Minutes of the Ogden Valley Township Planning Commission meeting held July 26, 2011, in the Weber County Commission Chambers, commencing at 4:00 p.m.

Present: Kevin Parson, Chair, Greg Graves, John Howell, Laura Warburton, Kevin Parson, Dennis Montgomery, Ann Miller, Pen Hollist

Staff Present: Rob Scott, Director, Ben Hatfield, Planner; Sean Wilkinson, Planner; Scott Mendoza, Planner; Chris Allred, Legal Counsel; Sherri Sillitoe, Secretary

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Pledge of Allegiance
Roll Call

1. Minutes:

1.1. Approval of the June 28, 2011 meeting minutes

Chair Parson declared the June 28, 2011 meeting minutes approved as amended.

2. Consent Agenda

2.1. Consideration and action on a request for preliminary approval for the Felt Subdivision and a recommendation for the vacation of Lot 5 of the Shawn Knight Subdivision No. 2 and all public utilities located therein.

Commissioner Hollist indicated that he had a communication in his capacity as a member of the Liberty Pipeline Board of Directors regarding Felt Subdivision. He spoke with Mrs. Felt about connection of water and about what the County and State required as far as water rights. He did not know it was a subdivision at that time and he believes he was not appointed as a member of the Planning Commission at that point. Chair Parson indicated that the Planning Commission did not see a conflict of interest and Commissioner Hollist could participate on this item.

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MOTION: Commissioner Graves moved to recommend approval of Consent Item 2.1, a request for preliminary approval for the Felt Subdivision and a recommendation for the vacation of Lot 5 of the Shawn Knight Subdivision No. 2 and all public utilities located therein, subject to staff and all agency requirements. Commissioner Warburton seconded the motion. Motion carried (7-0)

3. Regular Agenda Items:

Old Business

3.1. Clarification and action regarding the Planning Commission recommendation to the County Commission for the amendments to Chapter 34 Home Occupation as identified May 24, 2011.

Rob Scott said he was not at the May meeting and after review of the minutes, he believes clarification and revision of the minutes is warranted. There were some motions made in that meeting relating to this ordinance, but there is no overall motion to recommend adoption of the overall motion. A revised set of minutes was included in the packet for approval. Both the Western Weber Planning Commission and the Ogden Valley Planning Commission have made recommendations to this ordinance, but both do not agree on everything. Both ordinance options will be presented to the County Commission.

Commissioner Warburton wanted to clarify that the use to allow people to bring items onto the property and then resell them was included in the ordinance, as it was not included in the staff report. Mr. Scott indicated that he understood that a motion was made and passed to eliminate Item 7 altogether.

Because of the three new Commission members, Commissioner Warburton reopened a discussion which was previously voted down – massage therapists and nail salons. She felt eliminating these uses would be a mistake. She understood the Staff's recommendation to eliminate these uses along with tattoo parlors and all uses which might require exchanges of bodily fluids due to health department concerns in that they said it's difficult to regulate home occupations. Commissioner Warburton called the Health Department as well as researched their website to learn what regulations they require. She found that neither the nail salons or the massage therapy had regular mandatory inspections or licensing requirements for massage therapist. The Health Department told her that inspections were complaint driven. Commissioner Warburton stated that Chapter 34 did not inspect but was complaint driven. Therefore, if complaints were brought against these businesses, there was a process in place by which the Planning Commission could bring the business owner before the Planning Commission, request access for the Health Department and or revoke the license.

In addition, Commissioner Warburton pointed out that people are more likely to come in contact with bodily fluids in cutting and washing hair through scalp blemishes and scissor nicks on the scalp than in a massage.

Commissioner Warburton asked Rob Scott if this passed as the planning staff has suggested, would people be allowed to give massages in their homes as a business. Mr. Scott said that those who have a license could continue but from this time forth, no new licenses would continue. Mr. Scott continued by adding that a massage therapist could go to someone's residence and give a massage but not in his or her home.

MOTION: Warburton moved to amend 34-2 to remove from the not allowed massage therapy, leaving tattoo parlors and nail salons as not being allowed and leaving the word "beautician" in for clarification. Commissioner Miller seconded the motion.

DISCUSSION:
Commissioner Warburton feels removing these uses is unfair and a mistake in such a strained economy. The health department has no regulation regarding massage therapists and only inspects if complaints are received.

In reviewing the uses in home occupations that have bodily fluids, she submits that if they wash someone's hair there could be the same type of problem

Commissioner Hollist asked Legal Counsel to explain the issue of potential contamination associated with doing nails & massage therapy from the home.. Chris Allred, Legal Counsel, indicated it was included in the ordinance due to the recommendation by the Health Department.

Commissioner Howell indicated that he believes that the County Commission needs to take a close look at the issue of dropping massage therapy from Chapter 34 Home Occupation. This could be a potential health problem without Health Department regulations and inspection for unsuspecting citizens. In Los Angeles and other big cities, tattoo parlors and massage therapy businesses are a big thing. Furthermore, such businesses have been used as places of prostitution and this could even happen in Ogden Valley.

Commissioner Howell said he believes massage therapy and other mentioned businesses in the ordinance were put in the ordinance wisely and with good purpose.

Commissioner Hollist indicated that one of his neighbors is a massage therapist and he believes it is a beneficial business.

Commissioner Miller asked if other local jurisdictions regulate massage therapy home occupations, and Rob Scott indicated that he could only speak to the unincorporated Weber County area. Commissioner Warburton submitted she had researched many ordinances in surrounding cities and counties and found no other restriction against home massage therapists or nail salons.

Chair Parson said he heard that the concern was not for massage/tanning salons but for the materials used and cleanliness and toxic waste matter in nail salons and if the skin is broken with tattoo parlors. Commissioner Graves indicated that the restriction was added to the ordinance at the specific request of the County Health Department. Those businesses that are presently licensed could remain, but any new applications would not be approved.

AMD. MOTION: Commissioner Warburton amended her motion to exclude nail salons. Commissioner Miller agreed.

VOTE: A vote was taken and Chair Parson indicated that the motion carried 4-3 with Commissioners Hollist, Miller, Warburton and Chair Parson voting aye, and Commissioners Howell, Graves, and Montgomery voting nay.

MOTION: Commissioner Warburton moved to recommend to the County Commission that Chapter 34 is amended to allow two non-resident employees as the Western Weber County Township also recommended. Commissioner Montgomery seconded the motion

Commissioner Warburton said she does not see a problem with having two employees in a home occupation. Several regulations are already in place to ensure that the nature of the neighborhood is not disrupted if two employees are allowed, the home business still has to provide off street parking for all visiting clients (and/or employees). They still have to operate within certain hours. They are allowed to have clients in the home, which may be more than two in a day. They are still limited to the amount of space they can use in a home. Why do we care who occupies that space in which they are allowed to use?

Commissioner Montgomery asked why the difference in Planning Commission recommendations. Rob Scott indicated that Ogden Valley did not want to allow non-resident employees and Western Weber County did. Staff recommended against it. The purpose and intent of the ordinance is clear that home occupations are for homes.

Commissioner Howell said in 34-2 in the items listed as being not allowed, what about machine shops, auto repairs, etc. Rob Scott said someone could not operate in a garage. Commissioner Howell asked if someone could sale cars from their home, and Rob Scott said it is not allowed as a home occupation. Commissioner Warburton said that It is in the ordinance already that you cannot use more than 400 sq. ft. within a home.

Commissioner Graves indicated that he still leans toward maintaining home occupations to the residents of the home. If you get to the point of needing non-resident employees, you should look for a commercial location.

Commissioner Hollist stated that the way most small businesses evolve is from home. Rob Scott stated that if a business has employees they need to be in a commercial area. Commissioner Hollist pointed out that in this stressed economy, small businesses, which are the backbone of this country, need a way to develop. Often they start small, add a couple of employees and then grow enough to eventually move to a commercial area. Commissioner Warburton stated that in their family business, that's exactly the path they followed. She believes many people do. She stated again that as long as the business isn't affecting the quiet nature of the residential community, then what people do in their own homes, should be as unregulated as possible.

VOTE: A vote was taken and Chair Parson said the motion carried by a 4-3 vote with Commissioners Howell, Hollist, Miller, and Warburton voting aye and Commissioners Montgomery, Graves and Chair Parson voting nay.

MOTION: Commissioner Warburton moved to recommend approval to the County Commission of Chapter 34 as amended in their June meeting and this meeting. Commissioner Graves seconded the motion. A vote was taken and Chair Parson said the motion carried 7-0.

3.2. ZO 2010-10 An Ordinance to amend Chapter 29 Board of Adjustment of the Weber County Zoning Ordinance

Sean Wilkinson stated that the correction has been made in reference to when a final decision actually took place and when the time expires to file an appeal. A decision of the Board of Adjustment is final upon notice of receiving the notice of decision. Commissioner Howell said on 29-4 it indicates 15 calendar days to appeal: What was it before? Staff said they had to go by the State's minimum of at least 10 calendar days. Now it will be 15 calendar days. Sean Wilkinson indicated that they do not allow variances to be extended.

Commissioner Warburton commented that she had spoke with Steve Clarke further about his concerns which he previously spoke to the PC about regarding fair representation for those who appealed to the BOA. She indicated that she wanted it on record that she did research state law and found that we could easily adjust our BOA process to include an ombudsman but that would take considerable work and while she recognizes the need, she felt it was best to pass this ordinance as is and work on that project at a later date.

Sean Wilkinson said State Code does allow them to designate more than one appeal authority and they actually have two; the Board of Adjustment and the County Commission which acts as an appeal authority in some decisions; however, they are not precluded from having just a hearing officer.

Commissioner Warburton asked if it would be considered exparte communication to speak with the Planning Staff regarding other things than what is listed in the staff report. The Ombudsman would read the record and they could listen to the tape and write a brief that is given to everyone at the same time. She believes that it may help with legal issues to have a hearings officer.

As a policy issue, the County Commission would adopt the policy for a hearings officer.
Commissioner Hollist said not having been part of past discussions, he wanted to voice that he believes that Mr. Clarke is wrapping the issue in bureaucracy. In the end, there is the Board of Adjustment and the County Commission and he believes that is adequate.

Chris Allred said he believes Mr. Clarke submitted his comments to the Board of Adjustment.

Sean Wilkinson stated that the ordinance was taken to the Western Weber County Planning Commission and he included their recommendations in his staff report. In Chapter 31 section 2 they added flag lots and private rights of way as administrative approvals for the Planning Director to make. They added the Planning Director or designee as approving authorities. In section 7 they clarified the process for appeals.

Commissioner Howell asked if under Item 6 people outside of unincorporated areas of the County should be allowed as members. He believes they should not. Sean Wilkinson indicated that the Western Weber County Planning Commission believed they should not.

MOTION: Commissioner Graves moved to recommend that they adopt the proposed amendments to Chapters 29, 23, and 31 as presented by staff. Commissioner Warburton seconded. A vote was taken and Chair Parson said the motion carried by a unanimous vote.

4. Public Comments:
5. Planning Commissioner's Remarks:

Commissioner Warburton said she is very impressed with the Miradi Program that will help organize and communicate. Employees created the program and they were not paid for it. She also praised staff for getting the staff report out so quickly.

Commissioner Howell asked if Chapter 01 of the Subdivision Ordinance amendments would be placed on the agenda again and Rob Scott indicated yes.

6. Staff Communications:

6-1. Planning Director's Report

- Today the County Commissioners approved an ad-hoc committee to discuss the Weber County Trails Element, Maps, and Ordinance within 90 days. Commissioner Warburton asked if the Planning Commissioners could attend and Mr. Scott indicated yes if they would like.

- Staff would like to meet at 4:00 p.m. again for the August 2, 2011 work session and field trip. They will be going to Sand Hill Farms in Minnie Creek Estates.

Commissioner Warburton and Chair Parson said they would be out of town.

6-2. Legal Counsel's Remarks - None

7. Adjourn to convene a work session

Ogden Valley Township Planning Commission Work Session

WS1. Discussion of Heliports in the Ogden Valley

Sean Wilkinson indicated that at the June 28th work session staff presented several options for the Planning Commission to consider regarding the use of heliports in Ogden Valley. He presented the following summary of the meeting and is asking for the Planning Commission's verification that the summary reflects the discussion and direction given to staff.

- Heliports are considered a desirable use in Ogden Valley in appropriate areas, e.g., off the valley floor, and with appropriate regulations.
- A definition for "heliport" would include facilities for repair, maintenance, and refueling.
- A definition for "helistop" would include loading and unloading of passengers only with no permanent facilities.
- The DRR-1 and F-40 Zones are the two most likely zones for these uses.
- There was discussion about but no direction given on which uses would be allowed in which zones.
- Regardless of the zoning, there will be an elevation component for these uses. A decision on the specific elevation was not made.
- There was discussion about how to handle heliports in the CV-2 Zone, but no final direction was given.
- There is a difference between a helicopter flying in the Valley and allowing a heliport as a use in the Valley.
- The Planning Commission does not want to address private-use landing strips or helistops.

Staff is requesting further direction from the Planning Commission on these issues and any others that may not be listed in the summary so that a draft ordinance can be prepared. While the Planning Commission may not want to address the issue of private landing strips and helistops, staff does want to clarify that these uses are currently not discussed in the Zoning Ordinance, and, therefore, are not allowed. This may not have been an issue in the past, but going forward staff's determination is that these uses are not allowed and will be treated as violations of the Zoning Ordinance.

Commissioner Warburton indicated that they believe that helistop and helipad are interchangeable.

Commissioner Graves indicated that his thoughts on the DRR-1 and F-40 Zones was that there may be certain situations or cases that may be in the F-40 Zones such as a hunting lodge, etc. It would be a conditional use and the site plan evaluated on a case-by-case basis.

Commissioner Howell said he would imagine that if someone applies to put a helipad or helistop in a DRR-1 or F-40 Zone, they would have to come to the Planning Commission. Sean indicated his comments were they strictly limiting heliports to the DRR-1 Zone and helistops to the F-40 Zone. It would be listed as a conditional use in either zone.

Commissioner Warburton indicated that her concern was that they have to be accessible for fueling. They have to find a way to let resorts have them that are not on the Valley Floor. Snowbasin is a little less than 6,200 ft. where they currently have a flight path.

Commissioner Hollist indicated that safety is a primary issue especially in minimal flight conditions. Especially at 6,200 ft., using VFR and visual flight rules."

Commissioner Parson indicated that airports are allowed in the F-40 Zone. He believes there is a pad in the Skull Canyon area (Causey) for Forest Service use.

Sean Wilkinson said there has to be an elevation component for these uses. Commissioner Graves said a 6,200 ft. elevation was only an example, not what they are proposing. Commissioner Hollist said the higher it is the more socked in it would be.

Commissioner Warburton indicated that Snowbasin has a helipad at approximately 6,200 sq. ft.

Sean Wilkinson said they did not come to a resolution on how to handle heliports in the CV-2 Zones. If an elevation restriction precludes having a heliport in the CV-2 Zones on the Valley Floor, the potential may be there in a resort CV-2 Zone. Commissioner Graves said when there is a DRR-1 Zone, there is no CV-2 Zone there.

****The consensus is to eliminate heliports in the CV-2 Zone.**

Commissioner Montgomery said Steve Clarke recommended that flights would be limited to 2,000 ft. above the floor. Pen Hollist said he believes the FAA enforces that.

The Planning Commission does not want to address private-use landing strips or helistops. Sean Wilkinson said the ordinance states that if it is not listed as a use, it is not allowed. Option 1 is maintain the status quo and when they get a complaint, they would have to go after everyone. Another Option is we are going to allow these as accessory uses to an operation, and another option is to make them conditional uses that they could review. Commissioner Warburton said a conditional use really does not give them the right, they have to justify why they are saying yes or no. Commissioner Miller said it seems like they should have a legitimate reason for a complaint.

Private vs. Commercial options:
Commissioner Hollist asked to what extent the ranchers use aircraft to round up their cattle and Commissioners Graves and Montgomery indicated that there are not a lot of cattle in the Ogden Valley. Sean Wilkinson said the helistops could be used for other uses; agricultural, etc.

Adam Wilkerson, owner of A&W Aerospace, said in talking about elevation; the higher they go, it is a safety problem and the less performance they get. No harm to persons or property is their motto. They can operate 100 ft. over the valley floor if they want, as there are no Federal Regulations. It is different for each operation. They have tours that go through the valley every day. They take off from the Ogden Airport. It is usually 500 ft. off the valley floor that they fly.

Commissioner Hollist said suppose it is winter and they are moving to the top of the ridges, do they power on the rotor as they are disembarking skiers? Mr. Wilkerson said they do not operate skiing operations; however, they would like to fly out of some of the resorts. They can get through the valley in 15 minutes from the Ogden Airport. If there is a heliport in adverse conditions, they can land at a helistop in the valley to wait for better conditions.

Under FAA Regulations:

A helistop someone has to be certified and there is private fueling. A helipad does not have to be certified and anyone can use the pad. They allow private fueling. Mr. Wilkerson said their minimums are 1-mile visibility.

Commissioner Warburton asked if Mr. Wilkerson could put these standards in writing and send it to the Planning Staff. He indicated yes.

The meeting was adjourned at 5:41 p.m. to hold a combined Ogden Valley and Western Weber County Township Planning Commission field trip to visit Barker's Trout Farm.

Respectfully Submitted,

Sherri Sillitoe, Secretary
Weber County Planning Commission