

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

Tuesday, April 24, 2012 - 10:00 a.m.
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 unreported 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 PRESENT: Craig L. Dearden, Chair, Kerry W. Gibson and Jan M. Zogmaister.

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

- A. **WELCOME** - Commissioner Dearden
- B. **PLEDGE OF ALLEGIANCE** - Jenifer Graham
- C. **THOUGHT OF THE DAY** - Commissioner Zogmaister

D. CONSENT ITEMS:

- 1. Purchase Orders for \$74,814.72
- 2. Warrants #284752-285095 for \$1,970,912.17
- 3. Minutes for the meetings held on April 10 and 17, 2012
- 4. New business license
- 5. Tax Review Committee recommendation to grant a refund for 2010 tax year on LSN #20-111-0005

Commissioner Gibson moved to approve the consent items, holding the April 10, 2012 minutes; Commissioner Zogmaister seconded, all voting aye.

E. ACTION ITEMS:

- 1. **FINAL APPROVAL OF THE SUMMIT AT SKI LAKE NO. 11 INCLUDING A SUBDIVISION IMPROVEMENT AGREEMENT IN THE AMOUNT OF \$108,350.83 AND A SURVEY MONUMENTATION IMPROVEMENT AGREEMENT IN THE AMOUNT OF \$700**

Sean Wilkinson, County Planning Division, stated that this subdivision received preliminary approval in 1999, when the density was based on 1 unit/acre, which has continued per an agreement with the county and which gives the developer until 1/22/2016 to record the remaining phases. Phase 11 consists of 3 lots (one is a restricted lot due to steep slopes and will require hillside review) and includes a 312 foot extension of a private road. This phase connected to Phase 9, which had a road that had not yet been constructed but was a requirement for completing the subdivision. It is currently under construction and should be completed in the next couple of months along with other required improvements for this phase. The requirements have been met and the Planning Commission unanimously recommended final approval last August.

Commissioner Zogmaister moved to grant final approval of The Summit at Ski Lake No. 11 including a Subdivision Improvement Agreement for \$108,350.83 and a Survey Monumentation Improvement Agreement for \$700; Commissioner Gibson seconded, all voting aye.

- 2. **RESOLUTION APPOINTING A MEMBER TO THE GOLDEN SPIKE ADVISORY BOARD - RESOLUTION 10-2012**

Jennifer Graham, County Recreational Facilities Director, noted that a board member resigned, whose term was to expire on 12/31/2013. Both applicants are qualified and Gary Kapp received the highest ranking by the board.

Commissioner Gibson moved to adopt Resolution 10-2012 appointing Gary Kapp to the Golden Spike Advisory Board to serve through 12/31/2013; Commissioner Zogmaister seconded.

Roll Call Vote:

Commissioner Zogmaister..... aye
Chair Gibson..... aye
Chair Dearden..... aye

3. CONTRACT WITH CHARRO PROMOTIONS TO HOLD A MATCH RACE ON THE TRACK AT THE GOLDEN SPIKE EVENT CENTER ON APRIL 29, 2012 - CONTRACT C2012-62

Jennifer Graham, County Recreational Facilities Director, presented this standard contract. The commissioners want to ensure the county is vigilant in protecting the track’s integrity and discussions have occurred with the contractor and Jim Harvey of the GSEC. Commissioner Zogmaister noted that in the contract’s section dealing with worker’s compensation both sections had been checked and only one is applicable and that needs to be corrected. Mr. Harvey will take care of this issue.

Commissioner Zogmaister moved to approve Contract with Charro Promotions to hold a match race on the track at the Golden Spike Event Center on April 29, 2012 with direction to clarify the worker’s compensation section; Commissioner seconded, all voting aye.

4. CONSIDERATION ON REQUEST TO GRANT A REFUND TOR TAX YEARS 2007, 2008 AND 2009 FOR PARCEL #20-111-0005

Machel Maycock, of the Assessor’s Office, stated that Jim Stewart is requesting a refund and that this is an issue of primary vs. secondary residence classification for this property in Pineview Mountain Estates, where most are secondary homes. The county was not notified of the issue until 2011 and it was discovered via a late appeal. Recorder staff transposed the address as 858 W., rather than 585 W. Mr. Larsen did not receive tax notices for a couple of years. However, he had received them prior to that and paid taxes. The Commission granted a refund for 2010 due to the mailing address error under the consent calendar (D.5). Ms. Maycock noted that the property owner has responsibility and that he knew he should have received a tax notice. She addressed the commissioners’ questions stating that the tax amount is approximately \$800/year and that the county typically goes back one year to refund.

Jim and Carol Stewart stated that they purchased the property from the U.S. Forest Service. They overpaid the taxes and corrected the address when they found the problem. Prior to 2007, the property belonged to the government to which they paid about \$550/year. Commissioner Zogmaister asked when they became residents of that property and Mr. Stewart said that it was a few years prior, but initially it could not be their primary residence. Ms. Maycock referred to copies of tax notices that Mr. Stewart received prior to the purchase from the federal government, which were being mailed to the 585 address. Prior to the buy-out from the government, they were taxed under Book 30 and only on the building, not the land. When the Stewarts purchased the property from the government in 2007, the deed indicated the mailing address of 585, which is when the Recorder made the address error. Prior to that, notices were mailed for a number of years to 585. Mr. Stewart filled out a change of address form to 585 Bountiful on 2/11/2011 and said that the notices were mailed to 858 and paid by the mortgage company. He had not realized that the property was being classified as non-primary.

Commissioner Zogmaister noted that the county has never gone back more than one year to refund tax monies, that the responsibility lies with the taxpayer. David Wilson, Deputy County Attorney, stated that the county has generally followed a one-year limitation because taxpayers can also make one-year claim on the county and Commissioner Gibson noted that had already been done in this case.

Chair Dearden noted that both parties had made an error, that the Stewarts did not receive the tax notice, however, they had received tax notices prior to that and thus should have checked on it when they did not receive them for those years. Mr. Stewart said that it was a clerical error and that they did not receive tax notices and it was not their fault. Commissioner Zogmaister said that whether they received a tax notice or not they had knowledge that there is a tax system and their responsibility is to check into it—taxpayers need to notify the county if there are errors on the tax notices. Mr. Stewart felt this was a unique situation and Commissioner Zogmaister stated that the only unique issue is that they purchased the property from the federal government but this is not what changed their taxing status, they are requesting a change in taxing status because now they reside there full time, that’s where the difference in tax amounts comes from. Mr. Wilson noted that the Stewarts say this case is unique but the commissioners routinely deal with this issue—it is the homeowners’ responsibility to declare the correct property classification—and the commissioners have typically only reached back one year in refunding. The commissioners also expressed concern about setting a precedent.

Ernest Rowley, County Recorder/Surveyor, stated that last year his staff contacted the homeowners to find out the correct address. The practice is that when undeliverable tax notices return to the county his office works with the Treasurer’s Office in trying to find out correct addresses, which occurred in this case, and the address given to staff was 585 on 2/11, but this was an effort by the county, not the taxpayer. Commissioner Zogmaister noted that the county did its part by correcting its error and reached back the one-year refund for 2010.

Commissioner Zogmaister moved to deny the request to refund for tax years 2007, 2008 and 2009 for parcel #20-111-0005 based on the fact that it is the owners’ responsibility to notify the county. Motion died for lack of a second. Commissioner Gibson moved to refund for 2009 for \$800+ due to the address error by the county; Commissioner Zogmaister seconded. Chair Dearden seconded stating that most, if not in all such cases tax notices are received and then taxpayers realize the property classification error, but this is the first where there was also an error by the county. Commissioners Gibson and Chair Dearden voted aye. Commissioner Zogmaister voted nay.

F. PUBLIC HEARING:

1. Commissioner Zogmaister moved to adjourn the public meeting and convene the public hearing; Commissioner Gibson seconded, all voting aye.
2. **PUBLIC HEARING FOR CONSIDERATION AND/OR ACTION ON STAFF AMENDMENTS TO COUNTY ZONING ORDINANCE, CHAPTER 1 (GENERAL PROVISIONS), CHAPTER 9-A (SHORELINE ZONE (S-1), CHAPTER 23 (SUPPLEMENTARY AND QUALIFYING REGULATIONS), CHAPTER 24(PARKING AND LOADING SPACE, VEHICLE TRAFFIC AND ACCESS REGULATIONS), CHAPTER 29 (BOARD OF ADJUSTMENT), CHAPTER 31 (ADMINISTRATION), AND CHAPTER 36-B (HILLSIDE DEVELOPMENT REVIEW PROCEDURES AND STANDARDS) REGARDING THE WEBER COUNTY BOARD OF ADJUSTMENT (BOA)**

Sean Wilkinson, of the County Planning Division, stated that this item makes major amendments relating to the Board of Adjustment, which in turn affects other zoning chapters. The BOA held works sessions on these proposed amendments. The purpose is to establish procedures that are consistent with State Code that govern the BOA in considering appeals and variances. Currently, the BOA has power to grant special exceptions relating to flag lots, private rights-of-way, easements and access at locations other than across front of lot lines. However, these are not listed in State Code and these special exceptions will move to Chapter 23 of the Zoning Ordinance, becoming administrative staff decisions but issues can be given to the Planning Commissions when the issues are controversial. Both Planning Commissions discussed if these should be staff or Planning Commission decisions.

The BOA is an appeal authority and should not be acting as a land use authority that makes administrative decisions because they hear the appeals from the administrative decisions. Amendments to the BOA included member appointments, updating criteria for designing rights-of-way and bona-fide agricultural parcels in the criteria section for private rights-of-way and easements, adding a 15 calendar day period for appealing the land use authority decision, designating a new standard of review of the record, and recommending that no time extensions be given for variance approvals. The Decision Criteria and Standards (for appeals/variances) language comes almost completely from Utah Code. The BOA asked that a specific process be added requiring a board review and signature on the notice of decision. Mr. Wilkinson said that currently the board is not restricted to a certain process for handling these notices, which allows for flexibility and timeliness. Staff determines how notices will be handled based upon complexity of the case. Chair Dearden recommends that the board's chair or designee sign all decisions representing the board because they are making the decision, and Commissioner Zogmaister concurred. There was discussion whether the three former special exceptions concerning flag lots, access by private right-of-way or access at a location other than across the front lot line should be approved administratively or by the Planning Commission.

Other amendments include clarifying that decisions are final when written notice of decision is issued, the BOA is the appeal authority for administrative decisions, and the County Engineer is the authority to determine adequate measures for protecting land and buildings from flood damage, replacing the BOA, and the County Commission is designated as an appeal authority in some cases.

Chair Dearden invited public comments and Richard Rohde, referred to his career working for a billion dollar company and stated that staff can be easily be swayed by pressure from customers. He is concerned with having staff having quasi the last word on land use, and in fairness to them, asked the Commission to consider this carefully. Mr. Wilkinson said this is an important issue and the Planning Commission discussed it. He believes it depends on whether the criterion is such that a subjective decision may be made, but these decisions can be appealed to the BOA.

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

4. **ACTION ON PUBLIC HEARING.**

There was discussion regarding efficiency and David Wilson, Deputy County Attorney, added that expertise is also a component for consideration. Commissioner Zogmaister noted that a lot of the work by Planning Division staff was to clarify issues and she believes that it is important to truly hear the people's issues.

Commissioner Gibson moved to approve this item as a first reading, adding language that the chair or designee will sign decisions; Commissioner Zogmaister seconded, all voting aye.

G. ASSIGN PLEDGE OF ALLEGIANCE AND THOUGHT OF THE DAY FOR TUESDAY, MAY 1, 2012, 10 A.M.

H. PUBLIC COMMENTS: None

I. ADJOURN

Commissioner Gibson moved to adjourn at 11:27 a.m.; Commissioner Zogmaister seconded, all voting aye.

Attest:

Craig L. Dearden, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor