

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

Tuesday, July 26, 2011 - 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 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 PRESENT:** 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** - Jan Wilson

**C. THOUGHT OF THE DAY** - Commissioner Gibson

**D. CONSENT ITEMS:**

1. Purchase Orders in the amount of \$121,523.87
2. Warrants #276162- #276379 in the amount of \$4,002,770.77
3. Minutes for the meetings held on July 19, 2011
4. New business licenses

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

**E. ACTION ITEMS:**

1. **ACTION ON A REQUEST FOR A VARIANCE TO THE WEBER COUNTY SUBDIVISION ORDINANCE TO ALLOW AN ADDITIONAL TIME EXTENSION OF FINAL APPROVAL FOR THE RETREAT AT WOLF CREEK UTAH SUBDIVISION PHASE 1**

Sean Wilkinson, of the County Planning Commission, stated that this subdivision received approval in 2009 and received a 1-yr extension in 2010, which was to expire on 3/24/2011. Wolf Creek Properties submitted an application for a variance request to the Subdivision Ordinance in order to extend that deadline.

The applicant is requesting an open-ended time extension to complete this subdivision based upon the following excerpt from his letter: In 2009, underground sewer and water lines were installed but the project was put on hold due to negative economic conditions. These economic conditions eventually forced Wolf Creek Properties to file for Chapter 11 bankruptcy protection in 2010. Part of the bankruptcy reorganization plan involves the sale of new lots.

Staff has made the following findings in reference to this request:

- 1) Every subdivision currently in process in the Ogden Valley has faced the same negative economic conditions, many have been taken back by lenders and many have expired and become void. While filing bankruptcy may be considered an exceptional hardship, the negative economic conditions are not unique to Wolf Creek Properties. The development timeline standards in the Subdivision Ordinance cannot predict/account for periods of positive or negative economic conditions and therefore it is difficult to determine that a bad economy is an exceptional condition.

- 2) There is no justification for an open-ended time extension. If negative economic conditions persist, the subdivision could be extended for several years but the extension allowed by the ordinance is only for one year. If the subdivision is allowed to expire, the applicant can resubmit when conditions improve. The county is better protected in this case because the subdivision would have to comply with new ordinance standards in place at the time of submittal.
- 3) The underground sewer and water lines have been installed within this subdivision, but if an extension is approved, the Planning Division would feel much more comfortable if more of the subdivision improvements were complete. Staff agrees that completing the development, rather than leaving the disturbed site, is a better idea. However, the site can be temporarily cleaned up until the economic conditions are right to resubmit the subdivision and continue with development.
- 4) This request cannot be compared to other developments that have received additional time extensions. Each request for a variance must stand on its own and the applicant bears the burden of proof that exceptional conditions exist. Variances are not granted based upon precedent.

The Ogden Valley Planning Commission recommended denial of the time extension on 5/24/2011 based on the following:

- 1) Exceptional economic conditions also apply to other projects, therefore are not valid conditions that would merit an extension.
- 2) An open-ended time extension is not in the best interest of the county. With only 40% of the infrastructure in place, this does not show that the developer is fully invested in completing the project.

Mr. Wilkinson addressed Commissioner Dearden's questions stating that the ordinance standards are not expected to change significantly to have a considerable effect on what the applicant has submitted. He stated that if an extension is granted, it needs to be tied to a progress timeline/checkpoint. Chair Zogmaister expressed concern with the open-ended extension request stating that this may put the county at risk. She noted that the county has tried to be very fair with these subdivisions, recognizing the economic circumstances, but not all of them have fared well, even given an extension.

Robert Thomas, of Wolf Creek Properties, stated that they are in Chapter 11 bankruptcy and what makes this development unique is how it is tied to the resort. They feel this is a vital part to their plan to get out of Chapter 11, and with the extension of this development, they hope to move forward with the improvements and put the lots on the market. Chair Zogmaister asked how the extension is important to get out of bankruptcy and if it is not granted how it would impact them. Mr. Thomas said that they would be able to start selling those lots and bring in the money, or they would have to go back through the process on this subdivision or move to another area and start the process there and put in infrastructure. He said that when they present their plan to come out of bankruptcy to the judge they have this development tied as revenue. Other infrastructure (water and sewer lines) close to this property is partially in and their next step is to make significant extensions to connect it to this property.

Commissioner Gibson also expressed concern with an open-ended extension and Mr. Thomas said that they could work toward a one or two year extension. Chair Zogmaister asked if successfully coming out of the bankruptcy and completing this project were contingent upon each other. Mr. Thomas said that if they do not come out of the bankruptcy well and it moves into liquidation, someone else would bring the project before the Commission to complete it. He does not know the timeline for the bankruptcy process.

Lowell Peterson, with Wolf Creek Properties, feels that Wolf Creek is a vital economic entity in Ogden Valley stating that they employ many people. He said that this project is key due to its strategic location, that it can be completed rather quickly, and that if the lots were available for sale they would be viable and sell in this market. They have a contractor who has expressed interest in taking out the lender on this project, and if they can come to agreement, would finish the project and put the lots on the market. The revenue from those would be very important in working out of the bankruptcy. It is conceivable that having the lots available for sale now would expedite getting their plan approved by the court. Mr. Peterson agrees with Mr. Thompson and the commissioners that probably an open-ended extension is not warranted nor a good idea, and two years would be their preference; they could accept one year, depending on what they can negotiate with this contractor. If they were required to go back through the subdivision process, it would delay getting this agreement with the contractor and getting the improvements in. They can conceivably start on the roads late this summer with completion by fall if they have a viable subdivision.

Commissioner Gibson asked that if an extension is granted what will be the County Planning Division's recommendations for a timeline and Mr. Wilkinson said that the Planning Division had the same recommendations for the Planning Commission, although they chose to go in a different direction, but they did not expound on it. However, the Planning Division would like to see progress, such as installing the roads. Mr. Wilkinson said that he needs to check with County Engineering regarding what percentage of improvements are installed--Wolf Creek has estimated about 40%. Mr. Wilkinson said that if an extension is granted, the date would revert to March 24. Mr. Thomas stated that the March date may not give them enough time, in the event they are not able to complete the improvements this year. Commissioner Gibson requested to see progress by the one year mark and completion in two years. The commissioners gave direction to the Planning Division to place this item on next week's agenda for action and in the interim that the two parties work together to come up with an appropriate progress timeline for a 2-year time extension.

**2. RATIFY A CONTRACT WITH ESMERALD ENTERTAINMENT-LOS INQUIETOS DEL NORTE FOR A HISPANIC RODEO AND CONCERT HELD AT THE GOLDEN SPIKE EVENT CENTER ON JULY 24, 2011 - CONTRACT C2011-147**

Jennifer Graham, County Recreation Facilities Director, presented this standard contract.

Commissioner Gibson moved to approve Contract C2011-147 ratifying a contract with Esmerald Entertainment-Los Inquietos del Norte for a Hispanic rodeo and concert held at the Golden Spike Event Center on 7/24/2011; Commissioner Dearden seconded, all voting aye.

**3. RESOLUTION APPOINTING A MEMBER TO THE GOLDEN SPIKE EVENT CENTER ADVISORY BOARD – RESOLUTION 14-2011**

Jennifer Graham, County Recreation Facilities Director, noted that this is to fulfill an unexpired term and that Julie Snowball comes highly recommended by the Board. Commissioner Dearden has served with Ms. Snowball on committees and boards and feels she will be an asset to this board.

Commissioner Dearden moved to adopt Resolution 14-2011 appointing Julie Snowball to the Golden Spike Event Center Advisory Board with a term expiring 3/31/2012; Commissioner Gibson seconded.

Roll Call Vote:

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

**4. CONSIDERATION AND/OR ACTION ON ESTABLISHMENT OF A TRAILS AD HOC COMMITTEE (TAC) ALONG WITH A CHARGE TO THE COMMITTEE. THE TAC WILL REVIEW THE PATHWAYS ELEMENT OF THE OGDEN VALLEY GENERAL PLAN AND PATHWAYS ORDINANCE**

Justin Morris, of the County Planning Division, stated that the Planning Commission requested that the Planning Division form an ad hoc committee to review the existing Pathways Element of the Ogden Valley General Plan and the Pathways map and ordinance, and to form a recommendation to the Ogden Valley Planning Commission of potential changes. The Planning Division recommended individuals from Weber Pathways, Backcountry Horseman, U.S. Forest Service, Wolf Creek, Snowbasin, Powder Mountain, and Weber County Parks.

In 1998 the Ogden Valley General Plan recognized the value of trails and in 2002 the Ogden Valley Pathway Master Plan was adopted and incorporated into the Ogden Valley General Plan. Early in 2009 the County Planning Division, along with Weber Pathways, established a project to create a countywide pathways master plan. The project was endorsed by the Weber Pathways Board of Directors, the Weber County Commission, and the Weber Area Council of Governments. In 2010 and early 2011 the Weber County Cooperative Pathways master plan was presented to the Ogden Valley Planning Commission and was adopted, which incorporates the cooperative map.

Chair Zogmaister said that all proposed members, with the exception of representatives from the resorts, were members of Weber Pathways. She felt this committee was redundant because there are groups already dealing with this issue and asked why not use Weber Pathways or current Planning commissioners. Mr. Morris responded that the Planning Commission requested that another set of individuals review the item and make recommendations to them. She asked if ad hoc committees have been traditionally set up to make recommendations for Zoning Ordinance changes and Mr. Morris noted that in 2005 a steering committee was formed to review the Recreation Resort and TDR ordinances. Chair Zogmaister said that they did not have power to make recommendations. Mr. Morris stated that this ad hoc committee knows it is short term and that its purpose is to make recommendations to the Planning Commission, which will then hold a work session and make recommendations to the County Commission, which then will hold a public meeting.

Commissioner Gibson did not have an issue with forming this advisory committee with the proposed members or process, however, he felt that a better result might be achieved with a broader base, noting that  $\frac{3}{4}$  of the proposed members are involved with trails. Commissioner Dearden concurred but because this is a short-term committee, he can support it.

Rob Scott, County Planning Division Director, addressed Commissioner Gibson's question stating that this is an efficiency move on the part of the Planning Commission because they have so many issues on their plate, thus they are suggesting that this group cut through some of the different options and give a recommendation. He noted that county staff will be involved and the County Commission has ultimate control over the issue. After this discussion, Commissioner Dearden felt that if these 10 people are given the charge and a timeframe, they will get a quicker and perhaps even better product than a larger group.

Commissioner Dearden moved to establish a Trails Ad hoc Committee along with a charge to present their recommendations to the Ogden Valley Planning Commission in 90 days as discussed; Commissioner Gibson seconded. Commissioner Dearden and Commissioner Gibson voted aye. Chair Zogmaister voted nay stating it is based on redundancy.

**5. RESOLUTION OF THE COUNTY COMMISSION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT - RESOLUTION 15-2011**

Rob Scott, County Planning Division Director, noted that a member had to resign from this board and the vacancy was advertised. No new applications were received but there was a good pool to choose from the latest round of candidates. The suggestion is to appoint an alternate as a member and appoint one of the applicants as an alternate.

Commissioner Gibson moved to adopt Resolution 15-2011 appointing Deone Smith as a member (with an expiring term of 6/30/2014) and James Hogan as an alternate (with an expiring term of 6/30/2013) to the Board of Adjustment; Commissioner Dearden seconded.

Roll Call Vote:

Commissioner Dearden .....aye

Commissioner Gibson .....aye

Chair Zogmaister .....aye

**6. FIRST READING MAKING CERTAIN CHANGES TO TITLE 24 CHAPTER 7 OF THE WEBER COUNTY ORDINANCES RELATING THE RECREATIONAL FACILITIES, ART, MUSEUM AND PARKS TAX, MORE COMMONLY REFERRED TO AS THE RAMP TAX**

David Wilson, Deputy County Attorney, outlined the following changes, noting that they were mainly for clarification: the chair is generally appointed for a 3-year period or until his/her term expires; if funds are not expended in a given year they will be rolled over to the following year; and if a municipality fails to complete the project and submits the necessary certification to the county, they do not receive reimbursement.

Commissioner Dearden moved to approve the first reading of the ordinance approving certain changes to Title 24 Chapter 7 of the Weber County Ordinances relating the Recreational Facilities, Art, Museum and Parks Tax, more commonly referred to as the RAMP Tax; Commissioner Gibson seconded, all voting aye.

**7. AMENDMENT TO AGREEMENT WITH THE STATE OF UTAH, ATTORNEY GENERAL’S OFFICE - CONTRACT C2011-148**

Rod Layton, Children’s Justice Center Director, presented this amendment stating that the 2011-2012 amount is \$290,295, which includes the rollover. He noted that there has been a contract decrease of about \$20,000 due to a decline in caseload.

Commissioner Gibson moved to approve Contract C2011-148, amendment of an agreement with the State of Utah, Attorney General’s Office; Commissioner Dearden seconded, all voting aye.

**8. CONTRACT WITH KAP BROS. BAND TO PERFORM AT THE 2011 WEBER COUNTY FAIR - CONTRACT C2011-149**

Jan Wilson, of the Weber County Fair, presented this contract for \$600.

Commissioner Dearden moved to approve Contract C2011-149 with Kap Bros. Band to perform at the 2011 Weber County; Commissioner Gibson seconded, all voting aye.

**9. CONTRACT WITH UTAH DIVISION OF PARKS & RECREATION FOR THE NON-MOTORIZED TRAIL MATCHING FUND PROGRAM, FISCAL ASSISTANCE AGREEMENT - CONTRACT C2011-150**

Nate Pierce, County Operations Department Director, stated that through this contract the county becomes the governmental entity and representative for a trails project. The county will receive \$98,000 from the State Of Utah to extend the Weber River Parkway Trail from Riverdale to South Weber. The total cost of the project is \$390,000, and a good portion of that coming from RAMP funding granted in 2010. Weber County will manage the project even though the bulk of the funding will be coming from the State grant as well as monies already in hand by Weber Pathways.

Commissioner Gibson moved to approve Contract C2011-150 with Utah Division of Parks & Recreation for the Non-Motorized Trail Matching Fund Program, Fiscal Assistance Agreement; Commissioner Dearden seconded, all voting aye.

**F. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, AUGUST 2, 2011, 10 A.M.**

**G. PUBLIC COMMENTS: None**

**H. CLOSED EXECUTIVE SESSION TO DISCUSS STRATEGY RELATING TO PURCHASE OR SALE OF REAL ESTATE AND STRATEGY RELATING TO PENDING OR IMMINENT LITIGATION**

Chair Zogmaister moved to convene a closed executive session to discuss strategy relating to the purchase or sale of real estate and strategy relating to pending or imminent litigation; Commissioner Gibson seconded.

Roll Call Vote:

Commissioner Gibson ..... aye

Commissioner ..... aye

Chair Zogmaister ..... aye

No action was taken on the closed executive session.

**I. ADJOURN**

Commissioner Gibson moved to adjourn at 11:41 a.m.; Chair Zogmaister seconded, both voting aye.

\_\_\_\_\_  
Jan M. Zogmaister, Chair  
Weber County Commission

\_\_\_\_\_  
Ricky D. Hatch, CPA  
Weber County Clerk/Auditor