

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

Tuesday, November 13, 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:** Jan M. Zogmaister, Chair, Craig L. Dearden and Kerry W. Gibson.

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

**A. WELCOME** - Chair Dearden

**B. PLEDGE OF ALLEGIANCE** - Fátima Fernelius

**C. THOUGHT OF THE DAY** - Chair Dearden

**D. PRESENTATION OF RESULTS OF SALES TAX REVENUE BOND SALE CONDUCTED THURSDAY, 11/8/2012**

Dan Olsen, County Comptroller, noted that interest rates are quite low at this time. The bond funds are to help build the Ice Sheet expansion (for a second sheet of ice) and to refinance bonds issued in 2003 to construct the Health Department building. The total par amount is \$6,455,000 with an interest rate of 1.73989%. The portion of the 20-year bonds for the Ice Sheet is \$3,935,000 and the true interest cost is \$1.9 million with an annual debt service of about \$245,000. For the refinancing portion, the bond amount is \$2.5 million, the true interest cost is 1.3% (originally 5%) and the term remains the same (and will be paid off in 2023). The county will save about \$45,000/year.

Alan Westenskow, with Zions Bank Public Finance/county financial advisor, noted that this is the first time the county went through an open bid system. Four banks submitted bids and Raymond James was the lowest bid with a true interest cost of about 1.74%. He pointed out that this is the lowest that this index has been (going back to the 1940's). He emphasized the county's good credit and what a fantastic deal the county got in the market on the day the bonds were sold. Standard & Poor's Rating Service assigned its 'AAA' rating to Weber County's 2012 sales tax revenue and sales tax revenue refunding bonds and reaffirmed its 'AAA' long-term rating on the county's outstanding sales tax revenue bonds. This reflects the county's financially prudent management and its very strong coverage of annual debt service. Mr. Westenskow said that in conversations with rating agencies they had also echoed the county's strong financial management.

**E. CONSENT ITEMS:**

1. Purchase Orders for \$86,945.26
2. Warrants #294574-#291714 for \$394,144.85

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

**F. ACTION ITEMS:**

**1. CONTRACT WITH THE STATE OF UTAH DEPARTMENT OF TRANSPORTATION FOR DRILLING AND TESTING RELATED TO OLD SNOWBASIN ROAD - CONTRACT C2012-210**

Michael Tuttle, of County Engineering, noted that this contract is between the county, UDOT and the consultant, RB&G (drilling contractor). The geotechnical engineer determined some locations where drilling and test samples are needed. This contract falls under the original federal aid agreement.

Commissioner Zogmaister moved to approve Contract C2012-210 with the State of Utah Department of Transportation for drilling and testing related to Old Snowbasin Road; Commissioner Gibson seconded, all voting aye.

**2. CONTRACT WITH UTAH DIVISION OF WILDLIFE RESOURCES FOR THE FUNDS TO HELP PAY FOR THE NRCS PROJECTS THAT THE COUNTY IS IMPLEMENTING ON THE LOWER WEBER RIVER - CONTRACT C2012-211**

Lance Peterson, of County Emergency Management, noted that after the flooding last year the DWR committed \$150,000 to the county to help towards the NRCS mitigation projects on this river.

Commissioner Gibson moved to approve Contract C2012-211 with the Utah Division of Wildlife for funds to help pay for the NRCS projects that the County is implementing on the lower Weber River; Commissioner Zogmaister seconded, all voting aye.

**3. ACTION ON ZONING PETITION 2006-18 REGARDING A REQUEST TO REZONE APPROXIMATELY 4,297 ACRES AT POWDER MOUNTAIN RESORT FROM FOREST RESIDENTIAL-3 (FR-3), FOREST VALLEY-3 (FV-3), COMMERCIAL VALLEY RESORT RECREATION-1 (CVR-1), & FOREST-40 (F-40) TO FOREST VALLEY-3 (FV-3), COMMERCIAL VALLEY RESORT RECREATION-1 (CVR-1) AND FOREST-40 (F-40) - ORDINANCE 2012-18**

Sean Wilkinson, of the County Planning Division, noted that this rezone petition was submitted in 9/2006 to develop a four-season destination resort and in subsequent years it went before the Ogden Valley Planning Commission (OVPC) and County Commission in public hearings. After the public hearing on 6/1/2010, a Memorandum of Understanding (MOU) with Western America Holding, LLC (the current owner of Powder Mountain) was approved by the County Commission, however, no action was taken on the rezone petition. Currently, there is FR-3, FV-3, CVR-1 and F-40 zoning at Powder Mountain but this zoning petition removes the FR-3 zone. Previously, the rezone area was listed at 4,234 acres but as part of the MOU a more accurate description was created for the property which shows 4,297 acres, and the petition has been changed to reflect that. The boundary and density do not change. Mr. Wilkinson noted that two public hearings have been held on this petition. Chair Dearden stated that this item has not changed much from when it was presented in 2006 and the reason it was not approved at that time was due to action taken to incorporate and the county felt that if the incorporation occurred the town should make that decision, not the Commission, and thus it was put on hold. The next agenda item is related to this one.

Commissioner Zogmaister moved to adopt Ordinance 2012-18 rezoning approximately 4,297 acres at Powder Mountain Resort from Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1), and Forest-40 (F-40) to Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40); Commissioner Gibson seconded.

Roll Call Vote:

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

**4. ZONING DEVELOPMENT AGREEMENT WITH WESTERN AMERICA HOLDING, LLC AS PART OF ZONING PETITION 2006-18 REGARDING A REQUEST TO REZONE APPROXIMATELY 4,297 ACRES AT POWDER MOUNTAIN RESORT FROM FOREST RESIDENTIAL-3 (FR-3), FOREST VALLEY-3 (FV-3), COMMERCIAL VALLEY RESORT RECREATION-1 (CVR-1) AND FOREST-40 (F-40) TO FOREST VALLEY-3 (FV-3), COMMERCIAL VALLEY RESORT RECREATION-1 (CVR-1) AND FOREST-40 (F-40) - CONTRACT C2012-212**

Sean Wilkinson, of the County Planning Division, noted that this issue has taken almost three years to complete due in part to negotiations on the sale of the Powder Mountain property, which has included more than one entity. As part of the rezone petition approved in the previous agenda item, a development agreement is necessary, as was stipulated in the 6/1/2010 Memorandum of Understanding (MOU).

Mr. Wilkinson said that since that time the county has been negotiating a development agreement with Western America Holding, LLC. This MOU promotes the creation of a development agreement and a basic stipulation was that Powder Mountain would withdraw the incorporation petition and all pending associated litigation would be dismissed. Mr. Wilkinson noted that this agreement has been patterned after the one with Snowbasin Resort. Each section of the MOU is addressed in the agreement and the county worked hard to incorporate as many of the principles as possible that make up the Ogden Valley Planning Commission's 19 conditions that they recommended in 2007. This agreement is tied to the Zoning Petition for which two public hearing have been held. The agreement is not necessarily site-specific to development as there are other applications (i.e., subdivision conditional use design review), that will have to come in as the development proceeds. Planning staff recommends this development agreement. Following are some of its highlights prior to amendments:

- When the agreement is signed by both parties, they shall cause the dismissal of pending litigation and Western America shall immediately withdraw the Powder Mountain town incorporation petition. The county will rezone the property as previously described. This agreement supersedes the MOU and both parties must agree in order to amend the agreement or the conceptual development plan. If an amendment is sought, it must go before the OVPC for a public hearing.
- The developer has committed to follow requirements for avalanche hazards, fireplace use, development of a Weber County Sheriff's Office facility, wildfire prevention, and recommendations from the Utah Department of Environmental Quality and the Geological Survey.
- If a rezone to the DRR-1 Zone is requested, the density approved in the development agreement transfers as part of the rezone as per county ordinance. Approval of a rezone to the DRR-1 Zone is not guaranteed and the developer must show that the resort can meet all requirements. If property is rezoned to the DRR-1 Zone, a new development agreement is necessary.
- Exhibit B includes the overall concept plan as discussed in the 2010 public hearing. It includes a more specific Phase 1 of the development. Because the developer wants to move forward quickly with the first phase, the county feels it is important that before rezoning to the DRR-1 Zone that he be allowed to proceed prior to a rezone application to a DRR-1 Zone but no development beyond the first phase, as shown on the Conceptual Phase 1 Land Use Plan and as otherwise limited in the agreement, will be allowed until a DRR-1 rezone application is submitted. This section does not specify a unit number limit at this time. Other sections mention 200 units as the cap for phase 1.
- Development inconsistent with the approved conceptual development plans will not be approved and the county's typical development processes must be followed. Developer must consider comments from Utah Division of Wildlife Resources made through the Resource Development Coordinating Committee at the site plan level of approvals. Developer will make donations to the county previously described in the MOU with the following exceptions: a new \$100,000 donation will be made with the 100<sup>th</sup> unit and the donation associated with the 1000<sup>th</sup> unit is increased from \$250,000 to \$350,000. The county may also consider applying the value of land and improvements made by developer in public benefits in lieu of monetary donation. 30% of the project's gross acreage shall be preserved as open space within development applications.
- Total density for project is 2,800, divided into two density phases, as agreed to in the MOU. Three corporate retreats are allowed with a maximum combined room total of 36. Additional rooms may be added but each room over the first 36 count as 1/3 of a unit. A wastewater treatment plan will be created after development of the first 200 units, which must still comply with all applicable health/safety regulations or no development will occur.
- The developer will pay for a traffic safety/impact study after Phase 1 (1,477 units) is completed. Air transportation/operations will comply with the Valley's applicable zoning regulations. Developer will work with county to make acceptable provisions for construction traffic.
- Developer is required to adopt a reinvestment fee covenant complying with State Code.

- Developer’s obligations to commence development in a timely manner, actions that constitute default and enforcement are defined. Powder Mountain requested changes from commencing construction within 3 years to 4 years, added the sentence “absent any delays caused by the county” and changed the period to withdraw the incorporation petition from the signing of this agreement from 10 to 30 days.
- Seasonal workforce housing has been determined not to count against the density totals. Developer is asking that permanent workforce housing also not count against density totals.

Greg Mauro, of Summit, Russ Watts, of Powder Mountain, and Tom Bennett, of Ballard Spahr, addressed questions raised by staff in its report:

- Adding 200 units into Section 4.2 - Mr. Mauro said that phase 1 was expanded to make it more viable because they encountered landslide issues. He said that 250 units would be ideal to compensate for the large lost sections of what was initially thought to be developable areas. The commissioners felt comfortable with 250 units.
- Changing the petition withdrawal time from 3 to 4 years - Mr. Mauro said that they have a purchase agreement with the current seller who was concerned with not having ample time to close the real estate transaction. The commissioners agreed to stay with the 3 years.
- “Absent any delays by county” language - Chair Dearden expressed concern with that language because the county allows extensions and that language throws in a debatable item. He prefers not to include it. Mr. Watts said that they agree with that point. This language will be deleted.
- Mr. Mauro said that Pronaia Capital Partners had asked for 30 days to withdraw the incorporation petition simply because they wanted to have ample time to go through that process. The commissioners agreed to allow the 30 days.
- Permanent workforce housing - Mr. Watts said that they would have personnel up there year round and housing needs to apply to permanent employees not just seasonal. Mr. Bennett stated that it is likely there will be a need for affordable housing onsite for longer term personnel who will be raising families and it is difficult for them to drive up there from somewhere else where housing is more affordable. Mr. Bennett said that this item is to help incentivize the developer to build affordable housing, which can be looked at as a community benefit because it does not create additional traffic. He said that there are methods to stop someone from selling the housing on the open market to make a large profit. Typically this is done with a restrictive covenant with strict guidelines on the properties to limit the resale price or rental rates. Chair Dearden expressed concern with having a large number of affordable houses and asked how employees that work at the shops, hotel, etc. are differentiated from the seasonal workers. Mr. Bennett responded that affordable housing is not of real economic benefit to the developer and usually it is governmental entities that want more affordable housing. He said that the DRR-1 Zone has a requirement that workforce housing be addressed and the Development Agreement creates an obligation to present a workforce housing plan and the county will have input into that plan.

Chair Dearden said that the original seasonal workforce housing was exempted from the density. He said that seasonal starts about November and the workers leave when the snow melts but the petitioner desires to make it a year-round resort and to have affordable housing for them. Mr. Bennett said that he had just spoken with Mr. Wilkinson and their understanding is that a DRR-1 Zone provision excludes workforce housing from the density calculations and does not distinguish between seasonal or permanent, simply states “workforce housing.” Scott Mendoza, of the County Planning Division, said that the seasonal workforce housing section of the ordinance is specific and the remaining calculations assume a seasonal workforce housing. If they choose to become a resort zone, that plan would be reviewed at that time. He said that today’s item is for conventional zoning. Mr. Wilkinson read from the DRR-1 Zone which states that any increases in density caused by the development of workforce housing requirements shall be in addition to the allowable density approved at the time of the DRR-1 application.

For consistency with other resort developments, Mr. Bennett proposed removing “seasonal” and including the following language: “workforce housing units shall not be counted toward density of the project regardless of where it is located, as provided by, and subject to the limitations of the DRR-1 Zone Ordinance.” David Wilson, Deputy County Attorney, agreed with the language, noting that it is to develop housing for those workers so they can be there. He said that restrictive covenants or language on deeds is needed to address those that could make a large profit by selling or renting the units. Chair Dearden asked Mr. Wilkinson if he approved that language change and he responded that if legal counsel approves it that he also supports it. Commissioner Zogmaister agrees, if it refers back to the DRR-1 Zone, and also with adding the restrictive covenants on the ordinance. Mr. Wilkinson referred to Section 6.5 of the current agreement which states that a Seasonal Workforce Housing Plan shall be presented and reviewed and a recommendation made by the Planning Commission and approved by the County Commission as part of any request for a change in the concept development plan for the Project after the first 250 units, or as part of a rezone application to DRR-1. He stated that after the 250 units the developer will have to present a workforce housing plan. Mr. Wilkinson concurred with Commissioner Zogmaister that the details of that plan will come after the developer gets started with the first 250 units. Chair Dearden expressed thanks to staff that worked on this issue, noting that it has been a long process, with this being at least the 15<sup>th</sup> version of this agreement. Commissioner Gibson expressed thanks to Chair Dearden who worked hard on this issue. Chair Dearden noted that the county tried very hard to keep the Planning Commission’s recommendations in this agreement and for the most part this goal was achieved.

Chair Dearden moved to approve Contract C2012-212, Zoning Development Agreement with Western America Holding, LLC as part of Zoning Petition 2006-18 to rezone approximately 4,297 acres located at Powder Mountain Resort from Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40) to Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40) but amending the number of units allowed in phase 1 to 250 in the agreement, Section 6.2, adding the proposed language by Tom Bennett to the DRR-1 Zone Ordinance as discussed above, and to approve the change from 10 to 30 days to withdraw the incorporation petition; Commissioner Zogmaister seconded, all voting aye.

**G. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, NOVEMBER 20, 2012, 10 A.M.**

**H. PUBLIC COMMENTS:** (These were all regarding the Powder Mountain issue.)

Sandra Tuck, of Liberty, said she heard some changes (regarding the Powder Mountain MOU) that had not been brought before the Planning Commission and asked if they should be amendments. She asked if the commissioners remembered representation vs. control, and how this would impact agri-tourism.

Steve Clarke, of Eden, felt that the Powder Mountain item reached a good conclusion. He is distressed because the real estate transfer fee was dropped from discussions. His understanding is that the petitioner had to volunteer to impose a real estate transfer tax on the property through a home owners association or some other form of organization controlled/managed by residents, and that it could not be part of a contract between the county and the petitioner. The proceeds of the real estate transfer tax were to be used for the benefits of the residents. His understanding is that as long as it could be demonstrated that the residents benefited from the application of these fees, that it was included in the law. He requested that the County Commission review this and see if it is correct and appreciates their consideration of his request.

Drew Johnson, of Eden, expressed gratitude for the withdrawal of the incorporation petition for the Town of Powder Mountain and thanked everyone involved in this issue.

Darla Van Zeben, one of the litigants in the lawsuit regarding the proposed incorporation of the Town of Powder Mountain, echoed thanks to all county staff involved and to Summit personnel.

**I. ADJOURN:**

Commissioner Zogmaister moved to adjourn at 11:17 a.m.; Commissioner Gibson seconded, all voting aye.

Attest:

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Craig D. Dearden, Chair  
Weber County Commission

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Ricky D. Hatch, CPA  
Weber County Clerk/Auditor