

Minutes of the Western Weber County Planning Commission held on December 08, 2015, in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present: Jannette Borklund, Chair, Mark Whaley, Wayne Andreotti, Lance Greenwell, Roger Heslop, John Parke
Member Excused: Michael Slater
Staff Present: Sean Wilkinson, Community & Economic Development Director; Jim Gentry, Principal Planner;
Charles Ewert, Principal Planner; Scott Mendoza, Assistant Director; Sherri Sillitoe, Secretary

*Pledge of Allegiance – led by Jeremy Mathews, University Student

*Roll Call

No Exparte Communication was expressed.

1. Approval of the Minutes

Chair Borklund declared the November 10, 2015 meeting minutes approved as amended, noting the error after Members Present and after Vice Chair Whaley's name where Chair Gibson should be deleted.

2. Administrative Items:

2.1. CUP 2015-20 Consideration and action for a conditional use permit request for a private park and recreation grounds to be located on parcel #14-109-0002, 05-001-0001, and 05-001-0003 in the Waterfall Canyon Area (Sherpa Logistics, LLC dba Utah Adventure Center, Applicant; Chris Peterson, Agent)

Director Wilkinson read an open meeting statement at this time regarding the history of what spurred this application. The letter directed the focus of any comments regarding the application to the application's concerns only.

"Ladies & Gentlemen,

Thank you for your attendance at the Western Weber Planning Commission meeting this evening. The Planning Division staff and Planning Commission are aware that the Conditional Use Application on the agenda, submitted by Mr. Peterson, has generated a great deal of public interest over the last week. To be clear, the County informed Mr. Peterson that a Conditional Use permit was required for his business operation, and requested that he submit the application.

It appears that much of the public interest is focused on access through Mr. Peterson's property via existing trails. We understand that the discussion of public access rights on these trails vs. private property rights is an ongoing issue that many people, on both sides of the issue, are passionate about. By considering the application this evening, the Planning Commission is not taking a position on this issue and nothing in the staff report, staff analysis, or staff presentation is intended to enhance or extinguish any public or private rights that may exist, nor alter current use by the general public. With that said, this planning commission meeting is not the proper forum to debate this issue. The discussion tonight should be focused on Mr. Peterson's specific application request to operate climbing, hiking, and other outdoor activities within what the County's Land Use Code calls a "private park or recreation area."

Public comments at this meeting are under the direction of the Planning Commission Chair. If allowed, we ask that public comments remain focused on the application being considered by the Planning Commission and not on other issues, important though they may be which are not up for discussion or consideration. We ask that everyone please be respectful and courteous during the meeting and refrain from cheering, clapping, or otherwise being disruptive. We appreciate your attendance tonight and thank you for your cooperation."

Ronda presented a staff report and indicated that the members were handed out an amended staff report with newly added language shown in red and blue on Page 1 "*The application will have no effect on the current use by the general public.*" on the (1st Para.), Page 2. The same phrase has been added. Further down as they evaluated the parking, "*the non-paying visitors*" has been changed to read "*the general public.*" On Page 3, it has been changed to read "*paying guests and the general public*" and then on Condition #2 as recommended by staff, it shall now read; "*At such a time that the parking needs of the paying guests start to have a negative impact on the parking needs of the general public.*" The applicant will need to work with the county to establish additional parking. Also, the members have received copies of any previously submitted email correspondence sent in to staff regarding the project. The staff report is available on Miradi.

Jannette Borklund disclosed that she works for Ogden City and has done minutes on the Ogden Trails Committee. She does not feel that it affects her determination at this point. It is up to the members to decide. Chris Crockett indicated that the decision to recuse herself lies with her.

Ronda Kippen indicated that based on this amended staff report modification; State statute requires that the applicant receives the staff report prior to the meeting. The State Statute allows the applicant to waive that right, and Mr. Peterson has given the staff written authorization and waived that right so they can proceed with the agenda item tonight.

The proposed private park is located in the Forest Zone "F-40" and is allowed by a conditional use permit. It is proposed on a 1,440 acre parcel. The applicant's narrative indicated that the operation has been in operation since 2005 and the public use of the property predates the private park venture. The proposed use conforms with the purpose of the Forest zone and will enhance the preservation of the area by providing onsite maintenance and management by guides that deter littering, graffiti and vandalism that has become more prevalent as the area has grown in popularity.

This application will have no effect on the current use by the general public. The proposal is to allow a commercial venture on private property for paying customers to enjoy guided hiking, photography and mountaineering adventures. The Planning Division has been working with the applicant and it is anticipated that the proposed private park will not create additional negative impacts on the area.

Conditional use permits shall be approved as long as any harmful impact is mitigated by imposing reasonable conditions. The Uniform Land Use Code of Weber County, Utah (LUC) has specified certain standards necessary for mitigation of harmful impact to which the proposal must adhere. The proposed application meets these standards. The following is staff's evaluation of the request.

Mrs. Kippen presented a PowerPoint presentation which included a video from the Salt Lake Tribune showing a Via Ferrata operation and what is proposed by Mr. Peterson. There will be no structures on the site. The applicant is proposing that parking for the private park be located at the designated trailhead parking lots located on 22nd, 27th, 29th and 36th Street. Restroom facilities are available at the 29th Street parking lot. At this point, the parking needs of paying guests versus the parking needs of the general public are extremely minor; however, at such a time that the parking needs start to create a negative impact on the parking needs of the general public, the applicant will need to work with the county to establish additional parking.

The key concerns from the Weber Engineering Division, Weber-Morgan Health Department, and the Weber Fire District are parking, restroom facilities and access for emergency services. The applicant has adequately addressed these concerns by utilizing the public trailhead parking areas and restroom facilities and by utilizing the private road that runs from the east end of 29th Street to the north of Waterfall Canyon for emergency access. There is nothing in the Building Code that would regulate a Via Ferrata.

The Planning Division recommends approval of file# CUP 2015-20, a conditional use permit for a private park to be located on parcels #14-109-0002, 05-001-0001 & 05-001-0003. This recommendation for approval is subject to all review agency requirements and with the following conditions:

- All operations will be in strict compliance with the applicant's approved proposal.
- At such a time that the parking needs of paying guests start to have a negative impact on the parking needs of the general public using the public parking areas, the applicant will need to work with the county to establish additional parking.
- At such a time that additional wastewater or drinking water is deemed necessary by the Weber-Morgan Health Department due to the increased guided private park uses, the applicant will need to work with the county to establish additional restroom facilities.
- Requirements and recommendations of the Weber Fire District.
- Requirements of the Weber County Engineering Division.
- Requirements of the Weber County Health Department.

This recommendation is based on the following findings:

1. The proposed use conforms to the General Plan.
2. The proposed use will not be detrimental to the public health, safety, or welfare.
3. The proposed use complies with applicable County ordinances.
4. The proposed use does not require the construction of any new buildings.
5. The proposed use will encourage, educate and motivate guest to the park to preserve and protect the area.
6. The proposed use will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.
7. The proposed use will not generate additional parking needs and can be modified by the Planning Commission for unique circumstances.

Mr. Petersen did not have any comments to add.

Sandy Crossland, 1497 Beverly Drive, Ogden, UT, indicated that after the County Commission meeting this morning she met with Sean Wilkinson, Scott Mendoza and Ronda Kippen and they discussed the language that was initially in the proposal and the possibility that it might cause conflict between the rights that are present with this particular property. They have both land owner rights, which can include the right to exclude and in this case, also possible, or probably prescriptive easement rights that belong to the general public. This application states that the land owner acknowledges the public use of the property predates the private park venture, but then initially in this CUP, it stated that the applicant plans to continue to allow non-paying visitors to visit the property. That language was changed because that initially written language indicated that the land owner had the right to determine whether to allow or that at some point in time he allow a continuation of the predating private use. The Planning Commission does not choose to have this be a forum for this discussion about public use and private rights. The language was changed to make it completely neutral so that it wouldn't advantage either the public who claim prescriptive rights or the land owner that may claim a right to exclude now or in the future. She thanked the staff members involved for their careful meeting to make sure this CUP would not become a forum for debate of that issue.

Carol Jennings, 2545 Iowa, Ogden UT, asked what has to happen if public access is denied. Does he have to come back to the Planning Commission or go ahead without public approval? She is concerned with future public access and wants that preserved.

Dan Schroeder, 1444 Binford, Ogden UT, indicated he previously sent in his concerns and asked that the question as to how sniper training would or would not fall within the scope of the conditional use permit be answered. There has been clearing of trees on the property and he also heard of the application of herbicide on the property and how it would affect the Ogden City drainage.

Mary Hall, 1528 28th Street, said she is a big proponent of private property rights. She respects Mr. Peterson's rights to utilize his private property. She appreciated that the new language was added to the staff report. Her concern is that the private park is listed as the entire 14 acres and how it states that Mr. Peterson will permit the public to use the land. She believes that the public has the right to specifically use the Waterfall Canyon trail. She believes that most people in the county and city use this trail by right and not by permission.

Jerome Bird, 2725 Fillmore, expressed his concern about the existing parking areas being already full and wonders about having any additional access to parking. He only sees 29th Street as having any additional parking area.

Mike Vause, 2685 Shamrock Drive, stated that there has been concern for a number of years regarding the uses of the zip line, ice climbing, and other uses without receiving a conditional use permit. He appreciates that now Mr. Peterson is working with the county. In regards to the Via Ferratta, he recognizes that it is relatively safe. The chance of people being hurt is a concern and wonders if the county has the proper insurance for those activities. There has also been concern about signs posted along the trail indicating that people need to bring identification for them. He doesn't carry a wallet and knows that many people also do not. It seems to be somewhat underhanded and threatening. He is concerned that the property owner could close the access in the future or make it so difficult for people to use it. He asked that these questions be addressed.

Shad Burnham, 1644 26th Street, stated that he is the CO of the Front Climbing Club and Vertical Solutions and is familiar with climbing. He has enjoyed the trails in Ogden City and believes it is an incredible place to have access to. With his background, he knows that mountaineering is dangerous. He has not heard of risk management being addressed tonight, not only with activities, but what kind of qualifications does the staff of Sherpa Adventures have on file. To his knowledge the only guiding permits that have ever been issued in our areas is to Weber State's outdoor program. They worked very hard to get that and maintain a staff of NGA Certified guides. If another organization is permitted to have such guiding permits, he believes they should have to meet the same standards or greater. From personal observation, the anchors in place are not stainless steel and anchors fail regularly in the wild due to corrosion of the mixed metals used.

Jay Hudson, 4535 Country View Drive, stated that they are talking about a landmark in Ogden City and Weber County. They started talking to the Malan family in 1982 and they were cooperative and stated that they never prevented anyone from having access to the mountain. He believes that at first they wanted to give it to Ogden City, but gave the land to the Forest Service for fire protection. He believes the road goes through the Forest Service's land and the agreement was that it would always be open to the public. It was stated that the road would always be there but only used for emergency purposes. In 1995, they built the parking lot on the 17 acres and they were able to put the trails system there. They had the first National Trails Day in 1996 and a plaque was placed on the property thanking the Malan Family there for keeping the land open. He urged everyone to remember the history of the land.

Chris Peterson stated that the narrative he listed the variety of activities that could take place on this property. He had a tenant operating there from 2005-2006, and in 2007 he took the property over as part of guiding that his company does all over the State of Utah. They operate on private land that is either owned or leased by his company Utah Adventure Center or they operate on public land; National Forest, State land, State public land, Bureau of Land Management land and National Park Land; lands that are open for photography and recreation. The Weber County Land Code lists public parks and recreation grounds as a permitted use. They thought they were a public park and recreation ground. He received a call from the Weber County Planning staff indicating that he needed to obtain a conditional use permit for a private park or recreation ground. This is why he submitted the application and he is asking for a continuation of the activities they have been doing there for the past 10 years.

Chair Borklund asked if sniper training is a part of his operation, and Chris Peterson stated that sniper training has been done. He does not anticipate the need for it because the military is now utilizing drones; however, there may still be times when it is needed. He has been told the area is similar to the areas used in Afghanistan. Yes, in the past, he has closed the box canyon a number of times to support the use, but when he closes it, it is for the safety of the public. The Special Forces people are good shots and it is a safe and realistic environment. He wants to support the military needs if asked in the future although he does not anticipate it. When it has been done he has asked Weber County to send a marksman if they wanted to attend the training.

Chair Borklund said a question was asked of what will trigger if the right to access will be lost. Chris Crockett indicated that regarding whether there is a public right through a prescriptive easement based solely on permission exceeds the scope of the Planning Commission. Prescriptive rights are defined by courts and it would not happen in this forum.

Commissioner asked what will happen to the parking lot on 29th Street, and Ronda Kippen indicated that our code allows for special use permits which is similar to the permits that are utilized for marathons or he could apply for a special permit for a shooting range. At this point, it is not part of this proposal. During the 2006 application that was submitted by Mr. Peterson's previous tenant, they have a letter from Ogden City that allowed the parking at that area. However, the parking lot area is a public street. Since Mr. Peterson received that letter which allowed the trailhead at the top of 29th as parking for his venture they have allowed the use of the area for parking. The ice climbing was not proposed in this current application and therefore, they did not analyze any area of water disturbance there. Chair Borklund indicated that if the parking lot becomes full consistently, they would have to establish if Mr. Peterson is responsible to create more parking, that it is his users that would be creating the need for the additional parking.

Commissioner Parke clarified that the sniper training was not allowed by this permit. Ronda Kippen indicated that Special Use Permits are issued through a different process and department. The sniper training is not part of this proposal. If it did take place, it would be through a special event permit process.

Chair Borklund stated that the water draining would be through a different department as well.

Commissioner Heslop asked who would be responsible if the public accessed the private land and had an accident; how is that handled? Chris Crockett stated that it would depend on why the individual is there. If he were a paying customer as part of a business adventure, then the land owner would be himself up to potential liability if injuries occur. If the land owner allows the owner to use, but is not receiving a potential benefit, the law allows some more protection. As far as insurance, he does not know of a state law that would require certain insurance. They do if it is part of a special events process.

Chris Peterson stated that his guests sign a waiver and they have insurance. Utah has a law called the Utah Land Owner Liability Law to encourage land owners to leave their property open to access it. In Utah you cannot sue the land owner if they are injured. Even if there is an open and notorious hazard such as a running chainsaw, if someone enters the property and they are injured and didn't pay admission, they do not have rights to sue. If a fee is charged, then the land owner is required to pay a level of care. Utah also protects land owner rights such as ski areas, etc. There are a lot of protections on both sides.

Regarding the issue of requiring identification, Chris Crockett indicated that their opinions would be mute to that issue.

Alan Abdula, 2950 1665 Darling Street, stated that this area is one of the most beautiful jewels in the country and the Planning Commissioners have a job to protect that jewel; and that jewel is the east bench trails. The trails are unique and close to the city. He respects Mr. Peterson's right to have his private property, but they want the access to remain open to the public because it is a jewel.

Jock Glidden, 1777 Binford, stated that he believes Mr. Peterson needs to give them a list of the types of activities he will utilize on his land such as base jumping, etc. How much are the sniper activities going on? Mr. Peterson could be justified closing the canyon and trails for five days or more at a time. He believes the public deserves a comprehensive list of the activities that will be done on this land.

Chair Borklund acknowledges that it is a public trail on private property, but it is not open for this forum to discuss keeping the public access open.

Commissioner Andreotti stated that Ogden City is going down the road to being an outdoor capital of the west. This applicant is one of those who is contributing to this ideal. To balance this out, he has been up on the trails and it is one of the most beautiful areas in the State of Utah he believes. Mr. Peterson wants to have his guests and also allow the public use as has been done in the past. Many people come from out of state and acknowledge that it is a beautiful location. They will not be deciding or discussing the closing of any access.

MOTION: Commissioner Andreotti moved to recommend approval of 2015-20 as described for the private park, subject to all staff and agency requirements, which includes the following requirements:

- All operations will be in strict compliance with the applicant's approved proposal.
- At such a time that the parking needs of paying guests start to have a negative impact on the parking needs of the general public using the public parking areas, the applicant will need to work with the county to establish additional parking.
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6. The proposed use is to not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.
7. The proposed use will not generate additional parking needs and can be modified by the Planning Commission for unique circumstances.

Commissioner Parke seconded the motion. A vote was taken and Chair Borklund indicated that the motion carried by a unanimous vote with Commissioners Andreotti, Parke, Greenwell, Heslop, Whaley, and Chair Borklund voting aye.

3. Public Comment for Items not on the Agenda

Daniel Bosworth, who lives on Fillmore in Ogden, indicated that Weber County has a master trail plan and he believes it is important to that is recorded.

4. Remarks from Planning Commissioners

Charles Ewert indicated that the County Resource Management Plan is what the county is to prepare as part of the General Plan. In Western Weber County they are still having discussion of what the Western Weber General Plan update will be. The CRMP will be required before any resurrection of the Western Weber General Plan update. The first draft will technically be required by the end of June 2016. We will collect data and are working with WFRC who has hired a consultant, Bio-West. They will work with a task force who met today to start to identify what we think are the most important resources that Weber County has. The State outlines 27 resources that we have to address. The committee is formed to decide what our important areas would be. The data will be collected by March of 2016 and then they will have a couple of months to determine the best course of action.

Commissioner Heslop asked if it will supplement the General Plan. Charles Ewert indicated that this will be a stand- alone document that will be an element of the Western Weber General Plan.

Commissioner Whaley asked if the State has any requirements of how often it is to be updated or maintained.

In the Ogden Valley they are creating a matrix to be able to refer to on a regular cycle whether they have hit the mark. He believes they have had updates on a regular basis as to how they are following or updating their general plan. They are premature in answering when they can start updating the Western Weber General Plan.

Charles Ewert discussed items that the CRM Plan covers at this time such as water management, forestry, fire control, land use, water quality, economic quality, tourism, various types of industries, air quality, etc. The Planning Commission will see the draft in their meetings sometime in March or April.

Commissioner Greenwell asked if some of the contacts will be made with the Manufacturing and Industrial Companies to determine what hazards may arise or could arise in the future. The question of risk management is not something that has come up yet, but it may in the future.

Charles Ewert stated that the primary concern in his understanding is that on Federal Lands. Essentially, under the Federal statute is to require them to meet and collaborate with the county and cities. They are trying to make the planning concerns across boundaries cohesive.

5. Planning Director Report –

- ### **6. Remarks from Legal Counsel –** Chris Crockett thanked the Planning Commission for their hard work.

7. Adjourn

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Sherri Sillitoe, Secretary
Weber County Planning Division