



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Work session discussion on a proposed text amendment to the Weber County Zoning Ordinance by amending the definition of "school", adding the definition of "Therapeutic School", establishing facility requirements, and to include "Therapeutic School" as a conditional use in the F-5, F-10, F-40, AV-3, FR-3, and CV-2 zones.

Agenda Date: Tuesday, August 02, 2011

Applicant: Fred Smullin

File Number: Zoning Ordinance 2011-1

Property Information

Approximate Address: N/A

Project Area: N/A

Zoning: Multiple Zones

Existing Land Use: N/A

Proposed Land Use: N/A

Parcel ID: N/A

Township, Range, Section: N/A

Adjacent Land Use

North:	N/A	South:	N/A
East:	N/A	West:	N/A

Staff Information

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Report Reviewer: RS

Applicable Ordinances

- Weber County Zoning Ordinance chapter 1 General Provision (Definitions)
- Weber County Zoning Ordinance chapter 5B Agricultural Valley Zone 3 (AV-3)
- Weber County Zoning Ordinance chapter 8 Forest Zones (F-5, F-10, F-40)
- Weber County Zoning Ordinance chapter 15 Forest Residential Zone (FR-3)
- Weber County Zoning Ordinance chapter 18B Commercial Valley 2 (CV-2)
- Weber County Zoning Ordinance chapter 23 Supplementary and Qualifying Regulations

Background

The petitioners are requesting a text amendment to the Weber County Zoning Ordinance by amending the definition of "school", adding the definition of "Therapeutic School", establishing facility requirements, and to include "Therapeutic School" as a conditional use in the F-5, F-10, F-40, AV-3, FR-3, and CV-2 zones.

On June 28, 2011 the Ogden Valley Planning Commission discussed questions about the legality of the use in how it relates to Utah State Code and the Federal Fair Housing Act. A brief discussion was had regarding definitions.

The proposed amendment is summarized into three components. First, amendments to definitions found in chapter 1 General Provisions. Second, is a proposal of what zones are appropriate for the proposed use and whether it should be a permitted or conditional use in that particular zone. Finally, facility requirements to be amended in chapter 23 Supplementary and Qualifying Regulations.

The Planning Commission agreed that this petition should be discussed in those three parts. For the August 2, 2011 work session staff suggests that a discussion be had regarding definitions and if time allows an introduction on the type of use, i.e. permitted or conditional. As well as which zones are appropriate for the use and findings for why.

Summary of Planning Commission Considerations

An overall question is, does Weber County need additional standards beyond the Utah State Code? For example, why not consider allowing the state standards to be combined with Weber County's conditional use standards in specific zoning locations?

The petitioner is requesting (exhibit A-1) 3 definition changes to be made. Staff has identified policy questions for what is proposed followed by suggested direction or answers for the policy question.

The definition of schools:

- Does the definition closely follow state code for therapeutic schools?
Yes, the proposed definition matches what is in State Code. Staff suggests that since Therapeutic Schools are defined in State Code, there is not the need to repeat the definition in the zoning ordinance. This would be similar to what is done with other definitions.
- Should there be overnight accommodations at public or private schools?
In the current "school" definition overnight accommodations are allowed. Potential seminaries and boarding schools would qualify, under the current definition, to have overnight accommodations. On occasion over night activities are held which could be prohibited under this proposal.

One potential alternative is to create uses and definitions for "private schools" and subsequently "private boarding school" and "private non-boarding school".
- Should there be a definition for "Private Education Institutions" beyond High School?
In the petition the applicant requests to define "Private Education Institutions". The definition seems to go beyond the scope currently viewed for schools by the zoning ordinance. The definition "Private Education Institutions having academic curriculum similar to that ordinary given in public school" appears to be beyond High School. Staff suggests not including this new definition.
- Should the school definition be changed? Does the definition closely follow the definition in state code?
The land use portion of State Code does not define "School" however; it does define "Educational facility". This definition of "Educational facility" differs greatly from the definition of "school" found in the Zoning Ordinance.

Zones:

Important principles to remember about the difference between zones are:

- What is the purpose and intent of the zone? This is typically an overview of what would occur in the zone, but not very detailed or regulated.
- What are the listed allowed uses both permitted and conditional? This is an indication of what land uses are found in the zone. Often, this list of uses shows the intensity, degree, concentration, or compatibility of a land use. The list of uses may also regulate and provide requirements for a land use. There is a tendency to write in a regulation with a definition. However that practice is not desired and requirements should be listed with the use in each zone, as they could vary for each zone.

Should a Therapeutic School be listed as a permit use or a conditional use? Permitted uses are in nature straight forward. If there is a requirement then meet it. Conditional uses allow to mitigate between any potential negative impacts.

What zones (exhibit A-5 and A-6) are to allow therapeutic schools? And why are these zones appropriate for this use?

- Agricultural AV-3
- Commercial Valley CV-2
- Forest Residential FR-3

- Forest Zones F-5, F-10, F-40

Staff agrees that the CV-2, AV-3, F-5, F-10, F-40 zones would be appropriate for this proposed use.

Staff disagrees that the use should be proposed in the FR-3 zone. This zone does have a higher density per area than other zones in Ogden Valley. However, it usually has only been allowed in conjunction with a resort or Master Plan. This zone is not prevalent in Ogden Valley, and has such small minimum area for lots that it would be difficult to place a Therapeutic School and its proposed requirements on any of the existing FR-3 properties.

Staff suggests that this use be proposed in the FV-3 zone as it has many similar uses for group living arrangements. It would be disparate and contradictory to not allow the use in the FV-3 zone but to include it in the AV-3 and F-5 zones which typically border the FV-3 zone on either side throughout the Ogden Valley as shown in exhibit E.

Questions for future work sessions:

Therapeutic School – Facility Requirements:

The proposal (exhibit A-2, A-3, and A-4) blends both state and other agency requirements. Requirements listed for chapter 23-28 requirement numbers 1, 2, 3, 4, 5, 6, 7, 9, 14, 15, 16, 17, 18, of the proposal have some functions and responsibilities of the state. The following policy questions are a beginning point to start the discussion on what should be included in the requirements of the Weber County Zoning Ordinance:

23-28-1:

- Can density be limited? Why no more than 36 students? Should reasonable accommodation be allowed?

23-28-2:

- Does a Therapeutic School really incarcerate their students? Is a better term more appropriate? Can there be a limit to whether a facility is locked-down or not?

23-28-7:

- Is "Emotionally Disabled youth" the right term for these students? Can students be limited based on convictions or not?

23-28-8:

- Should this type of a facility be located in any existing subdivision? As any division of land is a subdivision this requirement would be difficult to comply with.
- As recommended by the petitioner, therapeutic schools would not be allowed in subdivisions of four or more lots, is there a basis for this standard? This requirement, likely, comes from the requirements currently in place for facilities for troubled youth. Staff suggests not including it.

23-28-10:

- Should therapeutic schools meet the same standards of chapter 18C Ogden Valley Architectural, Landscape and Screening Standards?
- The petitioner is stating that the buildings should be compatible with the surrounding neighborhood, main structures within 1320 foot radius. What is the 1320 foot radius based on?

23-28-11:

- What should be the minimum lot area? Why have special area requirements for this use and not other like uses in the zone? The proposed equation is not consistent with the Zoning Ordinance (8 Students / 5 acres in the AV-3 zone)?
- What are the minimum yard setbacks? Once again what are they and why are they different from other uses in the zone? This may need to just be reworded.

- Why should there be minimum or maximum lot coverage? Would this occur with the larger needed area for parking and septic drain fields? Why is this compared to the R-3 Zone? Ogden Valley does not have any area zoned R-3.
- Why require Open Space (green) requirements?
- Spacing from other therapeutic schools? If there is a spacing requirement what is the justification? Is that legally possible?

23-28-12:

- Parking Standards? How many spaces will be required? Why regulate this differently than other educational facilities?

23-28-13:

- What should be the accessory buildings standards regarding height, size, use, style, coverage and quantity? This would tie into lot coverage standards.

23-28-17:

- This should say the Utah State Department of Human Services, Office of Licensing.

23-28-18:

- What are the parameters of the “safety plan” and what does it detail?

23-28-19:

- A contingency plan for power and water would be a unique requirement. However, this may be a reason for a conditional use in some areas, as some infrastructure can vary throughout the county.

Staff Recommendation

Staff recommends that the Planning Commission give direction on these policy questions so that a proposed ordinance can be drafted and presented at a public hearing.

Exhibits

- A. Application and the proposed ordinance amendment
- B. Definitions from Utah State Code
- C. Zoning map of Ogden Valley

CHAPTER 1

GENERAL PROVISIONS

1-6 Definitions

PRIVATE EDUCATIONAL INSTITUTION HAVING AN ACADEMIC CURRICULUM SIMILAR TO THAT ORDINARY GIVEN IN PUBLIC SCHOOLS

Private training schools and other private schools which are instructional in nature, including laboratory and shop instruction with the use of demonstration vehicles, products or models incidental to such instruction, but not including the repair, maintenance or manufacture of vehicles, goods or merchandise, not providing direct services other than instruction to the general public. No overnight or sleeping accommodations, daytime only care and instruction. This does not include a therapeutic school.

SCHOOL

A public elementary or secondary school, charter, seminary, parochial school, or private educational institution having a curriculum similar to that ordinarily given in grades one through twelve in the public school system. The term "education institution" for the purpose of this Ordinance does not include post high school educational facilities. No overnight or sleeping accommodations, daytime only care and instruction. This does not include a therapeutic school.

New PART

THERAPEUTIC SCHOOL

A residential group living facility or residential treatment facility

- a. for four or more individuals who are not related to:
 - i. the owner of the facility; or
 - ii. the primary service provider of the facility;
- b. that serves students who have a history of failing to function;
 - i. at home;
 - ii. in a public school; or
 - iii. in a nonresidential private school; and
- c. that offers;
 - i. room and board; and
 - ii. an academic education integrated with;
 1. specialized structure and supervision; or
 2. services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

Exhibit A-1

CHAPTER 23

SUPPLEMENTARY AND QUALIFYING REGULATIONS

23-28. THERAPEUTIC SCHOOL – Facility Requirements

1. A Therapeutic School Shall:
 - A. Be operated by qualified licensed professionals certified by the Utah Department of Human Services Office of Licensing;
 - B. Be occupied on a 24 hour basis by no more than thirty-six (36) qualified youth in a family structure type arrangement, which does not imply qualifications for single family dwellings.
 - C. Not be used as a drug or alcohol treatment rehabilitation facility.
2. The structures at the school shall not be used as a lock-down facility for the incarceration of the youth it houses.
3. The school shall be permanently staffed by qualified licensed staff who will serve the youth who reside therein. Their duties will be as follows:
 - A. To supervise the orderly function of the school;
 - B. To assist in meal preparation for the youth who occupy the school;
 - C. To assign the duties, chores, and other tasks to each of the youth;
 - D. Supervise the preparation of homework and studies each of the youth is required to complete for their education in the accredited, on-site school;
 - E. To immediately report to local authorities and the appropriate State Agencies as required by the State of Utah licensing standards any difficulties, problems, breaches of the peace, or violations of law engaged in by any staff or the youth under their care;
 - F. To also report the same conduct to the organization who employs them directly.
4. The school and staff must meet the standards of the Department of Human Services and obtain all licenses, permits, or clearance required by the State of Utah before undertaking their duties and/or operation.
5. In the event that school staff terminates their employment without first training suitable replacements, the school must replace them with trained staff within 60 days or the school must cease operating.
6. In all instances, the program must adhere to State of Utah licensing standards related to staff to student ratios.

7. Emotionally Disabled youth who qualify for placement in the school shall:
 - A. All be of the same gender within sleeping/living areas of the school;
 - B. Be no less than 13 years of age and no more than 17.9 years of age;
 - C. House adolescents whose respective ages span no more than four years. For instance, if the school houses adolescents 14 years of age, the oldest adolescent in the school can be no more than 17.9 years of age;
 - D. Attend on-site accredited schooling;
 - E. Meet the requirements of emotionally disabled as diagnosed by a licensed professional;
 - F. Be placed at the school only on a strictly voluntary basis and not a part of or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;
 - G. Not be individuals who are considered violent; nor with such severe psychiatric problems that they present a danger to themselves or others. Or individuals whose tenancy therein would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others;
 - H. Not be any individual with a drug conviction or who have been convicted of a criminal act.
 - I. Not be any individual being treated for alcoholism or drug dependency;
 - J. Not be charged or convicted of any violent felony offense as defined by Utah State Code 76-3-203.5 e.g., sexual offense, arson, or aggravated assault.
8. No Therapeutic School shall occupy a lot in a recorded subdivision of four or more lots, including all subdivision phases.
9. The facility shall meet all applicable building, safety, zoning and health codes and ordinances applicable to similar dwellings.
10. The school's architectural style and landscaping improvements, as required in Chapter 18C, shall be compatible with the surrounding neighborhood, e.g., main structures within a 1,320 foot radius.
11. Site development standards of main structures for a Therapeutic School:
 - A. Minimum lot area
 1. Five acres per 8 residents similar to what is defined for residential facilities for troubled youth in Chapter 5B-4, Agricultural Valley Zone AV-3
 - B. Minimum yard setbacks
 1. Comply with setback requirements of applicable zoning
 2. Lot Coverage: In support of the Ogden Valley General plan call for open space preservation, no building or group of buildings with their accessory

buildings shall cover more than 40% of the lot area similar to that defined in Chapter 14-4, Multiple Family Residential Zone R-3

3. Open Green Space: At least 40% similar to that defined in Chapter 14-4, Multiple Family Residential Zone R-3
 4. Spacing five miles of another Therapeutic School or Residential Treatment Center similar to the requirements for residential facilities for troubled youth
12. A minimum of twenty off street parking spaces plus one off street parking space for each staff member on shift at peak hours shall be provided.
 13. A Therapeutic School may have additional structures, which shall comply with all zoning requirements, for the instruction, housing, maintenance, and storage needs associated with this use. Such structures may include classrooms, administrative offices, recreational facilities, dormitory / congregate housing facilities, garages or barns as accessory in conjunction to this use.
 14. The school shall meet all applicable building, safety, zoning, and health codes and ordinances applicable to similar uses and structures.
 15. The land use permit, and any other license granted in accordance with the provisions of this ordinance, is non transferable and terminates if the structure or parcel is devoted to a use other than as a Therapeutic School or if the structure or parcel fails to comply with the County's building, safety, and health codes or the requirements of this ordinance.
 16. The school must be licensed by the County's Business Licensing Division with the original license and any renewals thereof are subject to the inspection of Weber County.
 17. The Therapeutic School and faculty must be approved by the Utah State Department of Social Services Office of Licensing which provides, at a minimum, annual site reviews following initial approval and be:
 - A. Licensed or certified by the department of human services under title 62A, chapter 2, of the Utah code, licensure of programs and facilities; or
 - B. Licensed or certified by the department of health under title 26, chapter 21, of the Utah code health care facility licensing and inspection act.
 18. The applicant shall submit a plan of operations for treatment, including a safety plan which addresses the safety of the clients, the employee staff, the surrounding neighborhood, and the community as a whole.
 19. The Therapeutic School shall submit a contingency plan to provide power, water, and food to its staff and residents for at least 72 hours in the event that service to the facility is disrupted by natural (e.g. weather or earthquake) or man-made events (e.g. infrastructure failure, accidents, etc.) outside the control of the Therapeutic School.

Exhibit A-4

AGRICULTURAL VALLEY ZONE AV-3

5-B4 Conditional Uses

Conditional Use - Therapeutic School meeting the requirements of Chapter 23-28 of this Ordinance.

COMMERCIAL VALLEY ZONE CV-2

18-B5 Uses

Conditional Use - Therapeutic School meeting the requirements of Chapter 23-28 of this Ordinance.

FOREST RESIDENTIAL ZONE FR-3

15-3 Conditional Uses

Conditional Use - Therapeutic School meeting the requirements of Chapter 23-28 of this Ordinance.

FOREST ZONES F-5, F-10, F-40

8-3 Conditional Uses

Conditional Use - Therapeutic School meeting the requirements of Chapter 23-28 of this Ordinance.

[In order to make changes in the zoning ordinance, these five criteria need to be addressed:]

1. How is the change in compliance with the General Plan?
2. Why should the present zoning be changed to allow this proposal?
3. How is the change in the public interest?
4. What conditions and circumstances have taken place in the general area since the General Plan was adopted to warrant such a change?
5. How does this proposal promote the health, safety and welfare of the inhabitants of Weber County?

This is a proposal to add "Therapeutic School" (TS) as a conditional use listed in the Weber County zoning ordinance for zones AV-3, CV-2, FR-3, F-5, FV-10, and F-40. In our requested change to the zoning ordinance, we propose that the definition of a school be changed to, "A public elementary or secondary school, charter, seminary, parochial school, or private educational institution having a curriculum similar to that ordinarily given in grades one through twelve in the public school system. The term "education institution" for the purpose of this Ordinance does not include post high school educational facilities. No overnight or sleeping accommodations, daytime only care and instruction. This does not include a therapeutic school." Therapeutic Schools will have a distinct definition and zoning as proposed.

We recommend and request that the following changes be made to Weber County Zoning Ordinance 1-6 (Definitions). These changes are taken verbatim from the Utah County Land Use Ordinance 2-2(B)(86) and H.B. 412, recently passed by the Utah House and Senate. Changes are necessary to bring Weber County's zoning ordinance into conformity with the state's land use definitions.

The concept of a therapeutic school was neither well defined nor prevalent when the Ogden Valley General Plan and zoning ordinances were written and thus their use in the Ogden Valley was not foreseen, and as a result, not included in the plan or ordinances.

Recent applications by Green Valley Academy, a therapeutic school, to establish a presence in the Ogden Valley has tested the current zoning ordinances in both definition and permitted uses. These tests have triggered considerable concern within the Ogden Valley community on a number of topics. The conflicts between these competing interests have identified a gap in the Ogden Valley zoning. The conflicts also validate that creative uses of the Ogden Valley will outpace zoning reviews and general plan updates. Ogden Valley zoning ordinances are living documents that the need continuous dialog and revision as new uses surface. The proposed changes submitted represent the efforts of concerned members of the Ogden Valley to seek creative and equitable solutions to therapeutic school commercial enterprises that will allow them to exist as well as minimize adverse impact to the existing Ogden Valley communities.

1. How is the change in compliance with the General Plan?

ADDING definitions for "Therapeutic School" as well as conditions for their use is consistent with the General Plan. These additions are intended to support the General Plan vision of creative zoning solutions that protect private property rights while ensuring that development is compatible with the Valley's rural character.

Section 3.01 of the General Plan discusses the need to preserve and protect the Valley's environment to include air and water. Therapeutic Schools currently have no definition within the Ogden Valley Zoning. These facilities have no cap on the number of residents per acre thus opening the door for high density 24/7 residential living as schools in zones originally intended for low density living. Also, there is no historical data to quantify the impact of these facilities on ground water reservoirs and ground water contamination. The additions proposed are intended to ensure that the natural resources of the Valley are preserved and protected.

Exhibit A-7¹

Section 3.02 of the General Plan discusses the Valley's rural atmosphere and rural lifestyle. The section requires that development be compatible with the Valley's rural character and natural setting. Among the objectives is the identification of acceptable locations for commercial development as well as providing flexible zoning ordinances for creative solutions to development conflicts. The additions proposed are submitted with that spirit.

Allowing Therapeutic Schools to be equal to public schools and a permitted use within current zoning introduces high density housing into low density communities whose property owners bought land expecting rural low density family housing. This presents a conflict between commercial interests and private communities that needs a creative solution to reduce further conflict in the Ogden Valley communities and give these commercial interests a clear path to review and approval thus avoiding lengthy legal conflicts with the community.

Section 3.02 of the General Plan also encourages concurrency measures for development and infrastructure so that development does not proceed without adequate infrastructure. Therapeutic Schools have no cap on their population and there is no data to determine the impact on the Valley infrastructure and whether the existing infrastructure and emergency services is adequate to sustain the influx of this industry. Allowing these facilities to qualify as schools and thus permitted use in current zones opens the door for rapid growth that could potentially exceed the infrastructure and diminish resources to current Valley residents and increase Weber County costs.

In summary, we feel that the proposed zoning changes support the General Plan vision statements while addressing an issue that has been causing both the Ogden Valley residents and Weber County commissions a great deal of concern and conflict by an industry that was not envisioned when the General Plan and zoning ordinances were written.

2. Why should the present zoning be changed to allow this proposal?

Therapeutic Schools were not prevalent and thus their use was not foreseen, and thus not addressed, when the General Plan and zoning ordinances were written. Green Valley Academy's applications have exposed the fact that their use is not currently addressed adequately in the Ogden Valley zoning. Conflicts on interpretations of existing zoning language, in particular the definition of a school and private school, do not specifically allow nor deny residential facilities that offer curriculum similar to public schools. Nor does the zoning address the therapeutic aspect of a Therapeutic School and the types of client diagnoses permitted in these facilities.

Currently, these residential facilities are attempting to qualify themselves as school-like facilities; a use that was never envisioned in the General Plan or zoning. Drawing this parallel has permitted them to attempt to establish residence in rural low density AV-3 zoning most prevalent in the Valley. The parallel being drawn threatens to disrupt the lives and potentially property values of taxpaying Valley residents. These attempts have consumed a great amount of Weber County resources, taking them away from other priorities and thus impacting the responsiveness of Weber County to its citizens.

The resulting conflicts from this gap in zoning definition have led to considerable community concern and legal proceedings at the expense of the petitioner, communities impacted, and Weber County. As a result of these gaps, Weber County is potentially vulnerable to lawsuits under the federal Fair Housing Act as well as lawsuits by concerned taxpaying citizens who feel that their property ownership rights have been violated. It is in Weber County's best interest to specifically address these facilities in Ogden Valley Zoning.

It should be recognized that Therapeutic Schools such as Green Valley Academy are commercial enterprises. They have brick and mortar presence and "store fronts" that generate traffic, consume resources, generate larger volumes of waste, and introduce long term temporary residents to the Valley. The General Plan calls for "commercial nodes" to be established within the Valley. It is evident from this vision that commerce within the Valley would be generated in small clusters rather than a large

commercial district. A review of current zoning reveals that CV-2 zones are indeed scattered across the Valley either as single plots for a single enterprise, or larger zones encompassing a small number of geographically co-located enterprises.

It is our belief that the vision of the General Plan should be upheld and applied to Therapeutic Schools in recognition of their private, commercial, for-profit therapeutic and educational mission. If the therapeutic and educational aspects of the Therapeutic Schools are put aside, their use is essentially equivalent to hotels, motels, inns, boarding houses. These enterprises would be required to apply for or obtain property in a CV-2 zone in order to operate in the Valley. Throw in the therapeutic component and remove the residence component and Therapeutic Schools would be similar to a clinic or medical office that must be in a CV-1 or CV-2 zone. Finally, focus on just the educational institution and the Ogden Valley commercial zoning specifies that it is a permitted use in a CV-2 zone.

We understand that the General Plan vision for commercial nodes has limited availability of CV-2 properties that are attractive to this industry. Thus, these proposed changes to the zoning incorporate conditional uses within residential zones that are currently accommodating residential facilities for persons with disabilities. These proposed changes also give consideration to the higher density of residents proposed for therapeutic schools by means of a formula derived from current AV-3 zoning requirements of 5 acres per 8 full-time residents for troubled teen residential facilities. The purpose of this formula is to preserve open space as well as mitigate potential impact to ground water resources as called for in the General Plan. This minimum acreage is currently required to operate the residential facilities for troubled youth and we feel that it reflects research previously done by planners to establish an appropriate density level in the valley that should continue to be leveraged for therapeutic schools until more impact studies can be done.

We feel, in the long term, that it is in the best interest of Weber County, the citizens of Ogden Valley, and for future Therapeutic School petitioners to evaluate ways that will equitably require Therapeutic Schools to operate in CV-2 zoning and provide avenues for them to obtain that zoning. Since Therapeutic Schools are a hybrid of residential, therapeutic medical, and educational commercial enterprises covered under CV-2 zoning, it only makes sense that they should be required to operate in those zones. The added benefit of CV-2 zoning for Therapeutic Schools is that the General Plan vision of commercial nodes fits the desires of Therapeutic Schools to acquire Ogden Valley property, basically anywhere in the valley as long as it qualifies for CV-2 zoning, either currently or approved rezoning by Weber County. These changes to the Zoning Ordinance most likely would be upheld as being compliant with the Fair Housing Act since no discrimination would be made against a disabled class and it can be easily shown that current zoning has always accommodated those industries that are combined under the Therapeutic Schools hybrid commercial industry.

3. How is the change in the public interest?

The proposed changes are absolutely in the public interest. Ogden Valley taxpayers are shareholders in the rural atmosphere and lifestyle documented in the General Plan. The General Plan vision includes the objective, "creative zoning solutions that protect private property rights while ensuring that development is compatible with the Valley's rural character." This statement is a rallying cry for all parties involved to have dialog and develop creative solutions to new uses in the Valley.

New unplanned uses attempting to identify how to fit within current Ogden Valley zoning have the potential to adversely impact Valley stakeholders. Thus it is prudent that they be carefully evaluated and planned accordingly. Ogden Valley residents, while concerned about the unknowns that the Therapeutic School industry presents, are not attempting to close the door on these facilities entering the Valley community. To do so would be in violation of the federal Fair Housing Act. Green Valley Academy represents the first Therapeutic School to attempt to establish residence in the Ogden Valley. While similar facilities exist in other Utah counties, they should be considered unique in their implementation and impact as all counties do not have the same challenges as those present in the Ogden Valley.

Therefore, comparable facilities do not exist in the valley by which to judge impacts to Valley resources, emergency services, commerce, and residents.

It is in the public's interest to introduce zoning conditional uses to limit the number of residents per facility and acreage that Therapeutic Schools must have in order to equitably fit within Ogden Valley communities. Weber County's allowance of Therapeutic Schools to be equitable to public schools as defined in the current AV-3 zoning inadvertently grants Therapeutic Schools the ability to house an unlimited number of residents in an unlimited number of facilities since no cap is specifically identified. This gap in zoning is a potential threat to the low density, rural atmosphere envisioned in the General Plan and enjoyed by current Valley residents.

It is in the public's best interest to creatively and equitably create a specific use definition for Therapeutic Schools in order to adequately accommodate them in compliance with the Fair Housing Act as well as balance the rights of existing private property owners in the community who are stakeholders in preserving the rural character and lifestyle as called out in the General Plan.

It is in the public's best interest to see their tax dollars spent wisely. All of the energy expended resolving conflicts between these interests consumes valuable Weber County resources in a time of budget shortfalls as well as delaying other Weber County initiatives because staff is consumed by them. All parties concerned will benefit from clearly defined zoning and uses that reduces ambiguity and provides all a clear path to review and approval of these specialized facilities.

Likewise, Weber County has budgeted tax dollars from Ogden Valley residents to provide resources to the Ogden Valley such as infrastructure, police protection, and emergency services. The potential for Therapeutic Schools to proliferate as schools in existing zoning with no caps on residents or density is a very real threat to overwhelm county infrastructure and services requiring capital investments by the county and potential tax increases to Valley residents to meet the needs introduced by Therapeutic Schools. Therefore, it is in the public interest to ensure the growth is harmonious with the Ogden Valley infrastructure and services growth.

Concerned Ogden Valley residents have taken proposed Ogden Valley zoning ordinances originally drafted by Green Valley Academy petitioners as part of their first application and solicited community input via web sites and e-mail mailing lists on how to best adapt them to Ogden Valley zoning. The resulting changes submitted under this application are the evolution of that community collaboration confirming that the public interest is represented in these requested changes.

4. What conditions and circumstances have taken place in the general area since the General Plan was adopted to warrant such a change?

Two application submissions by the Green Valley Academy petitioners have brought the current zoning issues to light. As mentioned earlier, the Therapeutic School industry was not prevalent at the time the General Plan and Ogden Valley Zoning was created. Thus the industry was not considered when writing the zoning. While residential facilities for troubled youth were included in the Ogden Valley zoning, they are not considered the same as a commercial Therapeutic School.

The Ogden Valley represents a pristine, rural atmosphere with accessibility to recreational venues that many residents find solace in and even enjoy therapeutic benefits compared to the rush and sprawl commonly found in urban environments. These qualities are highly attractive to the Therapeutic School industry as a means of increasing perceived value in the eyes of their clients. Therapeutic Schools such as Green Valley Academy are able to use the promise of a pristine, scenic location, with easy access to world class recreation to increase their prices and recruit contracts with highly lucrative clients. These clients send their children from around the country to be admitted to their facility for treatment and behavioral modification. Based on admissions by similar schools formerly owned by the Green Valley Academy petitioners, it is fair to say that the vast majority of resident patients will be from outside of Utah.

As mentioned earlier, Green Valley Academy is the first Therapeutic School to attempt to establish operations within the Ogden Valley. The lack of clear zoning definition for Therapeutic Schools in the current Ogden Valley zoning has forced the petitioners to attempt to find the "best fit" that will allow them to operate in the Ogden Valley zoning. It is a fundamental business model to seek the least expensive option when starting a new business. This applies to zoning. It is far cheaper for the petitioners to find a "best fit" in current zoning, than to incur the cost and time of applying for rezoning. Allowing Therapeutic Schools to draw parallels to schools in current AV-3 zoning prevalent throughout the Valley is not reflective of all components encompassed in their hybrid business model of residence, therapy, and education, all of which are covered under CV-2 zoning. It also places no caps on the number of residents and facility density. No consideration of impact to infrastructure, emergency services, and community safety is made when this parallel is drawn.

The Therapeutic School industry is highly lucrative. Its proliferation has introduced zoning and permitted use challenges to communities nationwide. Thus, the challenges experienced by Ogden Valley residents and Weber County have been experienced by other Utah counties as well as communities nationwide. All those with Therapeutic Schools have eventually performed similar planning and added definitions to adequately and equitably accommodate this new use.

Utah has a disproportionate number of residential treatment programs when compared to other states. Thus the potential for other Therapeutic Schools to leverage the same path blazed by the Green Valley Academy petitioners in Ogden Valley is quite real. It is important for Weber County to address the Therapeutic School industry with updated zoning and uses so that the rural community vision of the Ogden Valley General Plan can be realized, valuable Ogden Valley resources conserved, and violations of the federal Fair Housing Act avoided.

5. How does this proposal promote the health, safety and welfare of the inhabitants of Weber County?

This proposal is designed to adequately address and promote the health, safety, and welfare of the Ogden Valley inhabitants in Weber County now and in the future.

HEALTH – The General Plan recognizes the importance of conserving water consumption as well as protecting the vital and limited water resources that residents depend on. Growth and residential density are recognized as critical factors in ensuring that these water resources will remain protected and able to meet the demands of the inhabitants. If Therapeutic Schools are allowed to establish businesses in the Valley under existing AV-3 zoning as schools with no caps on residents and housing density, they pose a potential threat to the underground water resources if they are not part of a community water and waste treatment system.

Since Therapeutic Schools do not yet exist in the Valley, there is not sufficient data to determine if they can successfully operate and protect vital water resources in their community using septic or on-site wastewater handling systems. Plus, open, on-site, waste handling presents a number of potential health issues in residential areas if flooding occurs as well as the odor that would permeate the area. The zoning changes are intended to equitably address this issue by encouraging participation in community water and waste systems. If those services are not available at the desired location, then a greater amount of acreage is required to accommodate on-site waste handling. Future data may influence the recommendations in this proposal either in favor of the petitioners in terms of higher occupancies allowed, or in the favor of Valley residents by further restricting their capacity to protect Valley resources.

SAFETY – A number of factors affect the safety of a community which planners normally take into account to include; Density, traffic, lighting, noise, waste generation, water consumption, storm run-off, wildlife habitat impact, types of dwellings, and more. The chief considerations incorporated into these proposed changes are to address density, traffic, lighting, waste generation, water consumption, and storm run-off. The road that the current GVA application resides on is one of the heaviest used recreation corridors in the valley. Without adequate pull outs, the frequency of GVA staff and students entering and exiting the facility have the potential to increase traffic accidents, potentially fatal as vehicles travel at

relatively high rates of speed. If sufficient pull outs cannot be accommodated, will speed limits have to be reduced? Will that impose more burden on public safety to enforce? Will the potential of increased accidents impose more burden on first responders? These all have to be taken into consideration under a conditional use permit.

While Weber County Planning cannot guarantee the safety of its residents through planning and zoning, it can recognize that some industries post a potential safety impact to the community. For example, an refining plant would pose a potential threat from potential fire, explosions, and potential health risks of exhaust fumes to surrounding homes and facilities. So, adequate spacing must be planned.

Likewise, it must be recognized that clients of Therapeutic Schools are their first and foremost for behavioral therapy. That therapy is an integral part of their daily lives while at the Therapeutic School. The reasons that clients are admitted to the Therapeutic School will vary greatly, but the common denominator is that they have a treatable behavioral problem that public schools as well as parents or legal custodians are unable to rectify. Some Therapeutic Schools are lock down facilities that operate much like an incarceration facility and then there are those who do not lock their residents within the facility. Green Valley Academy is proposed as a facility that IS NOT locked down. Students are heavily supervised the entire day. But, at any time, students are able to choose to defy authority and "escape" from the facility and thus into the community.

The Green Valley Academy petitioners have assured the community that students will be strictly monitored and controlled. But, data shows that while this may be the goal, escapes do happen from Therapeutic Schools. Most recently, in February 2011, Lee Kravath, a 15 year old autistic child functioning as a six year old, decided he didn't like his residential treatment program in Ogden, Utah. He went to the bus station and asked how much it cost to get a ticket to Phoenix, Arizona and then pan handled until he obtained enough money to buy a ticket. He was later found safe in Phoenix. In June 2009, four teens escaped from the Provo Canyon School, a treatment center for troubled youth. In June 2007, three teenage boys overpowered a security guard at the Cedar Ridge Academy in Roosevelt, Utah. According to the Deseret Morning News, they took his keys, took his wallet and also made him give them the alarm code to the facility. They departed in the guard's Jeep. Authorities were contacted after another teen in the center called off-duty [Cedar Ridge] staff and alerted them to the incident. Deputies and Roosevelt caught up to the escapees about three miles from the facility and were taken into custody without incident.

Would it not seem prudent to consider these factors when planning design requirements? For example, would it be prudent to specify certain types of property fencing if the Therapeutic School is within (n) feet of residences to at least give residents bordering the facility some increased sense of security? Maybe require privacy fencing (n) feet high on three sides?

These schools are, in essence, legal guardians of their clients while they are in complete control of their client's daily lives, health, and welfare. Therefore they are compelled to invoke police and emergency services when events occur that warrant them. The Ogden Valley is very limited in these resources. Sheriff Deputies are a limited resource. An ambulance ride to Ogden is approximately 20-30 minutes one-way. When these resources are consumed by residents of a Therapeutic School, they are unavailable to Valley residents thereby jeopardizing their safety and health in time of crises.

The conditions suggested under this zoning change application seek to acknowledge and address these facts by limiting the population of a Therapeutic School as well as zones in which they can operate.

WELFARE – Merriam-Webster defines welfare as: "the state of doing well especially in respect to good fortune, happiness, well-being, or prosperity." The proposed zoning additions are designed to provide creative and equitable zoning solutions that protect private property rights while ensuring that development is compatible with the Valley's rural character. These solutions contribute to the happiness, well-being, and prosperity of all inhabitants.

The proposed zoning changes also support the General Plan vision of promoting growth within the constraints of Ogden Valley infrastructure and emergency services furthering the well-being and happiness of residents while enabling a path to prosperity and good fortune for commercial enterprises wanting to co-exist in the Ogden Valley.

The changes proposed also address the General Plan vision of promoting conservation of limited ground water resources and community well-being through responsible review and approval of commercial enterprises such as TSs like Green Valley Academy.

Finally, these changes will help maintain the Ogden Valley rural atmosphere and lifestyle as envisioned in the General Plan ensuring that current and future generations will be able to co-exist harmoniously in the Ogden Valley.

Exhibit A-13⁷

Weber County Definitions Ch 1

SCHOOL

A public elementary or secondary school, charter, seminary, parochial school, or private educational institution having a curriculum similar to that ordinarily given in grades one through twelve in the public school system. The term "education institution" for the purpose of this Ordinance does not include post high school educational facilities.

Utah Code

Title 62A Utah Human Services Code

Chapter 2 Licensure of Programs and Facilities

Section 101 Definitions.

62A-2-101. Definitions.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

(ii) a therapeutic school.

(31) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

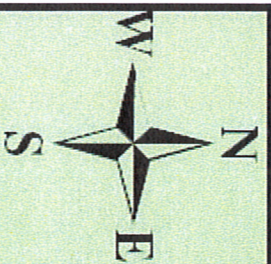
Exhibit B-1

- (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.

 - (2) (a) "Boarding school" means a private school that:
 - (i) uses a regionally accredited education program;
 - (ii) provides a residence to the school's students:
 - (A) for the purpose of enabling the school's students to attend classes at the school; and
 - (B) as an ancillary service to educating the students at the school;
 - (iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and
 - (iv) (A) does not provide the treatment or services described in Subsection (26)(a); or
 - (B) provides the treatment or services described in Subsection (26)(a) on a limited basis, as described in Subsection (2)(b)(ii).
 - (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.
 - (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (26)(a) on a limited basis if:
 - (A) the treatment or services described in Subsection (26)(a) are provided only as an incidental service to a student; and
 - (B) the school does not:
 - (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (26)(a); or
 - (II) have a primary purpose of providing the services described in Subsection (26)(a).
 - (c) "Boarding school" does not include a therapeutic school.
-
- (10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
- (b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.
-
- (26) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.
- (b) "Residential treatment" does not include a:
 - (i) boarding school; or
 - (ii) foster home.

Exhibit B-2

Proposed Zones for Therapeutic Schools



- Legend**
- AV-3
 - CV-2
 - F-10
 - F-40
 - F-5
 - FR-3
 - PV-3

