would come up and give their presentation and recommendation.

Director Grover said that they added that b in there, and what they are going to be doing, they are going to be trying that out on the next few items. There will be this staff standardized Power Point Presentations, where staff will be having the analysis for a conditional use permit, the analysis for a subdivision, the analysis for development review. Chair Warburton it would be the educational portion that they are talking about. Director Grover said that the end of that meeting, he would like to discuss with the commission, and see how they felt like it went.

Chair Warburton asked if everybody understood the recitation with the Findings of Facts. She is looking at Motions, on Page 9, under e & f. What they are not doing right now that they need to do; is when the person that makes the initial

motion, they need to make finding of facts as to why that motion should be carried. Whether it's in the General Plan, supported by the General Plan or whatever else is offered by staff, however they feel is appropriate to support their motion. Commissioner Haymond said they are doing that by referencing the recommendations in the findings and facts report, those are all the things that go into that. Chair Warburton said she always thought that but is that enough. Commissioner Haymond replied that he believed that it does, if the staff report contains specific findings which they do.

Courtlan Erickson said that the staff reports that he has seen have been quite extensive and specific in their findings and recommendations and conditions were appropriate, and if there is a clear reference it is sufficient.

Chair Warburton asked if there was anyone that had any changes they wanted made. Commissioner Haymond asked legal counsel if there was anything that he wanted to point out, any considerable changes that he made, and he talked about recommendations awhile ago. Mr. Erickson replied he did that, and there were some additional feedback the last time or two that they have discussed that he did incorporate that. The director provided the new order of the applicant and he believed that has been through the process. He appreciated the comments from the Planning Commission members wishing to have comment and he would work on the revision of that. He would look into any legal liability that could result from any ex parte contact. Otherwise, he didn't end up writing beyond any changes that were agreed upon on the ex parte contact discussion.

Commissioner Taylor said that she had one suggestion, when he talked about division; she would be in support of something that said in an effort to, the Planning Division would not have more than two Planning Commissioners pre-arranging a meeting, and not more than one Planning Commission attend one of these meetings, and she didn't know if it was out of line to put that. Chair Warburton said that she had thought of that too, one is fine to go just don't plan with somebody else to go. Commissioner Graves said so if two showed up, do they need to flip a coin of who goes home. The response was yes. Chair Warburton said if they were at a meeting with GEM, and four of us showed up, three of us would have to go. Otherwise we represent a quorum at that point.

Courtlan Erickson said that may be questionable; because a lot of that depends on the meeting was convened. If it was actually a Planning Commission meeting, is it a meeting of this public body. Commissioner Haymond said it would be of public record. Chair Warburton said then when it's a public meeting, then it has to be announced publically, and it goes back to an open meeting. Mr. Erickson said for the record that didn't constitute a public meeting, but any of these restrictions that they are talking about, they could be self imposed. They can feel free to say as a rule that they are going to impose on themselves, no more than one of those attending the meeting to discuss the legislative issue.

Chair Warburton asked if he could look into the quorum issue, if there a majority of us and there is a quorum. Mr. Erickson replied sure, and what he was trying to say, if three of them choose to get together, and arrange some kind of meeting with members of the public, on a legislative issue, there is no legal prohibition on that. He understands that they are saying that it really is an internal division of the Planning Commission issue, and that is up to them. It's not prohibited by law for three of them to meet and do that, and it's an internal questions. Chair Warburton said that she gets that it's not prohibited, but the once a quorum shows up, then it needs to be noticed.

Kim Wheatley said when he read these he thought they were great; they've been in place pretty much the way they've done things throughout the years. But that only provides sort of a structure, and in rehearsing back the conversation that they just had, he thinks they could do a lot to mend, to take the tension out of our planning and our community, by not using phrases like if anybody is opposed to this. That is not what they are asking for, what they are asking for if anybody could present evidence that they should take this off of the consent agenda. That's what they are asking for, they are not asking if people are opposed, but they set it up that way in all of the language and all of the meetings, and he is not picking on the chair but all chairs. This is a place they are supposed to present factual evidence, and he is talking about the administrative side of it. He thinks that they could use more tender language and educate people along the same way. Sort of inviting them up and taking it off the consent agenda, only if it's evidence they are presenting, not public clamor.

Courtlan Erickson said that he could answer the question about the quorum attending a non-planning commission meeting. There could be different situations where there could be some grey area, but the law is a meeting open to the public, the public body shall give not less than 24 hours of each meeting. The common word that is used for this general requirement is the word meeting. A meeting has a very specific definition under the Open Public Meeting Act; *"Meeting means the convening of a public body, or specified body, with a quorum present, including a work shop or executive session, whether in person or by*

*means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon, a matter over which the body has jurisdiction or advisory power.”* So the key words there are the convening of a public body, quorum present, for the purpose of discussing, receiving comments, about or from the public about, or acting upon a matter. Convening is also defined and it means, *“The calling together of a public body, a person authorized to do so, for the express purpose of discussing or acting upon, subject over which that public body has jurisdiction advisory power.”* So if the chair calls multiple members of the Planning Commission together to attend a meeting of another group or Novation, for the purpose of gathering information that probably is a meeting that would be prohibited. But if the is some other group or another entity holding a meeting, and four members of the Planning Commission happened to attend, he didn’t see that as the convening of a Planning Commission, with a quorum present, that isn’t the convening of that body for the purpose of discussing and receiving comments from the public about or acting upon that matter. Now they will notice in there, there are a lot of facts that have to line up to make it a meeting or not a meeting. So we have to be very careful, if four of them show up at some kind of meeting, and it turns into a situation where they are receiving comments about an issue that is going to be before them whether it’s legislative or administrative, that gets a lot to go through what a meeting is. If they independently show up in a meeting somewhere, and sitting there listening, that could be an argument that is not a meeting.

Chair Warburton said so Commissioner Graves calls four of them and says lets go to this meeting. So he’s called it and they go, and they head out to that meeting, doesn’t that constitute a public meeting. Courtland Erickson said that they would have to look at the facts of each situation. Chair Warburton said if they just heard about it and four or five them showed up, then that is just fine. Mr. Erickson asked if she was talking about going to a GEM meeting. Chair Warburton replied yes. Chair Warburton said so we go, and the minute people start asking questions about a topic that comes up, an application and it’s administrative, that would be a problem, because those people are giving us information. Mr. Erickson replied that could turn problematic, it depends on how strictly they read these words. It could still be argued nobody convenes that quorum with the express purpose of meeting to gather public comments. Chair Warburton said we just need to be careful. Mr. Erickson replied that does have a bad appearance. The black and white answer is there are times when four of they can attend a meeting, then it wouldn’t be considered a Planning Commission public meeting, but there are a lot of facts they need to line up one way or another.

**WS3. Adjournment:** The meeting was adjourned at 7:00 p.m.

Respectfully Submitted,

Kary Serrano, Secretary;  
Weber County Planning Commission