

Minutes of the Ogden Valley Township Planning Commission Special meeting held April 11, 2007, Weber County Commission Chambers, commencing at 5:30 p.m.

**Members Present:**

Louis Cooper, Chair  
Greg Graves  
Gary Allen  
Jim Banks  
Keith Rounkles  
Sharon Holmstrom

**Members Excused:**

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**Staff Present:**

Jim Gentry, Director  
Scott Mendoza, Planner  
Sean Wilkinson, Planner  
Monette Hurtado, Legal Counsel  
Angela Martin, Secretary

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Pledge of Allegiance

**Regular Agenda Items**

1. Approval of the Minutes for February 12, 2007, March 14, 2007, and the March 27, 2007 meetings
2. Preliminary Approval for The Rivers Cluster Subdivision (46 Lots) located at approximately 7800 East Hwy 39
3. Zoning Petition Z.P. #01-07 Ordinance Chapter 42, Accessory Apartments to redefine the accessory apartment specifications and application procedure
4. Adjourn

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1. **Approval of the Minutes for February 12, 2007, March 14, 2007, and the March 27, 2007 meetings**

**MOTION:** Commissioner Holmstrom moved to approve the February 12, 2007 meeting minutes. Commissioner Allen seconded the motion. A vote was taken and Chair Cooper said the motion carried with all members present voting aye.

**MOTION:** Commissioner Banks moved to approve the March 14, 2007 meeting minutes. Commissioner Graves seconded the motion. A vote was taken and Chair Cooper said the motion carried with all members present voting aye.

**MOTION:** Commissioner Graves moved to approve the March 27, 2007 meeting minutes. Commissioner Allen seconded the motion. A vote was taken and Chair Cooper said the motion carried with all members present voting aye.

2. **Preliminary Approval for The Rivers Cluster Subdivision (46 Lots) located at approximately 7800 East Hwy 39**

Staff presented the following report:

The petitioner is requesting preliminary approval for The Rivers Cluster Subdivision (46 lots) located at approximately 7800 East Hwy 39. The property is currently zoned Residential (RE-20) and Shoreline (S-1). The RE-20 portion of the property was zoned such at the time zoning went into effect in the Ogden Valley in 1961. When the current General Plan was adopted, the one acre forest and agricultural zones (FR-1 and A-1) were down zoned to three acres. The down zoning did not affect the other zones. The RE-20 Zone in this subdivision is legitimate.

At the Planning Commission meeting on March 27, 2007, this subdivision was tabled pending information from the Utah Department of Transportation (UDOT), the Army Corps of Engineers, and the Division of Wildlife Resources (DWR).

Planning Staff contacted the Army Corps. of Engineers and received an update on the Rivers project which is included in the packet. The wetland delineation has been received by the Corps and they are just waiting for the right conditions to visit the sight and make a determination on the delineation.

Gardner Engineering has been in contact with UDOT regarding the Rivers Subdivision. A traffic study has been completed and a variance from UDOT will not be needed. Access permits from UDOT will be required for final approval.

Planning Staff has contacted the DWR for information regarding a new review process that is apparently in place but a reply had not been received before packets were sent out. Staff had prepared a packet for Pam Kramer from the DWR to pick up, but this never happened. A review from DWR is not required under current County Ordinances but Staff has made this information available so that comments can be made for the developer to look at.

**Previous Subdivision Information**

Five of the lots will be located in the S-1 Zone, which currently does not have provisions for cluster subdivisions. These lots will meet the requirements for the S-1 Zone by having at least five acres and 300 feet of frontage. The other 41 lots will be in the RE-20 zone which does have provisions for cluster subdivisions. The RE-20 Zone requires at least 30% of the subdivision to be preserved as permanent open space and does not allow for any bonus density. However, lot sizes in this subdivision can be reduced to a minimum of 10,000 square feet if connected to a sewer, and frontage requirements are reduced to 80 feet. Lots will range from approximately 11,000 sq. ft. to 24,000 square feet in area. The reason for clustering the lots in this subdivision is to help preserve the wetlands on the property.

Approximately 10.82 acres of open space will be provided within the subdivision. The open space will have a private park with a 900 square foot covered pavilion and a small parking area with thirteen stalls. The area will be landscaped with trees, shrubs, and native grasses. A small mailbox area for subdivision residents will also be provided and served by the parking area as will a public trail system that runs throughout much of the open space and connects to roads in the subdivision and public lands to the west. Ogden Valley Pathways suggests that "shared roadway paths or side paths be planned along the private roads in the subdivision to provide a safe lane for residents to access the pathways in the open space."

New roads will be built as part of this subdivision and all roads must meet the requirements of the Weber County Engineers Office. The property currently has four access points but only two will be used as part of this subdivision. The north entrance road into the subdivision will require a 60 foot right of way but all other rights of way will be reduced to 50 feet. The petitioner is requesting a variance to allow an island to be placed near both of the subdivision entrances. Each island will contain a subdivision monument sign, a guard house (see renderings provided), and landscaped areas. No renderings for the monument signs have been provided. An agreement relieving Weber County of any liability or maintenance for the islands will be required. Rolled curb will be installed throughout the subdivision but pathways will take the place of sidewalk. The petitioner has had preliminary discussions with the Utah Department of Transportation and a letter of approval from UDOT will be required for final approval.

Waste water treatment will be provided by a package treatment facility that is being proposed as part of the Bison Creek development. Culinary water will be provided by the Eden Waterworks Company. Both culinary water and wastewater have met the preliminary requirements for the Weber County Subdivision Ordinance. Final approval will not be given until a financial guarantee is in place and recorded as part of the Bison Creek subdivision for the wastewater system. The Weber Fire District is requiring 12 new fire hydrants.

A wetland delineation on the property has been completed by BIO-WEST Inc. and has been submitted to the Army Corps of Engineers for review. An approval letter as well as any associated permits from the Army Corps of Engineers will be required for final approval. A geotechnical report recommended that no basements be allowed for homes in this subdivision.

**Conformance to General Plan:**

This subdivision conforms to the General Plan by:

- Meeting the requirements for the RE-20 and S-1 Zones.
- Meeting the requirements for Chapter 22B of the Weber County Zoning Ordinance.
- Meeting the objectives of the General Plan Section 3.01 to “Identify and promote the preservation of open space” and “Establish mechanisms to preserve open space in the Valley” and Section 10.02 to “Provide incentives for developers to preserve open space and cluster development.”

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**Conditions for Approval:**

1. Requirements and recommendations of the Weber County Engineers Office.
2. Requirements and recommendations of the Utah Department of Transportation
3. Requirements and recommendations of the Weber Fire District.
4. Requirements of Eden Water Works Company.
5. Financial guarantee and approval for sewer package treatment plant.
6. Requirements and recommendations of the Army Corps of Engineers.

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**Staff Recommendations:**

Staff recommends preliminary approval, subject to staff and other agency comments and recommendations. These recommendations need to include the variance to the road standards. Staff is also recommending that rolled curb/gutter be installed.

Chair Cooper talked about the reasons that this item was tabled and that staff had given them some information from UDOT which was one concern. Another concern was regarding the Army Corps. of Engineers.

Commissioner Graves stated that there were two things asked for and he wanted to make sure they were included and understood. The petitioner requested a variance to allow an island to be placed near the subdivision entrances. Each island will have the monument sign and a guard house and landscaped areas. The other one was regarding the width of the roads. He stated he was okay with the roads, but was not in favor with the guard house which was one more obstacle that could get in the way of maintenance as well as vision.

Commissioner Rounkles stated that it could be someplace for children to get under when they are waiting for the bus to pull over because of the traffic.

Commissioner Holmstrom asked staff regarding modifications. The Planning Commission has approved a preliminary plan, so if they had modifications and suggestions to the developer, this was the moment to do that so that the developer would incorporate the Planning Commission’s suggestions.

Commissioner Allen asked who would have jurisdiction if you want a bus stop, the State or County? Staff replied that it was a state road. Staff stated that the Planning Commission has an option, the petitioner would provide a park inside with adequate parking and the road is a through road where the bus could go through and turn back onto the highway. Maybe there would be an option to put a bus shelter at that pavilion or the park area for the children.

Chair Cooper stated that was a good idea but asked if the park would be private and if the County made those decisions on where the busses would go? Staff replied that the issue would have to be brought up to the school district.

Commissioner Banks asked if staff had verified that a bus could even drive into that area and get back out of it? Commissioner Graves replied that it would be fine. Staff stated that the roads were public.

Chair Cooper stated that they could recommend to the petitioner that they consider a pavilion at a site where theoretically the county could bring a bus in. The Planning Commission could recommend that the school district do that.

Monette Hurtado, Legal Counsel, stated that the Planning Commission could send a letter to the

school district stating that would be something that would be acceptable to them and could incorporate it into the final approval plan if the school district were comfortable with the plan. Commissioner Graves stated that if the school district does not approve, it was still covered by UDOT. Monette Hurtado replied that Commissioner Graves is correct, the state road is covered by UDOT.

Commissioner Allen asked if the roads inside the development were state roads? Staff replied that they were not state roads, they were county roads. Commissioner Allen stated that there should be a rule that it should be mandatory if you have narrow roads going into a large development, they should have an area for a bus to be able to pull over and not impede traffic and endanger children. Staff replied that was a good suggestion and they could look into that. Staff stated that was why a bus shelter could be put inside the development at the pavilion where there would be parking. There would be plenty of room for the bus to pull over and get off the highway.

Commissioner Holmstrom stated that there are some things in different portions of the ordinance and it would be very important for them and the people of Ogden Valley to understand what the thoughts were. She read the purpose and intent of the zoning and ordinances and stated that it was within the law for them to show a developer how their subdivision would be in the best interest and blend with the community. Staff replied that they had zoning ordinances in effect and it is the Planning Commission's job to enforce those ordinances. That would be the tool in place to make sure that the subdivisions were taken care of.

Commissioner Holmstrom stated that on the meeting agenda, there are two separate subdivisions, one with 5 lots in an S-1 zone with 4-acres designated open space and the other was a cluster subdivision. A huge portion of the area in the S-1 zone fell in the floodplain. She wanted to make sure that when a subdivision was initially done, and when prospective homeowners were shown the plan, that there is something on the plat that would let them know that the property is in a floodplain. Staff responded that it would be shown on the plat. Commissioner Holmstrom stated that her concern was that the homeowner down the road, who unwittingly in a dry year, bought property in the subdivision but did not really understand it. Staff replied that floodplain was mapped and shown on the plat, but they didn't think that they were here to discuss whether it showed up on the deed.

Monette Hurtado stated that the county did not control what was on any individual deed, but every person who pulled up their land serial number could access the plat and they're bound by the plat when they bought their lot. The property description encumbers them.

Commissioner Holmstrom asked if the lots would be designated as restricted lots on the final plat? Staff replied no, they would not be restricted. Restricted lots as designated by the ordinance, are designated for steep slopes and would require a Hillside Review.

Staff stated that on these lots the developer has shown buildable areas and they are outside the floodplain and that would be where they would have to build. They could build on floodplains, but they would have to mitigate it.

Commissioner Holmstrom stated that the petition had 23 acres of RE-20 zoning, if the developer kept 30% of that in open space, he would have approximately 7.1 acres of open space. She asked staff to clarify the subdivision ordinance regarding the common open space. Staff replied that wetlands could under normal circumstances be developed.

Commissioner Rounkles stated that when you mitigate a wetland, you have to mitigate it two times as much, so it would almost go against you. Staff replied that they met with the Army Corps. of Engineers, and their statement to them was "*that any wetland except a port or a harbor could potentially be mitigated and developed.*" There's a very normal process that takes place all over the country. It is a normal part of development. It is staff's interpretation that wetlands are considered developable with mitigation.

Commissioner Rounkles stated that for every acre that gets mitigated, he believes you have to create two times as much. Staff replied that there were many different ways to mitigate it. There are wetland banks that you could buy property somewhere else in this bank and they give you credit towards your property. Commissioner Graves stated that condition didn't exist in Ogden Valley so they couldn't do that. Monette Hurtado stated that they would look at different options.

Commissioner Rounkles stated that the Planning Commission didn't want to stop development, but how many developments do they approve? Staff responded that they were talking about open space. Right now, they consider wetlands to be completely developable under a normal process of mitigation. Therefore, they would have the full density to the developer.

Chair Cooper stated that staff has answered that it's developable in that it was common that floodplains could be built on. So as far as the numbers, if the plan met the zoning requirements, just because they don't like the number, it did not matter.

Commissioner Holmstrom stated that she was going to disagree with Commissioner Rounkles because if her math was correct, if they had 23 acres of RE-20 zoning, they would have 92+ dwellings if they had no wetlands. Staff replied that was incorrect, the RE-20 zone required 20,000 square feet, which was roughly a half acre. They would be allowed more lots in the RE-20 area than what they were proposing right now without the cluster and no open space. They would have to mitigate the wetlands in order to do that.

Chair Cooper stated that he was trying to understand this, they have to mitigate some wetlands which might reduce a few lots, but was it going to be better visually to have them every 20,000 square feet than it was to have them cluster? If he was understanding this right, if the Planning Commission said they would rather not have them cluster, they would have some pockets of wetlands that would have to be mitigated, so the only way that they could mitigate those was to reduce the number of lots? They may have fewer lots and they have some open space that the wetland areas created. Staff replied that the mitigation could actually allow them to build on that wetland. It could actually take it all out and eliminate it, but they are leaving that as open space and staff does not think it is something they need to discuss.

Monette Hurtado stated that if it made them feel more comfortable, after talking to the Army Corps. of Engineers, they would prefer a cluster subdivision because they preferred to have the wetlands in the open space. That was the information that the Army Corps. Of Engineers provided for them. They stated that the worst case scenario was the cookie cutter subdivision in which you would be encroaching on the wetlands with the number of lots. Chair Cooper asked if the Board could say that they don't want a cluster subdivision and want a cookie cutter subdivision? Ms. Hurtado replied that they could say that.

Commissioner Holmstrom stated that it had been brought up in letters from Huntsville Town that they actually have a water line or water source under the property, that it would be possible for this developer to move sewage, they would have to obtain an easement from Huntsville as well. Under 2624 Section I, "*national drainage and other easements, the Planning Commission may require the easements for drainage through adjoining property be provided by the subdivider.*" This was something that the Planning Commission could require, if legal counsel agreed. They should stipulate that before any final was given, they would need to see those easements.

Chair Cooper stated if they had a water line that was legally their waterline, easements would have to be given anyway. Monette Hurtado stated that was correct and they always have the easement shown on the recorded plat. Chair Cooper stated that if they couldn't obtain the easement, then even if they gave preliminary approval, they couldn't get final approval. Commissioner Holmstrom stated that this was something that went without saying, and she asked staff if it didn't have to be stipulated in a motion. Staff replied yes.

Commissioner Holmstrom said she was concerned about rear yard setbacks and that there was a slough on the property which she wanted to know if that was defined as a natural waterway? Staff replied that they did not know, that question would have to be referred to the engineers.

Commissioner Holmstrom stated that the rear setbacks were too close if that was a natural waterway and that would affect all the buildings in the rear of this property. Considering where this was going to butt up against a historic town, a 35 ft. height is allowed, but that was a really tall building to butt up against a community which has historic farmhouses with lower height buildings. She didn't know if they could do anything about the 35 ft. limit, but would like for it to be 25 feet. Staff replied that 35 feet is permitted and they do not believe the Planning Commission had any power to deny them going that high.

Monette Hurtado stated that was something that was an allowed use within the residential zones. The Planning Commission would have to address the ordinances if they wanted to change the height requirements.

Commissioner Rounkles stated that he had a problem with the density. He is torn on the cluster, if the density changed, he didn't want the land all chewed up or the wildlife disturbed, etc.

Chair Cooper stated that they are stuck with the RE-20 zoning. The bottom line is there is nothing they can do if a plan meets the letter of law with regard to density. They can express their feelings about it on record, and they could recommend to the County Commission that they create ordinances to minimize this in the future, and they'll move forward.

Commissioner Graves stated that the Army Corps. makes the mitigation decisions, it is totally in their hands. They made the decision on what the ratio was, whether they do it on-site or whether they go off-site. If you had questions, you would go and talk to those individuals. They made the decisions and they all have to abide by what they decided.

Chair Cooper stated that they were at that point now. They board has heard the concerns and they could back off and make a recommendation that the developer proposes a non-cluster subdivision. They have to move forward. They have had input from staff and legal counsel on what their options are.

Commissioner Holmstrom said that she tried to figure out if it was absolutely required for them to allow 10,000 sq. ft. lots or if they could say this plan would be fine except they want 20,000 sq. ft. lots? Staff replied no, the ordinance allowed the smaller lot size if they were on sewer, as long as they were in compliance with what the ordinance stated.

Commissioner Holmstrom asked why the word "may" applies in the ordinance when the sewer becomes a factor because initially the language in the ordinance said that the Planning Commission "may" reduce the lot size. Staff replied that they didn't believe that it said, "the Planning Commission may." They believed that it said, "lot sizes may be reduced to 10,000 square feet." It doesn't give the Planning Commission the ability to determine the lot size. What it was saying, was that it would be the petitioners' choice.

Neal Geddes stated he was representing the petitioner, Jamie Gull, who was out of town. He stated that he didn't have any comments other than to reiterate what was already said numerous times. The petitioner had been through two full hearings and it was clear that they met the statutory requirements and were entitled to preliminary approval. Whether everyone liked every detail of the proposal or not was irrelevant at this stage of the preliminary approval process.

Ron Gault, Huntsville Town Council, stated that he was responsible for zoning ordinances and the general plan. He submitted a letter dated April 11, 2007, and its subject was the proposed Rivers Cluster Subdivision. He read the referenced letter addressed to the Planning Commission at this time, a copy of which is on file.

Monette Hurtado stated that they have addressed all of the issues tonight but staff could go into detail on each one, but if they recall, the development "may" be a cluster subdivision with the lot size reduction to 10,000 square feet. If the Planning Commission would like staff to address each issue and relate how they looked at each one, that would be an option.

Staff stated that wetlands are developable land. Under normal circumstances, they can be developed so that is not subtracted from that developable acreage. The only thing that is subtracted from the acreage is roads. Roads do not count as developable lands. On a subdivision, floodplains and wetlands count, roads do not count as land that can normally be developed.

Commissioner Holmstrom stated to Ron Gault, that the crux of one of their problems in reading through these last two subdivisions dealing with wetlands. They appear to have different ideas about what classifies as net-developable land. It would be helpful if the Planning Commission got around to having workshops on the ordinances, but at this moment they have to comply with existing ordinances. The problem at the moment is with defining net-developable land, and staff has to go by what the Army Corps. requires because they have no other tool.

Ron Gault said he can't speak officially on behalf of the Town because they didn't have an opportunity to discuss this. In looking at the layout of the cluster versus spreading the lots out, he believes that spreading the lots is more similar to the town and the land around it than jamming all those houses into a small space.

Monette Hurtado stated that they sent a letter to Huntsville Town to give them the opportunity to annex this property, and they chose not to do so.

Donald Bell, Huntsville, stated that he thought that the board's function was to do planning. What they seemed to do was to get bogged down on the minutia of road sizes etc., when they really should be planning based on ordinance restrictions or tools. Their job is to advise and recommend to the three county commissioners, and their job should be leadership. That leadership fell short in 1997 or 98, when they hired Bio-West as an environmental consulting firm out of Logan who didn't know anything. They had little training about municipal or urban planning. What he proposed was that this body recommend in the strongest possible terms to the three leaders of the unincorporated East Huntsville area, that there be a moratorium or a cease and desist order, and if there is a six-month limit legally for that order or moratorium, then they should approach the legislator who represents the valley to go before the Legislature and get an extension. Also, that this Planning Commission recommend to the County Commission that they go outside the State of Utah and hire a credible, reliable, honest consulting firm that was trained in municipal and urban planning. Thereafter, they would stay involved in that tool and in the meantime develop ordinances not put together by resort owners, realtors, and developers.

Chair Cooper stated that Mr. Bell was right on target. He believes the Planning Commission and the County Commission need to be lectured because the public is the constituency. The Planning Commission could recommend to the County Commission that they need various ordinances and some of the studies Mr. Bell has requested that they do; however, the studies cost a lot of money so the County Commission has to make those decisions because they're the fiscal agents for the county, the Planning Commission members are not. Its citizens like Mr. Bell who needs to contact the County Commission, and say they are the County Commission's constituency and they want to have these ordinances soon. Mr. Bell is right, this Planning Commission has become bogged down in agendas that are unsurmountable. They have had more and more put on a consent agenda that staff can look at for them where the Planning Commission really doesn't have any some say, but why? They have set meetings like tonight to work on ordinances, but what happens if they get a project like this project that is controversial and has been tabled, then legal issues start to come into play. They were scheduled to meet once a month, but now they have been meeting twice a month.

Chair Cooper said they are meeting twice a month and they are going to try to stay on track to make the second meeting of the month an ordinance discussion meeting. The public has to lecture the Board and they have to lecture the County Commission because that's what they need to hear. They usually hear from the opposite side. People that don't want the ordinances or regulations, they are the most vocal, and if they are the majority, then that's the way it has to go.

Chris Stephenson, Huntsville Town Council, stated that what they need to do was address some of these issues from a procedural and ordinance. It's not enough to say they don't like roof tops or flood areas. He made three quick points, where it seemed to him that tabling this issue was based on three contingencies, one being a response from the DWR. Since this item was placed on the agenda sooner than 30 days after it was tabled, he thought that was an adequate reason to table this until they got a letter from DWR. Having worked on ordinances in Huntsville, it seemed to him that one of the main objectives was the health, welfare, and safety of the community. On what grounds could you preliminarily approve a subdivision where the developer, land owner, and other people confirmed that on the south boundary of the town and the north boundary of the subdivision there is a bog, a slough, that had been created by the septic systems in Huntsville Town? He suggested that the health, welfare, and security and safety of the town and new residents of the subdivision would be in jeopardy if they allowed that. He recommended that the Planning Commission's decision tonight would be that they don't want a cluster subdivision, and that they decline it.

John Posnien stated that he appreciated the Planning Commission's attitude towards these types of things because they were implying that they were not in favor of it. He asked Commissioner Zogmaister what it would take, and what the time table was for them to put into place some ordinances that would protect them in the Ogden Valley? What would be wrong with the moratorium and how would it be diplomatic?

Chair Cooper replied that Commissioner Zogmaister just came to observe this meeting and shouldn't be expected to speak. The Planning Commission at the last meeting recommended to the County Commission, that based on counsel indicating that the new onsite waste water systems are new technology it would give them an opportunity to then say, they are going to look at that new technology for up to six months. Then they could look at an overall plan for the valley. They can't say that they are going to put a moratorium on development while they think about a new ordinance because they are playing under that set of rules. If you came under that set rules, you'd want to play. Because of the new technology, zoning is affected by the new technology and the location, they can stand back and take a look, and developments of this type would be held while they review that technology. They Planning Commission has requested to the County Commission, which they're taking under advisement, that they give themselves and the Planning Commission the ability to have a planning tool to look at these types of things. Just like staff has a tool for the Hillside review, they don't have a tool for the wetlands. They want a tool because right now, they are under DEQ or other recommending agencies and if they recommend, then they are tied to what they recommend. They are asking the County Commission to stand back and give the Planning Commission an opportunity to review it, however they want to do that, so they can try to look at an overall plan for the valley, specifically, the waste water at this time.

Rex Harris, a former council member of Huntsville, stated that he worked for UDOT and his name was probably on the letter. He stated this was for future reference and that he probably couldn't say anything that would change what the decision would be for tonight, but he believes they should follow the transportation plan for the Upper Valley. He felt that UDOT was placed in a position to be the heavy or control how they do their transportation development. They don't want to be in that position, and hoped the Planning Commission would plan wise roads. Mr. Harris expressed that he didn't want the upper valley to turn into a situation like the SR-134 in Plain City where they met standards for spacing but every ten-home subdivision had access to the state highway. The surface ability dropped down. He wants to make sure that the Planning Commission looks into planning a Master Plan for transportation.

Rex Harris said he does not know if the county had a sensitive land study in the upper valley and also wanted to reemphasize the May issue, in reference to the cluster ordinance. He couldn't believe that the intent was to allow the developer to make that decision. If there are clarifications that needed to be made in the ordinances, they need to do that now so they don't have these continued problems in the future.

Robin Roberts, East Huntsville, stated that she was resigned to the fact that development was going to go on, and they wouldn't be driving their cattle up the highway. She was wondering if there was any way in the process, if they could move some of the open space so it is along the road? Chair Cooper replied that would be a zoning issue, and if they looked at the Master Plan, he believes they need to step up to the plate, however, it takes time and money to do an overall Master Plan for roads and other things and that affect everyone. If you own a bunch of property, you want them to designate open space, there has to be TDR's, and there has to be a way to compensate you. It has to be fair to you, it would nice if we could take all the corridors and make them as nice, but there has to be a way to take care of your rights.

Commissioner Holmstrom stated that when they initially talked to this developer, they talked about next to the road and him softening it with planting. There is a wide right of way there on the state road, and some people are used to walking and riding horses, and in someways that's probably where the pathway connection should have been, but instead it's going through Jefferson Hunt. Staff replied that they talked about the pending sensitive land ordinance that did have the recommendation along scenic corridors of 100 foot setback. The UDOT right of way is so large the belief is that there is plenty of room to put a house on the lots that are the closest to the road without having to change anything. As far as landscaping, additional buffering could be brought up with the petitioner, but it didn't really affect anything in the subdivision.

Commissioner Banks asked if the decision they made tonight was not what the petitioner desired, could he go to the County Commissioners? Staff replied that has been done before and there is a provision in the ordinance for an appeal to the County Commission within 15 days.

Commissioner Rounkles asked if the county took over these roads after it was all done and if the private park would be open to the public? Staff replied yes, the county would take over the roads and the park itself was not open to the public but the parking area would be because the trails go through there.

Star Prim, who resides adjacent to this subdivision, showed some pictures of their property and the proposed subdivision. She asked for those that have land next to this subdivision, would the developer have to compensate them for any devaluation of the property? Chair Cooper stated no, the developers do not have to compensate surrounding property owners.

Steve Saunders, a former Huntsville Councilman, stated that clearly this drawing shows a guy who has no concern for the community in terms of the visual impact that it has. It is clearly in the language of the ordinance that he needs to do that. If it does go through, he would suggest that the Planning Commission enforce this ordinance requirement and have him have provide a buffer with trees.

Ron Gleason, a resident on Kelly Drive in Huntsville, stated that he was speaking tonight on his personal views. He wanted to talk about the variance request for the 50 foot roads. As he understood, and he believed that this RE-20 cluster zoning was the highest single residential zoning allowed in the valley. Because of that, they need to do everything to ensure as much open space, or scenic corridors, or other type of corridors are available. One way to do that was to ensure you have the maximum width road of the standard 60 feet. Mr. Gleason continued by stating that each individual house has the 30 foot setback from the road to the beginning of the house. If they look at a road, there would be 30 feet for each house, if it's at 50 feet, then you have 110 ft. corridor, if it's the standard 60 feet, then you have 150 feet looking down there. If you look at these two major roads, they run east/west. If you drive down there and look off to the west, he believed it would be best to have as much width there to be able to see the reservoir and trees. That would be much preferred. It's only ten feet, but that's 10% more and it would make a difference and it would be important to preserve the rural atmosphere. He asked that they vote with a conscience and not with a number of checked boxes they are being asked to put on a piece of paper.

Ron Gleason asked that they look at this from a qualitative standpoint, make the roads as wide as possible, and send it back to the developers to have them come back with a non-clustered plan or a different cluster type of subdivision that fits better.

Tim Hansen, who resides adjacent to proposed subdivision, stated that he wasn't at the last meeting, but he was at the meeting regarding Bison Ridge which is connected with this. What he was continually hearing was the letter of the law. In dealing with the plan for the valley, you start dealing with word like aesthetics, etc., which are very negotiable words. He keeps hearing "the letter of the law," and at that point, do they let that define the aesthetics and the feel when they say they want to keep it a rural community and something more open? Either you have this power taken away or you're giving it up.

Chair Cooper replied that he could try to explain that when you look at the Master Plan, and everybody in the valley has used those big terms, aesthetics, open space, and rural. Then what they do is develop an ordinance, and that ordinance will list requirements such as, the fences will be at a certain height, so much open space is required, etc. The ordinances are the "teeth" of the master plan. If you look at the Upper Valley since 1978, there have been two or three plans that get placed on the shelf and gather dust, because they're almost useless unless they have those ordinances to back them up. People have to come forward and take a stand on getting them pushed through. The Planning Commission is a recommending body to the County Commission

Chair Cooper closed the meeting for public comment at this time.

Chair Cooper stated that a couple of issues to discuss is the variance issue to allow or not allow the variance with a possible recommendation that they put in buffering in this subdivision. The only other issue is, do they want a cookie cutter subdivision, or a cluster subdivision?

Commissioner Allen stated that they have two choices, they either vote yes on the development and apologize to the people of the valley, and especially to the people of Huntsville, or they vote no on the development and let it go up to the three County Commissioners and let them decide what it is.

Commissioner Rounkles asked Legal Counsel if it was to go to the commissioners with a denial recommendation because the Planning Commission was not comfortable with the cluster, could they ask to see the two comparisons of the developments? Monette Hurtado replied no, they have the same right to say they don't like this development and factually state why. They don't get to keep saying they want the developer to go back and redesign, or that they want the developer to adopt an actual style. When a developer comes to the Planning Commission at this point, the Planning Commission has the ability to ask for a road redesign, a change of density, etc. However, if the Planning Commission wants them to come back with a cluster, the appropriate thing to do would be to deny and tell them why they denied it. That would be their factual reason, because they need reasons why they approved or why they denied. They need to state the factual reasons, either way. The facts support their decisions so a developer knows why they are appealing. If the factual basis for their motion to deny is because they want to see a cookie cutter subdivision, then if they don't like the cookie cutter subdivision, they don't have a factual basis for denial.

Commissioner Holmstrom stated that she wanted to clarify what legal right they have. She does not believe they have to grant a variance on the width of the road. She does not believe they should grant a variance on the islands because of the egress and ingress is going to be on very fast traffic. She would like to have the legal clarification of the word "may" in that sentence and have it thoroughly examined, because it's prefaced by the word "The Planning Commission "may", and not "The Developer "may."

Monette Hurtado responded that she would agree. However, Ms. Holmstrom is confused. The other “may” was regarding the reduction when there’s a sewer system. They don’t disagree with that. The Planning Commission has the option to either have a regular cluster subdivision or have a cookie cutter subdivision. That’s in their discretion. If they want to deny this because they would rather see the alternative, they need to put the facts on record, because if a developer meets the County requirements, for example, they don’t want to see a cluster, and they are denying it because they don’t think a cluster is appropriate in this area, then they can come back with the regular subdivision meeting the ordinances and get approval based upon that recommendation. The “may” was brought up in two different circumstances. The first one was very clear, “The Planning Commission may decide,” whether a cluster subdivision is appropriate.

Staff stated that the petitioner had four different designs when he met with them. He had a regular cookie cutter subdivision, and he had different road patterns. The petitioner had looked at all of those issues, and this was the subdivision proposal that worked the best as far as looking at all the other issues on the property.

**MOTION:** Commissioner Allen moved to recommend denial of Preliminary Approval for The Rivers Cluster Subdivision (46 Lots) located at approximately 7800 East Hwy 39, because of the significant negative impact on the Ogden Valley Development Plan and especially on the city of Huntsville.  
Commissioner Banks seconded the motion. Chair Cooper stated that the motion carried by a vote of 4 to 2.

Staff stated that the petitioner needs to know that he has the right to appeal to the County Commission within 15 days.

3. **Zoning Petition Z.P. #01-07 Ordinance Chapter 42, Accessory Apartments to redefine the accessory apartment specifications and application procedure**

Staff presented the following proposed ordinance:

**An Ordinance of Weber County, amending the Zoning Ordinance Chapter 42, Accessory Apartments to redefine the accessory apartment specifications and application procedure.**

**WHEREAS**, The Moderate Income Housing element of the County’s general plans recommends the use of accessory apartments as a method of providing for moderate income housing; and

**WHEREAS**, The County is desirous of providing an opportunity for moderate income housing; and

**WHEREAS**, Both the Western Weber County and Ogden Valley Township planning commissions voted unanimously to recommend approval of the amendments;

**NOW THEREFORE**, The Board of County Commissioners of Weber County, State of Utah, Ordain as follows:

The Uniform Zoning Ordinance of Unincorporated Weber County is hereby amended as follows:

CHAPTER 42

ACCESSORY APARTMENTS

- 42-1. Purpose and Intent
- 42-2. Conditional Uses in any zone which permits residential dwellings
- 42-3. General Provisions
- 42-4. Application Procedure
- 42-5. Moderate Income Housing Provision
- 42-6. Non-conforming Accessory Apartment units
- 42-7. Applicability to existing units

42-1. Purpose and Intent.

The purpose of allowing Accessory Apartments within existing dwellings or by addition thereto, subject to conditions by Conditional Use Permit, is to provide for affordable housing for the citizens of Weber County.

42-2. Conditional Use.

Accessory Apartments may be permitted, by Conditional Use Permit, in any zone in which single family residential dwelling units are allowed, under the following specifications;

- A. Relationship to principal use; appearance. An apartment may be established only accessory to a permitted dwelling. The apartment unit shall have common wall(s), roof, and/or floor(s). ~~to the livable floor area of the principal dwelling. The minimum width shall be twenty feet (20) ft. with the main home, with an opening from the accessory apartment to the main home, into a common living area of the main home. The opening can be closed off by a door. Basement apartments meet this requirement with the common floor. The stairs which lead to the main floor and open up into the common living space of the main home can be closed off by a door. The accessory apartment opening into a garage or storage is not considered livable space.~~ The outward appearance of the accessory dwelling shall be consistent with the design and character of the principal dwelling in its construction, materials and finish treatment. There shall be no more than one apartment accessory to a permitted dwelling. There shall be no separate address, mailbox or utilities.
- B. Floor area. ~~The accessory apartment shall be subordinate in floor area to the principal dwelling and shall not consist of more than two bedrooms.~~ Floor area. Living area of an accessory apartment shall contain a minimum of four hundred (400) square feet and shall not exceed a maximum of eight hundred (800) square feet; there shall be no more than two (2) bedrooms in such apartments. In no case shall the floor area exceed twenty-five (25) percent of the gross livable floor area of the total structure.
- C. Location. An accessory apartment shall be so located upon a lot to comply with all dimensional requirements of the zoning district for new construction. An apartment located within the perimeter of an existing; (by location); non-conforming dwelling, shall not be subject to such requirements. No apartment shall be located in a basement or cellar unless such basements or cellar constitutes a walk-out basement. Additions for the purpose of an accessory apartment shall be made only above or to the side or rear of the principal dwelling.
- D. Access. An accessory apartment shall have a minimum of one (1) separate external door access from the principal dwelling located on either the side or the rear of the principal dwelling.
- E. Amenities. An accessory apartment shall contain separate amenities from the principal dwelling: kitchen facilities, full bath, electric panel with separate disconnect, telephone service.
- F. Parking. In addition to the two (2) parking spaces required for the principal dwelling, two (2) off-street parking spaces shall be provided for an accessory apartment in a designated location on the premises. Such spaces shall be on an area prepared to accommodate vehicle parking.

**42-3. General Provisions.**

In addition to the section above, the following general provisions shall apply:

- A. Either the principal dwelling or accessory apartment shall be occupied by the owner of the premises at all times, excepting reasonable vacation absences.
  - B. Nothing shall prevent the owner of the premises from deed restricting aspects of the use of the apartment as long as such restrictions legally conform to any local, state or federal law or regulation.
  - C. There shall be no limitation on age of structure, time of ownership, or construction of additions to establish an accessory apartment, except as provided in this section.
  - D. All provisions of the State of Utah Building Code, as amended from time to time, including the securing of requisite building Land Use Permits, Building Permits, and certificates of occupancy, together with the requirements of all other applicable construction codes or regulations, shall be met to establish an accessory apartment.
  - E. The Fire Marshal shall review and approve any proposal to establish an accessory apartment to assure adequate fire safety.
  - F. The Morgan-Weber Environmental Health Department or Sewer Service provider shall review and approve any proposal to establish an accessory apartment to assure the premises conforms to the minimum requirements for sewage disposal.
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**42-4. Application Procedure.**

The application for a Conditional Use Permit for an accessory apartment shall follow the guidelines in Chapter 22C. The following provisions shall also apply to the establishment of an accessory apartment:

- ~~A. A person seeking to establish an accessory apartment shall file an application for Conditional Use Permit, accompanied by complete floor plans, elevations, and interior layout drawn to scale, including alterations to be made to the exterior of the existing dwelling, photographs of the exterior of the existing dwelling. The application shall be reviewed and either approved or denied by the Township Planning Commission in which jurisdiction the property lies.~~
  - A. A person seeking to establish an accessory apartment shall file an application for a Conditional Use Permit and pay the associated filing fee. The application is to be accompanied by complete floor plans, elevations, and interior layout drawn to scale, including alterations to be made to the existing dwelling exterior. Also, photographs of the dwelling exterior are to be submitted with the application. The application shall then be reviewed and either approved or denied by the Township Planning Commission in which jurisdiction the property lies.
  - B. Upon receipt of a Conditional Use Permit and Building Permit, and prior to issuance of a Certificate of Occupancy by the Chief Building Official, the Weber County Zoning Enforcement Officer shall inspect the premises. The Conditional Use Permit shall be reviewed for renewal every two (2) years.
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**42-5. Moderate Income Housing Provision.**

In the interest of furthering the goals of providing increased affordable housing stock, it is desirable that provision for accessory apartments be established meeting the affordability guidelines established by the Weber County Moderate Income Housing Plan. Owners are encouraged to establish units in consideration of such guidelines.

- A. To determine achievement of affordable housing designation, the owner shall provide a copy of the initial rental agreement indicating either the monthly or annual rent of the unit at the time of issuance of the Certificate of Occupancy.
- B. The Planning Department Staff, pursuant to its established administrative requirements, shall review rental agreements every two (2) years as part of the Conditional Use approval in order to assure that the affordability of the accessory apartment is upheld and to keep records on numbers and availability of affordable housing.

**42-6. Non-conforming Accessory Apartments.**

Any accessory apartment type unit remaining without a Conditional Use Permit after the date of May 6, 2006 shall be deemed to be illegal and in violation of the zoning regulations and subject to such enforcement action and penalties which the law may prescribe.

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42-7. Applicability to Non-conforming Units.

Recognizing that there currently exists illegally established units of accessory apartments, provision is made under this subsection to allow such units to apply for and receive Conditional Use Permits for a period of one (1) year from the effective date of this ordinance. Upon expiration of this provision on May 6, 2007 this subsection shall become invalid and be removed from the zoning regulations. Existing units shall be reviewed subject to the following:

- A. The request shall meet the provisions set forth in this ordinance.
- B. The provisions of this ordinance for the establishment of an approved accessory apartment shall be waived only if found to create no violation of any local, state, or federal ordinance, law or regulation.

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**MOTION:** Commissioner Graves moved to recommend to the County Commission approval of Zoning Petition Z.P. #01-07 Ordinance Chapter 42, Accessory Apartments to redefine the accessory apartment specifications and application procedure to redefine as presented. Commissioner Banks seconded the motion. Chair Cooper stated the motion carried with all members present voting aye.

4. Adjourn

There Being No Further Business, the meeting was adjourned at 8:45 p.m.

Respectfully Submitted,

Kary Serrano, Secretary  
Weber County Planning Commission