

**MINUTES
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, February 8, 2011 - 10:00 a.m.
Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

COMMISSIONERS: Jan M. Zogmaister, Chair, Craig L. Dearden and Kerry W. Gibson.

OTHERS PRESENT: Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; Fátima Fernelius, of the Clerk/Auditor's Office, took minutes.

A. WELCOME - Chair Zogmaister

B. PLEDGE OF ALLEGIANCE - Mike Caldwell

C. THOUGHT OF THE DAY - Chair Zogmaister

D. PRESENTATION OF ENERGY RESOURCE STEWARDSHIP GRANT AWARD TO WEBER COUNTY LIBRARY

Steve Rush, of Rocky Mountain Power, stated that several years ago Lynnda Wangsgard, County Library Director, had contacted him with a vision to make the future southwest library branch an example of energy conservation and use it as an educational opportunity. Rocky Mountain has a program that promotes energy conservation through providing money increments and its participation in this project is almost \$10,000. Ms. Wangsgard stated that she and the Library Board worked on the energy conservation concept long before the building was designed, realizing that public buildings consume about 60% of the power produced in the United States. This library is the first gold lead certified facility north of Salt Lake City and they are now overlaying principles on the other county library buildings. The main library has reduced its electrical consumption by 52.4% over the last three years. Ms. Wangsgard was presented with a certificate and Mr. Rush applauded this initiative in energy conservation.

E. CONSENT ITEMS:

1. Purchase Orders in the amount of \$794,138.92
2. Warrants #270934-#271049 in the amount of \$393,479.60
3. Minutes for the meeting held on February 1, 2011
4. New business licenses
5. Elective Service Benefit Agreements:

Kenneth A. Bischoff - Contract C2011-12; Cheryl V. Madsen - Contract C2011-13

Commissioner Dearden moved to approve the consent items; Commissioner Gibson seconded, all voting aye.

F. ACTION ITEMS:

1. **RESOLUTION REAPPOINTING TWO MEMBERS TO THE LIBERTY PARK SERVICE AREA BOARD - RESOLUTION 3-2011**

David Wilson, Deputy County Attorney, noted that the County Commission does not have oversight of these independent districts. In 2008 this board approached the Commission to update some appointments for which terms had expired and the Commission appointed five members at that time. Two terms expired in 2009. Only two applications were received (from members who had been serving).

Commissioner Gibson moved to adopt Resolution 3-2011 reappointing Sharmain Kennedy-Croft and Michael D. Rhodes for 4-year terms from 1/1/2010 through 12/31/2013 to the Liberty Park Service Area Board; Commissioner Dearden seconded.

Roll Call Vote:

Commissioner Deardenaye
Commissioner Gibsonaye
Chair Zogmaisteraye

2. RESOLUTION APPOINTING 7 MEMBERS TO THE LITTLE MOUNTAIN SERVICE AREA BOARD - RESOLUTION 4-2011

David Wilson, Deputy County Attorney, noted that Chris Allred, Deputy County Attorney, had worked on this item with Jason Nichols, legal counsel for this board, which is comprised of seven members. When the last appointments were made they all had the same term and this resolution staggers them. Because there are no people residing within the district, appointments come from outside. The board recommended reappointing five members, and there is an additional vacancy that needs to be filled. Commissioner Dearden stated that there was only one new application in the Commission packets.

Commissioner Dearden moved to adopt Resolution 4-2011 reappointing Kent Bradford, Kevin Merchel, Lance Wood, Ron Kusina for 4-year terms from 1/1/2011-12/31/2014, and Jim Adams, Kerry Gibson and Gary Hales to the Little Mountain Service Area Board; Commissioner Gibson seconded

Roll Call Vote:

Commissioner Dearden.....aye
Commissioner Gibson.....aye
Chair Zogmaisteraye

3. REQUEST FROM GWSC PROPERTIES, LLC TO CONSIDER WAIVING PENALTY AND/OR INTEREST ON DELINQUENT PROPERTY TAXES ON LAND SERIAL NUMBER (LSN) 05-144-004 FOR 2007 AND 2008

John Bond, County Treasurer, stated that Mike Swenson, Manager of GWSC Properties, was requesting the waiving of penalties and interest in the amount of \$4,389.97 for 2007 and 2008. After deliberation the Tax Review Committee (Committee) unanimously recommended not waiving the penalty or interest.

GWSC purchased five properties on 11/17/2006 from Sanders Brine Shrimp Company. Documents for the five properties were sent to the County Recorder’s Office in 2006, which determined there was a legal description error (it stated “south” rather than “north”). The Recorder Office’s practice at that time was to return such documents, and they were sent back to the title company for correction. The correction did not occur for 2½ years, thus the valuation and tax notices for the largest property continued to be mailed to Sanders. In 2009 a corrected deed was provided to the Recorder’s Office.

In 2007 GWSC received four tax notices and taxes were paid, and this continued in 2008. In 2009, when the corrected deed appeared, GWSC filed an appeal on the five properties and Mr. Swenson’s brother hired an agent, Steve Preston, to act in their behalf. In January 2010 the appeal was withdrawn and all five values were accepted and taxes due were paid. This confused the Committee. It appears that in 2010 the Assessor’s Office erroneously omitted the building value for LSN 05-144-0001.

The Committee felt that a large part of the responsibility lies with the title company because if it had submitted a correct legal description in the beginning, or if they had acted more timely in correcting the legal description, probably none of these problems would have occurred in 2007, 2008 and 2009.

Mr. Swenson stated that this was not the county's fault. When GWSC received the four tax notices in 2007, those values were not out of line with what they believed was correct. In 2008 they paid the taxes not realizing they were missing a tax notice. This was discovered in 2009. They felt the value was high at that time and appealed it, but Mr. Swenson does not know why the appeal was withdrawn. In 2010 Mr. Swenson received a letter informing him of the delinquent taxes for 2007 and 2008.

Commissioner Dearden stated that the problem was corrected in 2009 and Mr. Swenson concurred. Commissioner Dearden then stated that we are now in 2011 and asked why nothing happened in the 1½ years in between, also noting that starting with the 2009 tax notice it was indicated that taxes were delinquent. Mr. Swenson said that clearly that was on the notice but they had missed it. Commissioner Dearden asked what responsibility the county had in this case and Mr. Swenson responded that the county did not have any responsibility, that State law is on the county's side, but he was appealing under a sense of fairness not the county's obligation. Commissioner Zogmaister asked if he had discussed the problem with the title company and Mr. Swenson said he could enter into a lawsuit with the title company but lawsuits are expensive.

Mr. Bond stated that the County Recorder acted in compliance with the practice of that time and GWSC was given notice in 2009 and 2010 of the delinquency, and this issue could have been resolved 1½ years sooner, which would have resulted in lesser interest due. Chair Zogmaister stated that the Commission has the charge of looking at this from the county's responsibility. Mr. Swenson said GWSC had the responsibility of dealing with this issue earlier.

Commissioner Dearden moved to reduce the penalty and interest to \$3,000; Commissioner Gibson seconded for discussion recommending that the penalty and interest be reduced by more than that. Chair Zogmaister stated that some of the penalties need to remain in place because GWSC should have taken responsibility starting with 2009, and the county should not take responsibility for those years that the title company failed to follow through with their part. Commissioner Gibson made a substitute motion, based upon the discussion and the extenuating circumstances, that the \$4,389.97 be split in half. Chair Zogmaister stated that the practice has been that when the county has not had the money for a period of time, and because the individual has, that interest is not waived, and the penalty is discussed and decided upon. Commissioner Dearden seconded for discussion stating that he had not moved for a lower amount due to the tax notice stating "delinquent" starting in 2009 and that Chair Zogmaister was correct, regarding the county's practice of never waiving interest and discussing penalties. Chair Zogmaister stated that the property owner is responsible and should have acted when he received the tax notice in 2009. Chair Zogmaister called for the vote for the substitute motion to decrease the penalty and interest by 50% or \$2,194.99; Commissioner Gibson voted aye; Commissioner Dearden voted nay; Chair Zogmaister voted nay. Chair Zogmaister called for the vote on the first motion to reduce the penalty and interest amount of \$4,389.97 to \$3,000 and all voted aye.

4. **CONTRACT WITH WASHINGTON TERRACE CITY FOR LAW ENFORCEMENT TO THE CITY. (ADJUSTMENT TO AMOUNT PRESENTED IN ORIGINAL AMENDMENT) - CONTRACT C2011-14**

David Wilson, Deputy County Attorney, stated that the Commission approved Exhibits to the original contract on 1/25/2011. However, the amount of credits in Exhibit C has been reduced by approximately \$15,000, which increases the amount that the City will pay to \$845,520.

Commissioner Dearden moved to approve Contract C2011-14, adjusting the amount presented in the original amendment with Washington Terrace City for law enforcement to the city; Commissioner Gibson seconded, all voting aye.

5. **CONTRACT WITH UTAH STATE UNIVERSITY EXTENSION TO RENEW THE ANNUAL CONTRACT - CONTRACT C2011-15**

Jerry Goodspeed, of the U.S.U. Extension, presented the annual contract renewal.

Commissioner Gibson moved to approve Contract C2011-15 with Utah State University Extension renewing the annual contract; Commissioner Dearden seconded, all voting aye.

6. **CONTRACT WITH ANIMAL SPECIALTIES TO HAVE ANIMAL SPECIALTIES AT THE 2011 WEBER COUNTY FAIR - CONTRACT C2011-16**

Jan Wilson, of the Weber County Fair, presented this contract in the amount of \$5,000. Chair Zogmaister noted that the contract did not indicate whether the company has workers compensation insurance and Ms. Wilson will make sure the information is provided before they perform.

Commissioner Dearden moved to approve Contract C2011-16 with Animal Specialties to participate in the 2011 Weber County Fair, contingent upon the information on workers compensation being provided; Commissioner Gibson seconded, all voting aye.

7. **CONTRACTS WITH ACORN PRODUCTIONS FOR ANTIQUE SHOWS TO BE HELD AT THE GOLDEN SPIKE EVENT CENTER (GSEC) ON THE FOLLOWING DATES:**

FEBRUARY 19-20, 2011 - CONTRACT C2011-17

MAY 21-22, 2011 - CONTRACT C2011-18

NOVEMBER 5-6, 2011 - CONTRACT C2011-19

Jim Harvey, of the GSEC, presented these contracts.

Commissioner Gibson moved to approve Contracts C2011-17 through 19 with Acorn Productions for antique shows; Commissioner Dearden seconded, all voting aye.

8. **CONTRACT WITH UTAH STATE CUTTER AND CHARIOT ASSOCIATION FOR A RACE TO BE HELD AT THE GOLDEN SPIKE EVENT CENTER (GSEC) ON FEBRUARY 26-27, 2011 - CONTRACT C2011-20**

Jim Harvey, of the GSEC, presented this contract.

Commissioner Dearden moved to approve Contract C2011-20 with Utah State Cutter and Chariot Association for a race at the Golden Spike Event Center on 2/26-27/2011; Commissioner Gibson seconded, all voting aye.

G. PUBLIC HEARING

1. Commissioner Gibson moved to adjourn the public meeting and convene the public hearing
Commissioner Dearden seconded, all voting aye.

2. **PUBLIC HEARING TO CONSIDER AND/OR TAKE ACTION ON A REQUEST TO AMEND THE WEBER COUNTY ZONING ORDINANCE BY ADDING "DAYCARE" TO THE LIST OF CONDITIONAL USES FOUND IN CHAPTER 21-B; OGDEN VALLEY MANUFACTURING ZONE (MV-1)**

Scott Mendoza, of the County Planning Division, stated that in 2009 a similar petition requested an amendment to the MV-1 Zone to put all the commercial uses in the Ogden Valley as permitted uses into the Ogden Valley Manufacturing Zone. Staff's recommendation was for that petition to be denied. However, staff worked with that original petitioner and presented the Commission with a list of 28 new uses determined more compatible, and that was approved. That list did not include daycare because of concerns by the Planning Commission, staff, and the County Commission relating to compatibility with

the manufacturing uses already allowed in the zone, and occupying a manufacturing zone—which has a limited number of developable acres—with commercial uses, which should be located in vibrant and active commercial cores. Per State law, a daycare must have an outdoor playground and the surrounding uses in a manufacturing zone may pose potential hazards to children. Additionally, the county's Gravel Zone has since been amended to allow contractor equipment storage in the manufacturing zone.

The Ogden Valley Planning Commission recommended approval of this current request by a 3-2 vote, allowing daycare when it is located on the same lot and established in conjunction with a recreation center. Staff recommends denial of this request based upon compatibility and genuine concern for the safety of children in a manufacturing zone with the required outdoor playground in a zone that allows industrial uses. Mr. Mendoza noted that there has been community support for this proposal. Staff tried to accommodate the petitioner and did a lot of research. They provided an alternative by trying to mitigate hazards that can be located in this zone and added additional standards that would have to be met.

The daycare is already operating in the Valley and has been for some time, although it is not allowed. It has a daycare license only from the State, not from Weber County. Chair Zogmaister noted that parking had not been addressed and with a daycare there is a lot of traffic flow and a lot of children. Mr. Mendoza said that parking is generally addressed during the site plan process. Chair Zogmaister realizes this but believes that safety relating to the activity should be addressed. Mr. Mendoza said that they would look at other standards, such as a drive through, rather than backing out of stalls.

Chandra Barrong, petitioner, provided parking information to the county last year. She said that parking in her last commercial area was very dangerous and this location is much safer. In that commercial area there are 7-8 businesses sharing one building with many people driving fast in and out that were not aware of the daycare, the main street has a 40 mph speed limit, and there are over 4000 cars driving on that street. They are currently in a cul de sac, there is no heavy machinery driving through their parking lot, there are 3 other cars besides those coming to their facility, and they have as many parking spaces as most childcare centers in the county. They started their business as an adult fitness and children's tumbling recreation facility four years ago in Huntsville because it was the only building available for lease in the Valley. Gymnastics and recreation facilities are generally located in manufacturing areas because they require large open rooms with high ceilings. They moved to Eden when a building became available, but it became too small. A 30-year Valley realtor showed them their current building in the manufacturing zone, and Ms. Barrong said she had not known of such a zone in the Valley. As they were moving to the current site, they called County business licensing and were told that area was not zoned for recreational uses. The building owner then filed a petition, but not knowing to choose specific uses, he listed all the commercial uses on the application. It was approved. At the time she was not operating a daycare, but had a couple of preschool classes and did not know that preschool and daycare are considered the same in the county. She then filed an application with the County Planning Division. She said that they bus children from the elementary school and had to take out a State daycare license to stay in compliance.

Ms. Barrong said that in Ogden City a tumbling, dance or preschool business can stand alone but in the Valley her businesses need to combine to be successful. She is not asking for this use because they are already in the building, she would still be asking for it because there are no other buildings available in the Valley to combine tumbling/gymnastics/dance and preschool/daycare programs, and a manufacturing building is essential. At the May 2010 Planning Commission meeting no one from the community expressed opposition to her request and many expressed support, including all seven lot owners in that zone.

Ms. Barrong said that Weber County has three daycares, two that are in heavy manufacturing zones. These have normal fences, but she is being asked to put up netting, the others are on 40 mph roads that have diesel trucks traveling all day long and one sits across from a lumber yard. The Valley does not have the inversion and children in other county daycares still play outdoors.

Ms. Barrong said that the Bureau of Childcare Licensing had yet to have a county in Utah not allow daycare in a manufacturing zone, that it is common, and that the Bureau called in November stating that a Weber County Attorney requested that her license be revoked but they could not do that because she met all the qualifications for the manufacturing area. She showed on a map that she is two lots outside of the Commercial Zone. None of the rentable facilities in Eden wanted a daycare. The only possible danger in this location may come from the one allowed use—a cement batch plant, and the owners are willing to put a stay on it stating that as long as this business is there they will not put a cement batch plant next to it. She showed on a map that all the commercial lots are closer to the cement batch plant than she is at the current location.

Commissioner Gibson asked if the county has daycares as conditional uses in manufacturing zones. Mr. Mendoza said that was correct, but just because they are listed does not mean this is a safe practice, that a lot of the ordinances were adopted in the 1950's and the Planning Division has been revising them as problems arise. One of the organizations Mr. Mendoza contacted about this issue, the Center for Health and Justice, addresses health and safe school sitings, and they stated that there is "a critical gap in legislation with respect to siting schools near sources of pollution." He also contacted a physician from Primary Children's Hospital, representing Moms for Clean Air, who expressed gratitude to him for looking into this and stated that even though the current rules allow daycares to be sited in manufacturing and other potentially hazardous areas, they are working to correct that. Commissioner Dearden asked that, if this is a health issue why not move toward removing it from the Manufacturing Zone and not allow it even as a conditional use. Mr. Mendoza said that it had not come to their attention previously, but based upon this recent research, it is a very good idea to start reviewing the available research and potentially amend the manufacturing zones. Ms. Barrong believes that the Planning Commission approved this because they recognize that the Valley needs the infrastructure of a recreation facility, of preschools, of childcare, and before/afterschool care, that those cannot stand alone and succeed, and they need to be in buildings with high ceilings.

Chair Zogmaister noted that Ms. Barrong has been continually operating outside of the law and that it is the business owner's responsibility to know the requirements, that she is putting the commissioners in a position to allow something that has been operating illegally for three years to continue by giving it a special allowance. Ms. Barrong said to grant it to her on the basis that a recreation center is a permitted use, but to add daycare as a conditional use, that this is in a small manufacturing zone, and Weber County allows the use in other manufacturing zones. The county allowed her to operate until she received her verdict from the Planning and the County Commissions.

Chair Zogmaister invited public comments and Thom Summers, owner of the subject building, said that after being a business owner in the Valley for about 30 years he is convinced there will never be manufacturing in that zone because it is cost prohibitive. He believes that in the future storage units will go in that area. Due to the number of zoning restrictions in the Valley, a dirt contractor cannot move in there, construct a building, handle improvements, landscaping, etc., and succeed. The lots are not large enough to park the equipment. He believes this is a well placed use in that area and a great service to the Valley.

Mr. Mendoza stated that since the issue was presented in 2009 it has never been staff's opinion that a recreation center should not have a nursery type use for children to be watched while their parents exercise at the recreation center. The fact that a daycare must have an outdoor playground is the concern. Ms. Barrong had referred to a cement batch plant as the only dangerous manufacturing type use in that zone but this is not true. Mr. Mendoza spoke with health professionals at the Weber County Health Department and they expressed concerns with the list of uses shown in the draft ordinance attached as Exhibit "E," not just the cement batch plant, and the children going outside. He showed photos of the daycare, outdoor playground and existing conditions. He stated that a few days prior to taking the photos there was a large diesel fuel container—uncontained, unfenced, with electronics hanging out of conduit, sitting on the site within 50-100 feet of the existing daycare's outdoor playground. These types of conditions—large equipment, intense processes—can be expected in a manufacturing zone and may not be the most appropriate to have children come and play nearby. The daycare facility is fenced. The lots where this current daycare is located was designed by a construction contractor who operates earth equipment—bulldozers, track hoes, etc. The "cement batch plant" use was requested there because it was recognized as a need for the area.

Chair Zogmaister asked if the daycare has had a site plan inspection and Mr. Mendoza responded it had not; that the first step is to get the use allowed and then submit it to the county. Mr. Mendoza addressed Commissioner Dearden's question stating that currently there was no plan to assign more standards or further regulate daycares. The health professionals would like all the county's land use standards to take into account all of these hazards.

3. Commissioner Gibson moved to adjourn the public hearing and reconvene the public meeting; Commissioner Dearden seconded, all voting aye.

4. **ACTION ON PUBLIC HEARING:**

G.2. -AMEND ZONING ORDINANCE BY ADDING "DAY CARE" TO THE LIST OF CONDITIONAL USES IN CHAPTER 21-B, OGDEN VALLEY MANUFACTURING ZONE (MV-1)

Commissioner Dearden said that this was a safety issue, but daycares are already allowed in manufacturing zones in other parts of the county. Commissioner Gibson said that he was trying to balance the desires of the people in this unique community with the government's role. He said that the Planning Commission voted to approve the request and the use is consistent with those allowed in other areas of the county.

Commissioner Gibson moved to approve daycare as a conditional use within a recreational facility as outlined on Exhibit D as approved by the Planning Commission. Commissioner Dearden seconded and asked if this use is a conditional use in the lower valley's manufacturing zones and Chair Zogmaister added that if so, were there any other requirements or restrictions placed on it. Mr. Mendoza stated that it is a permitted use in manufacturing zones in the lower valley and there are no other standards required. Mr. Mendoza noted that an ordinance needed to be prepared according to the Commission's guidance. Commissioner Gibson asked if there would already be more restrictions on this item because it was a conditional use and Mr. Mendoza explained that was not necessarily the case. Mr. Mendoza addressed Commissioner Dearden's question stating that the Ogden Valley's commercial, manufacturing and some multifamily uses are subject to the county's architectural design standards. Staff is recommending screening standards around the playground. Chair Zogmaister called for the vote and all voted aye.

H. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, FEBRUARY 15, 2011, 10 A.M.

I. ADJOURN

Commissioner Dearden moved to adjourn; Commissioner Gibson seconded, all voting aye.

Jan M. Zogmaister, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor