



## Weber County Planning Division

To: Ogden Valley Planning Commission  
From: Ronda Kippen  
Date: December 30, 2014  
Subject: File# CUP 2014-29 Pine Canyon Lodge CUP

### **Summary:**

The request for approval of a conditional use permit for a condominium project consisting of 54 condominium units and 54 lockout units with an average building height of 54 feet was presented during the December 2, 2014 Ogden Valley Planning Commission meeting. After receiving public comment on the item, and followed by discussion from the Planning Commission, the request was tabled until the January 6, 2015 Ogden Valley Planning Commission meeting for further research and clarification needed and the following direction given to the applicant (see Exhibit A for the draft motion of the 12/2/14 meeting):

1. Lighting and what steps can or will be taken to ensure the "Dark Sky International Recognition" for North Fork Park will not be jeopardized.
2. Does Weber County currently have adequate fire equipment to handle a 71 foot structure fire without needing to purchase new equipment?
3. What is the legal interpretation of a lockout as a separate dwelling?
4. What is the impact as far as noise and dust of a development of this caliber in a residential area?

### **Follow-up:**

I have been diligently working with the County Attorney's office, the Weber Fire District and the applicant regarding the direction received from the Planning Commission during and following the last meeting. The applicant has requested that the Planning Commission table the agenda item until the January 27<sup>th</sup> meeting to allow the applicant to redesign the building in an attempt to address the concerns that were expressed during the December 2<sup>nd</sup> meeting. I received a portion of the new design earlier today; however, based on a new/modified design, adequate time needs to be allotted for a thorough review prior to presenting it to the Planning Commission.

I have attached to this memo the responses to the Planning Commission's questions and concerns pertaining to the legal interpretation for a lockout as a separate dwelling as Exhibit B and fire suppression as Exhibit C.

### **Necessary Corrections:**

I would like to address two items that were not part of the Planning Commission's request to the applicant but are necessary to ensure the correct information is being evaluated.

**Additional Height Request:** In the initial notice and staff report prepared for the December 2, 2014, it was stated that the applicant was requesting, as part of the conditional use permit, that the Planning Commission vary the maximum height requirement of 25 feet per the CVR-1 Zone and consider an average height of 54 feet as conditionally allowed in the Uniform Land Use Code of Weber County, Utah (LUC) §104-11-4 and defined by the LUC §101-1-7. According to the LUC §104-11-4, a conditional use permit is required if the building height is over 25 feet. There is not a "maximum" height identified in the LUC for the CVR-1 zone and height in excess of 25 feet is conditionally allowed in that zone.

**Zoning:** It appears that there has been an error in the digitizing of the zoning maps when compared to the ordinances that have enacted the applicable zones specifically pertaining to the Nordic Valley Resort area. After the December 2<sup>nd</sup> meeting, it was evident that additional research of what has historically been approved at the resort was necessary. An old zoning map was found that lead to a couple of rezoning ordinances. In 1977, the property owner of Nordic Valley petitioned the County to rezone approximately 12 acres located at the base of the resort from the FR-1 zone to the CR-1 zone which would bring the zoning current with the uses that had been established prior to the adoption of zoning in the Ogden Valley. Weber



## Weber County Planning Division

County granted a rezone but only for a 400' x 400' area located where the "lodge" currently sits. In 1980, the property owner again petitioned the County for a rezone of the base area of the resort from the FR-1 zone to the CR-1 zone. The County once again granted a rezone but only for an additional area of 470' x 400' tying the rezone to the northern line of the Silver Bell Subdivision and the southern line of the previously adopted rezone. Based on Ordinance 17-77 and Ordinance 18-80, parcel # 22-023-0086 containing 12.29 acres is split between the CVR-1 zone (containing 7.98 acres) and the FV-3 zone (containing 4.31 acres) as identified in Exhibit D.

The process in reviewing parcels that are split by zone boundaries has been identified in LUC §104-1-4 which states:

*"Where a parcels that is split by a zone boundary, the parcel must contain at least two-thirds of the area required for a lot in the more restrictive zone, the area from the less restrictive zone can be used to meet the total area requirement for the more restrictive zone."*

Based on the correct zoning lines, the proposed site plan needed to be modified to ensure that the footprint of the building would be fully contained in the CVR-1 zone. The revised plans must show the building located in the CVR-1 zone, reflect adequate setbacks along the existing side property line and the future front property line as well as identify the fire access lane along the south property line that has been approved by the Weber Fire District. During the subdivision process, a minimum of two-thirds of the area requirement must be located in the CVR-1 zone.

### **Public Notice:**

To ensure adequate time has been allotted to the affected property owners, a second series of notices have been mailed out to all property owners within 500 feet of the subject property on December 5, 2014 for the January 6, 2015 Ogden Valley Planning Commission meeting.

### **Public Comment:**

All comments that have been submitted in writing to the Planning Division to date have been attached as Exhibit E. Additional comments will be compiled and provided to the Planning Commission prior to the public meeting on January 6, 2015.

### **Exhibits:**

- A. 12/2/14 Planning Commission Motion (Draft)
- B. Legal Opinion
- C. Fire Approval
- D. Plat map with correct zoning
- E. Public Comment

Respectfully,

*Ronda Kippen*

Planner II

Weber County Planning Division

Phone: 801.399.8768

Email: rkippen@co.weber.ut.us

## Exhibit A- 12.2.14 Draft PC Motion

Minutes of the Ogden Valley Planning Commission Regular meeting held on December 02, 2014, in the Weber County Library, Ogden Valley Branch, Huntsville, UT commencing at 5:00 p.m.

**Present:** Pen Hollist, Chair; Greg Graves, Will Haymond, Laura Warburton, Kevin Parson, Ann Miller

**Absent/Excused:** John Howell

**Staff Present:** Sean Wilkinson, Planning Director; Scott Mendoza, Principle Planner, Charlie Ewert, Principle Planner; Ronda Kippen, Planner; Dustin Parmley, Legal Counsel; Kary Serrano, Secretary

***Pledge of Allegiance***

***Roll Call:***

## **2. Petitions, Applications and Public Hearings**

### **2.1. Administrative Items**

#### **a. New Business:**

**1. CUP 2014-29:** Consideration and action on a Conditional Use Permit (CUP) application for a condominium project including lockout rooms and allowance to exceed the required 25 feet in building height located at 3567 Nordic Valley Way in Eden, in the Commercial Valley Resort-1 (CVR-1) Zone (Skyline Mountain Base, LLC, Applicant)

**MOTION:** Commissioner Warburton moved that they table CUP 2014-29 until the next scheduled work meeting and there are things that she couldn't decide and there are many questions that need to be answered. Such as how many units are allowed on this property. Could they do a DRR-1 Zone, and would that be better. She believes that there needs to be more discussion; it's not based on public clamor, and this is a very critical decision that requires more discussion. Commissioner Miller seconded.

**DISCUSSION:** Commissioner Graves said that having some kind of a master plan would help in dealing with this and he was not sure that would be something they could ask for. Director Wilkinson replied that they can ask, but that is something that as staff they cannot require. It's been brought up several times the context of what we're planning, but the zoning is in place, there is not a Zoning Development Agreement associated with that zoning. They cannot impose something outside of what is allowed by that zone. Their hands are essentially tied; the zoning was in place years ago. Dustin Parmley added the fact that they elected the mechanism of a conditional use permit, that's their choice entirely and that's allowed by law. We are required to follow the legal standard for a conditional use permit because that's the mechanism they have elected to pursue to move forward for this development project. Commissioner Miller asked what they would need in place in order to require a master plan; will that mean that they would have to go through the process of becoming a designated resort. Director Wilkinson replied if they wanted to do that. The problem is the applicant does not currently have enough property. If they were to rezone and they were to ask for something outside of what the zoning allows, that's when that opportunity would open up. Dustin Parmley said that even if they had enough property, it would be at their election, and it would not be something that this body could require of them.

Commissioner Miller asked that if they were to grant this, these buildings could be as tall as 10 stories high. Could they go back in and change the ordinance at a later time? Director Wilkinson replied that would not affect this project but they certainly could do that and that would be a discussion they could have at a work session. Ultimately the County Commission will make a decision if the Planning Commission recommends something to them.

Chair Hollist said that this is a legislative matter and it is appropriately suggested, and the motion to table, allows them to consider that, not for this applicant, but for future applicants.

Commissioner Graves asked for clarification on the reason for tabling. Do they have any instructions for the applicant to provide more information for us to consider that they don't have in order to table? Director Wilkinson said specific conditions are generally applicable with a motion to table. Commissioner Graves said that he was not opposed to tabling, but they need to provide specific direction to the applicant to provide more information. Commissioner Warburton said that what she is not hearing from the applicant what is going on with the rest of the property without asking for a master plan. She has not heard from staff on how that works and if there are many options that they can look at. She would like this commission to have a work session to look at some of the options, such as do they want a bigger footprint on the land to be able to lower that. They have a law that they have to follow, and there are things here that cannot be addressed and are outside their ability to rule on.

## Exhibit A- 12.2.14 Draft PC Motion

Commissioner Miller said since they can't have a master plan, could they have some kind of vision that the applicant sees as the next steps, with some sense of where they are going, and how many units they can build? Ronda Kippen replied that the only piece property owned by Skyline Mountain Base, that is zoned CVR-1, is the 12.29 acres that is at the base. They will utilize the same footprint for this building to identify how much acreage we need. Across the street next to the barn is the CVR-1 Zone that goes from the southernmost property line that's adjacent to Nordic Valley Water and it's the Stokes' property north past the barn. In the packet on Map 2, the subject property is the rectangle along Nordic Valley Way; that is the only parcel that is zoned CVR-1 for this type of commercial development. Commissioner Warburton said that the applicant has the right to build, and we can't deny the use but there are a lot of questions. Commissioner Miller said that she would like to have a conversation, that if they approve this, how do they change the ordinance so that is something they can live with in the future. Director Wilkinson indicated that the discussion needs to be focused on the application, but if there are specific things for the applicant to do before the next Planning Commission meeting, please state those, so when they have the next meeting, there is something that can be presented to satisfy the concerns that the Planning Commission has. Dustin Parmley said part of the concern with getting into the other topics, was not properly noticed and on the agenda for discussions amending the land use code, and they are straining in areas that they shouldn't without given proper notice.

**MOTION:** Commissioner Warburton called for the question, which ends debate. Commissioner Miller seconded.

**VOTE:** A vote was taken and Chair Hollist said that the motion did not pass by two thirds of the majority.

**MOTION:** Chair Hollist that he would like to have the applicant comment at the next meeting. This is a game changer for the light, the size of the lantern that would be pushed into the sky that close in proximity to North Fork Park, which may in fact jeopardize the Dark Sky International Recognition. Secondly, he would like to know whether Weber County has the fire equipment presently on hand that can handle a 71 foot structure without the purchase of additional equipment. Thirdly, he would like to know the legal interpretation of a lockout, not the opinion; the legal interpretation of a lockout as a separate dwelling. Finally, he would like to know the impact as far as noise and dust of a development of this caliber in a residential area.

**DISCUSSION:** Director Wilkinson said that this will not be a work session item; this will be back on the agenda for action. The next meeting we have will be a work session. Commissioner Warburton said that as far as lighting goes, it is already an ordinance, which they have already met that requirement. Dustin Parmley said that light can be considered as far as the minimum standard for a permitted use. It is something that you can take into consideration and impose reasonable conditions to mitigate detrimental effects. Director Wilkinson said that where this is an application for a conditional use permit, we have to respond according to what the code says and it will be in a meeting where you will make that decision. Commissioner Warburton suggested that the people contact Ronda and send in their fact-based comments and contact their neighbors as this has already been noticed. Director Wilkinson clarified that the first meeting will be January 6, 2015.

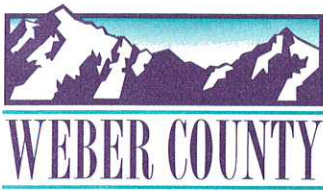
**VOTE:** A vote was taken with all members voting aye. Motion Carried (5-0).

3. **Adjourn:** The meeting was adjourned at 9:00 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,  
Weber County Planning Division



## Exhibit B- Legal Opinion for Lockout

### ATTORNEY'S OFFICE

2380 Washington Boulevard  
Suite 230  
Ogden, Utah 84401-1464  
Telephone: (801) 399-8377  
24 Hour FAX: (801) 399-8304

December 12, 2014

Ogden Valley Planning Commission  
% Sean Wilkinson  
2380 Washington Blvd., #240  
Ogden, UT 84401

RE: CUP 2014-29, Nordic Valley Condominium Project

Dear Sirs and Madams:

On December 2, 2014, the Ogden Valley Planning Commission considered CUP 2014-29, a conditional use permit application for a condominium project including lockout rooms and allowance to exceed 25 feet in building height located at 3567 Nordic Valley Way in Eden, in the Commercial Valley Resort-1 (CVR-1) Zone submitted by Skyline Mountain Base, LLC ("applicant"). The applicant proposed a condominium rental apartment building with 54 condominium rental units, with each unit containing a lockout room for a total of 54 lockout rooms. The Commission tabled the application for further investigation. When tabling the consideration of the application, the Commission, among other conditions, instructed the Attorney's Office to provide a legal opinion on the definition of a lockout room and how such a room is counted for purposes of density.

Weber County Land Use Code Section 101-1-7 defines lockout sleeping room as follows:

The term 'lockout sleeping room' means a sleeping room in a condominium dwelling unit or condominium rental apartment with separate or common access and toilet facilities but no cooking facilities except a hotplate, which may be rented independently of the main unit for nightly rental by locking interior access. A lockout sleeping room shall not be sold independently of the main dwelling unit, and is not considered a dwelling unit when figuring density on a parcel of land.

The lockout rooms within the condominium rental apartment project are not separate units. They are separately rentable sleeping rooms, but would not be calculated as part of density in most zones that permit condominiums.

Dee W. Smith  
Weber County Attorney  
▼  
Chief Criminal Deputy  
Gary R. Heward  
▼  
Chief Civil Deputy  
David C. Wilson  
▼  
Attorneys  
L. Dean Saunders  
Monette Hurtado  
Sandra L. Corp  
Christopher F. Allred  
Reed M. Richards  
Branden B. Miles  
Teral L. Tree  
Christopher L. Shaw  
Benjamin B. Willoughby  
David L. Gladwell  
Letitia J. Toombs  
Gage H. Arnold  
Jeffrey G. Thomson Jr.  
Brody E. Flint  
▼  
Administration  
Kimberley A. Lee  
▼  
Investigations  
Robert D. Carpenter  
Shane L. Minor  
▼  
Victim Assistance  
Jamie Pitt  
Diane Oberg-Lowe  
Becky Jones



## Exhibit B- Legal Opinion for Lockout

However, the CVR-1 Zone's more specific regulations do account for lockout sleeping rooms, though they are not counted in the same way that condominium units are counted. A site for a condominium rental apartment building must meet the following requirements from LUC 104-11-6(a): "7,500 square feet of net developable area plus 2,000 square feet of net developable area for each dwelling unit [condominium unit] in excess of two dwelling units [plus, for each] Lockout sleeping room, 500 square feet." Under this calculation, each lockout sleeping room is counted the same as approximately 1/4 condominium unit.

The following examples may serve to illustrate the point:

The current proposal of 54 units with each unit containing a lockout room requires the following site area within the CVR-1 Zone:

	7,500 square feet (baseline)
+	104,000 square feet (2,000 square feet for each condo unit in excess of two, or 52 units)
+	27,000 square feet (500 square feet for each of the 54 lockout sleeping rooms)
	<hr/>
	138,500 square feet total site needed or 3.18 acres (43,560 square feet per acre)


This same site size could support 67 separate condominium units without lockout sleeping rooms as follows:

	7,500 square feet (baseline)
+	130,000 square feet (2,000 square feet for each condo unit in excess of two, or 65 units)
	<hr/>
	137,500 square feet total site needed or 3.16 acres (43,560 square feet per acre)

This is a difference of 13 additional units, or approximately 1/4 of the total project.

The applicant has proposed a smaller number of units overall, with each unit containing an additional lockout room, rather than proposing the largest number of entirely separate units a 3.2 acre site in the CVR-1 Zone could support. The application meets the statutory size requirements for a condominium rental apartment building with lockout rooms in the CVR-1 Zone.

Sincerely,



Dustin M. Parmley  
Deputy County Attorney

## Exhibit C- Fire Approval

**Kippen,Ronda**

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**From:** brandontogden@gmail.com on behalf of Brandon Thueson [bthueson@weberfd.com]  
**Sent:** Monday, December 15, 2014 11:15 AM  
**To:** Kippen,Ronda  
**Subject:** Re: City Planning review comments

Rhonda,

As part of my plan review process, I consider fire fighting strategy and tactics along with our equipment we have available to fight fires. While the proposed project at Nordic Valley does include a large and tall building, it is similar in nature to other buildings in the upper valley such as the ones in the Wolf Creek area. The agreed upon enhancements such as the full NFPA 13 fire suppression system, fire command room and wet standpipes in the stairwells will greatly aid the Weber Fire District should a fire occur.

Brandon Thueson  
Fire Marshal  
Weber Fire District  
801-782-3580 Office  
801-917-0678 Cell

**\*FOLLOW WEBER FIRE DISTRICT ON TWITTER @WeberFireDist\***

On Mon, Dec 15, 2014 at 9:23 AM, Brandon Thueson <[bthueson@weberfd.com](mailto:bthueson@weberfd.com)> wrote:  
Rhonda,

Will my plan review comments suffice for what the planning commission needs, or do I need to write a letter also?

Please let me know when the meeting is and I will try to attend to answer questions.

Brandon Thueson  
Fire Marshal  
Weber Fire District  
801-782-3580 Office  
801-917-0678 Cell

## Exhibit C- Fire Approval



2023 W. 1300 N.  
Farr West, UT 84404  
(801) 782-3580  
Fax (801) 782-3582

## PLAN REVIEW

**Date:** December 15, 2014

**Project Name:** Pine Canyon Lodge- Review #2 December Site Revisions

**Project Address:** 3497 North Nordic Valley Way, Eden

**Contractor/Contact:** Greg Jensen

**Fee(s):**

Property Type	Schedule Rates	Square Foot Rate	Square Feet or Number of Res. Units	Total
Type	Rate	Rate/ Sq Ft	Sq Ft or # of Units	Total
Plan Review	Commercial			\$100.00
Impact Fee	Multi Family Residential Units	295.20	54	\$15,940.80
Total Due				\$16,040.80

### **Fee Notice:**

Weber Fire District has various fees associated with plan reviews, and inspections. Please be prepared to make payments at the time of inspections or when you pick up your approved plans. Impact Fees are due prior to taking out a building permit. Make checks payable to: **Weber Fire District.**

## CONDITIONAL USE

**Status: APPROVED**

### **Specific Comments:**

1. This is a mixed use occupancy consisting of B, R2 and an S2 parking area.
2. Fire Access: The revised site plan indicates a fire access lane on the south side of the property extending to the west end of the building, ending in a turn-around with a fire hydrant in the area of the turn-around. The design of the plaza on the north side does not allow for a fire access roadway completely around the building, so other accommodations have been required and the developer has agreed to provide the following in lieu of a fire access road on the north side of the building:
  - a. The fire suppression system shall be an NFPA 13 system throughout the building.
  - b. There shall be wet standpipes installed in each stairwell. Standpipes shall meet requirements of the IFC.
  - c. There shall be a fire command room as outlined in section 508 of the IFC.
  - d. The fire alarm system shall be an addressable system and meet the requirements of section 907.2.13.2
3. Fire Hydrants: The fire hydrants indicated on the site plan are acceptable. Other hydrants may be needed in order to meet fire flow requirements.

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Chief, David L. Austin - Deputy Chief, Paul Sullivan - Fire Marshal, Brandon Thueson

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## Exhibit C- Fire Approval

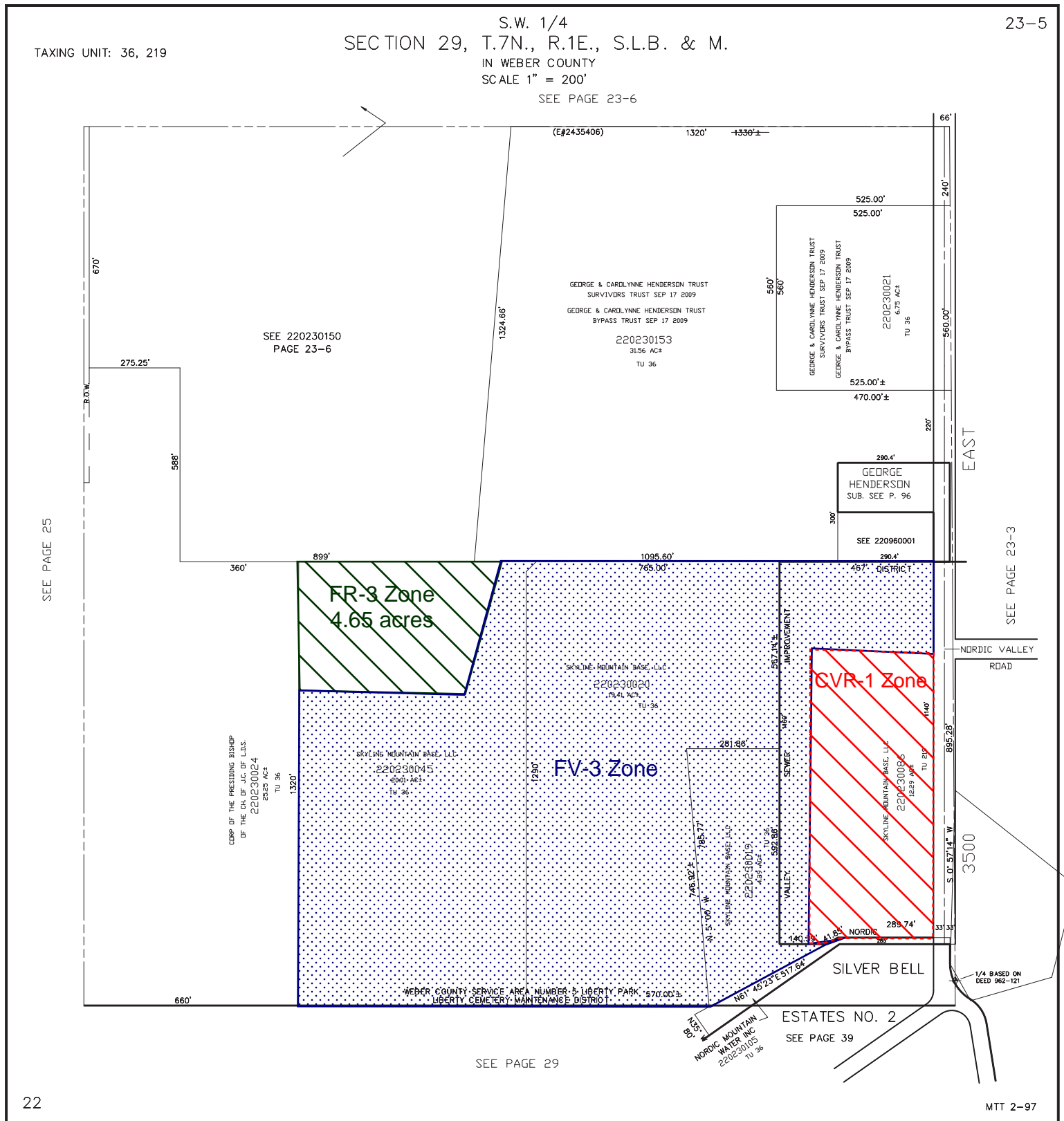
4. Fire Flow: Fire flow for the proposed building is 3125 GPM for 2 hours (this is allowing for a 50% reduction in required fire flow as the building will be equipped throughout with an NFPA 13 system as allowed by section B105 of the IFC).
5. Standpipe System: A standpipe system is required in the building per section 905.3.1 of the International Fire Code. Standpipe may be connected to and be a part of the fire suppression system (again easier to do with a NFPA 13 system).
6. Fire Alarm System: A full automatic fire alarm system is required as outlined by section 907.2.9.
7. Gas meters shall be protected from vehicular damage. If the gas meter is in a traffic area, bollards shall be provided as per the International Fire Code.
8. Fire suppression systems for kitchen hoods shall have the plans approved by the fire department before installation and a test of the system shall be preformed for the fire department for approval.

NOTE: This review is for the Conditional Use Permit. Additional reviews and requirements may be necessary.

Every effort has been made to provide a complete and thorough review of these plans. This review DOES NOT relieve the owner, contractor and/or developer from compliance with any and all applicable codes, and standards.

Any change or revision of this plan will render this review void and will require submittal of the new, or revised, layout for fire department review. If you have any questions, please contact me at 801-782-3580.

# Exhibit D-Plat map with correct zoning



## Exhibit E- Public Comment

Public comment submitted to the Planning Division Staff as of December 30, 2014

## Exhibit E- Public Comment

**Kippen,Ronda**

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**From:** Kimbal Wheatley [kimbalwheatley@gmail.com]  
**Sent:** Tuesday, December 23, 2014 2:13 PM  
**To:** Alan Wheelwright; Alexxis Owen; Brian and Elaine Hockridge; Cheryl Ferrin; Chip Ulrich; Chris Stevenson; Cindy Beger; Clark Duellman; Cliff Peterson; Cord Pack; Dave Mills; Doug Gregory; Ellen Fowers; Elsa Svennson; Eric Householder; Ernest Goff; Evan Byers; Ewert, Charles; Frank Cumberland; Fred Mullin; Gary Fullmer; Greg Mauro; Hatfield, Ben; Helene Liebman; Jack Wright; Jan Fullmer; Janet Muir; Jeff Burton; Jeff Stokes; Graham, Jennifer Ann.; Jim Ormsbee; Jim Truett; Joan Blanchard; Jodi Smith; John Klisch; John Loomis; Jon Bingham; Julie Tisue; Kathy Allen; Kimbal Wheatley; Kirk Langford; Larry and Sharon Zini; Laura Warburton; Lee Schussman; Lon Child; Lowell Peterson; Megan Boswell; Mike Loud; Miranda Menzies; Neil Grotegut; Nick Breeze; Pam Kramer; Pam Mitchell; Paul DeLong; Paul Riley; Peggy Turner; Pen Hollist; Phil Ordway; Richard L Sorensen; Richard Menzies; Richard Webb; Rick Vallejos; Rod Peterson; Ron Gault; Ron Gleason; Roody Rassmussen; Ross Mertlich; Ross Walker; Sandra Tuck; Scott Blank; Wilkinson, Sean; Shanna Francis; Sharon Holmstrom; Steve Clarke; Steve Ransom; Susan LePage; Terry Davis; Thayer Walker; Vickie McKenney; Vicky Harris; Zack Tanner  
**Cc:** Kippen,Ronda  
**Subject:** A legal framework for dealing with Conditional Use Permits  
**Attachments:** GEM whitepaper to OVPC 12-23-14.docx

Colleagues,

At our last GEM meeting several of us decided the conditional use application for a 71 foot tall, 190,000 square foot condo project at the base of Nordic Valley was a direct assault on our General Plan for Ogden Valley and the land use code we have created to carry it out.

The OVPC expressed dismay in their December 2 meeting that their hands were tied; that unless we could muster legally valid reasons to deny, the CUP would be approved.

For that reason, we wrote the attached legal framework for considering CUP applications. Today it was sent to the planning staff and it will be included in the OVPC packet for their January 6 meeting.

The paper builds the case that our OVPC is indeed empowered to make reasonable decisions about CUP applications. Read the case and let your opinion be known by sending an email to Ronda Kippen at the Planning Office [rkippen@co.weber.ut.us](mailto:rkippen@co.weber.ut.us) (before new years).

One way or another, by the end of the January 6 OVPC meeting we will know what county legal counsel and OVPC think about the authority and obligation they have when dealing with conditional use applications.

Kim

--

*Kimbal Wheatley*

*(801) 725-7583*

*[kimbalwheatley@gmail.com](mailto:kimbalwheatley@gmail.com) is preferred communication method*



*Please consider the environment before printing anything.*

## Exhibit E- Public Comment

December 23, 2015

Dear Commissioners,

As you may know, the GEM committee consists of Valley residents who believe we should **grow with excellence** (Growth Excellence Mandate) and further believe in working through and improving the county planning process to that end.

Our last GEM meeting occurred the night after the December 2 OVPC meeting in which CUP2014-29 was on the agenda. We had a packed house and we spent our entire discussion on the action at the OVPC meeting the night before.

The consensus was that OVPC did the right thing to table CUP2014-29 and we commend you. We especially felt tabling was appropriate because so little notice was given to those who would be affected by the CUP; there was little time to prepare as neighborhood residents learned about the OVPC agenda over the Thanksgiving weekend. We thank you for providing time to study the CUP petition and we ask that *all* Conditional Use applications and meetings be noticed at least a month before the public OVPC meeting, including access to all pertinent documents through Mirada.

Toward the end of our GEM meeting, we decided to accept the challenge OVPC put out there to find a legal framework through which we could mitigate the harmful effects of a free-for-all for every conditional use in our Land Use Code. We wrote as useful a paper as we could about how OVPC could rule, in a legally defensible way, to deny a CUP when the proposal is inconsistent with our overall Land Use Code and General Plan. Its purpose is to serve as a reference document for discussions about CUP applications and we have distributed the paper to the people who live around Nordic Valley resort, asking them to voice their concerns within the legal framework of our Land Use Code.

We learned that some of the closest neighbors were too intimidated in the December meeting to speak and ask you to invite their voice into the discussion in January.

FYI, we asked the county and legal staff to tell us whether or not our arguments are flawed, but they say they never provide legal advice to ordinary citizens.

We want to thank the many GEM community who vetted the paper and provided ideas and feedback on short notice. We are all citizen volunteers in the planning effort, and we want to remain a participating part of your team as you work to plan the growth in Ogden Valley.

Cordially,

Kimbal Wheatley, GEM chair

[and some other supporters who wanted to sign on in support; we suspect some who did not make our get-this-out-before-Christmas deadline will express their support via email]

Alex Sawicki, Brenda Schussman, Carol Campbell, Chris Thomas, David Jenkins, Denise Haldeman, Diane Evans, Doug Haldeman, Fred Tisue, Helene Liebman, Howard Haldeman, James Evans, Julie Tisue, Lee Schussman, Lil Sedgewick, Mike Yauck, Natasha Zangerie, Pat Thomas, Ron Tymcio, Stephen Clark, Susan Yauck, Ron Gault, Kim Wheatley, Debbra Wheatley

## A legal framework for considering conditional uses in Ogden Valley

December 22, 2014

Utah Land Use Code (LUC) empowers OVPC to make reasonable decisions about Conditional Use Permit (CUP) applications based on whether or not reasonably anticipated detrimental effects can be substantially mitigated. Utah Land Use Code allows county land use planning authority (e.g., OVPC and/or WCC) to deny CUP applications when detrimental effects (as described in county LUC) cannot be substantially mitigated by applying additional conditions.

Title 17, Chapter 27 of Utah Code covers county land use and development. The General Land Use Authority section UC 17-27a-102(1) describes the purpose of this authority, granting counties the authority to use land use planning to promote a wide range of public purposes:

- (a) *"The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each county and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values."*

Section (b) then grants counties the authority to employ a fairly full quiver of land use tools and public purposes to regulate county land use planning and code:

- "(b) To accomplish the purposes of this chapter, counties may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law."*

Utah Code 17-27a-506 covers conditional uses and subsection (1) enables counties to allow conditional uses as well as to enable compliance with standards established in LUC ordinances

- "(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance."*

Then subsection (2) defines the conditions under which a CUP should be approved or denied (we think this is the section where "may" was changed to "shall" in the circa 2010 legislature):

- "(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards."*

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This appears to mean certain detrimental effects can be mitigated and, if so, the CUP must be approved. Then subsection (b) allows denial of CUP if detrimental effects can't be substantially mitigated:

*“(b ) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.”*

The “applicable standards” are defined in “Standards” title 108 of Weber County LUC, which includes chapters for Design Review, Architecture, landscape and screening design, Conditional Uses, Lighting, Pathways, (and others). In the Conditions section (LUC Sec. 108-1-5) extends approval criteria beyond the specific zone and CUP chapter to broaden the definition of LUC standards:

*“Design approval may include such other conditions consistent with the considerations of this, and/or any other chapter of the Weber County Land Use Code, as the commission or planning director deem reasonable and necessary under the circumstances to carry out the intent of the Land Use Code.”*

Thus, OVPC can apply any part of Weber County LUC as criteria for approving conditional uses to carry out the intent of the Land Use Code, which is usually described in the “purpose and intent” sections of the code.

Also in the Standards title, LUC Sec. 108-4-4 gives OVPC clear instruction about the criteria for issuing a CUP, including an obligation to deny the CUP if there is not sufficient evidence to prove that detrimental effects can be mitigated enough to meet applicable standards:

*“Conditional uses shall be approved on a case-by-case basis. The planning commission shall not authorize a conditional use permit unless evidence is presented to establish: (1) Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts are odor, vibration, light, dust, smoke, or noise. (2) That the proposed use will comply with the regulations and conditions specified in the Land Use Code and other applicable agency standards for such use.”*

The examples used to illustrate detrimental effects in section (1) in no way limits the range of possible detrimental effects to odor, vibration, light, dust, smoke, or noise. These examples simply list the specific restrictions further imposed for excavations (LUC Sec. 18-4-1).

Throughout the LUC, and with the General Plan for guidance, various values are expressed that set the overall community standards against which the critical phrases “detrimental effects” and “substantially mitigated” can be evaluated by OVPC in the CUP evaluation process. We might call these our community values, or our desired future for the development of the Valley, or our vision for it... we wrote these ideas into our general plan as best we could and without them as a guiding reference and standard, words like “*detrimental*” and “*substantially*” are meaningless. The primary role of OVPC in the CUP process is to make a judgment around these two words.

Our Planning Department staff and public input into the process does a good job of identifying the possible detrimental effects. The role of OVPC is to determine if a detrimental effect is

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serious enough to warrant mitigation. The second role of OVPC is to determine whether such “reasonably anticipated detrimental effects” can be mitigated by various means, either proposed by the CUP applicant or imposed by OVPC. The key judgmental action of OVPC is to find whether or not the mitigation designs and conditions are sufficient to substantially reduce the detrimental effect. Repeating LUC 108-4-4 of the Standards chapter pretty well sums it up:

*“The planning commission shall not authorize a conditional use permit unless evidence is presented to establish: (1) Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards.”*

It is important to note that the burden is on the CUP applicant or county staff or public input to prove (“presents evidence to establish”) that mitigation efforts will substantially reduce the harm (“detrimental effects”) of the CUP project going forward. Otherwise, OVPC “shall not approve”.

Accordingly, OVPC can and should consider effects of a CUP, but especially possible detrimental effects that run counter to the outcomes our LUC was created to achieve. Our Land Use Code clearly guides OVPC to evaluate specific possible detrimental effects in many cases; not so clearly in others. Here are some examples of where it is clear, but there are many more.

**In Chapter 2, Standards, we define desirable standards for architecture, landscaping, screening.**

- a) *The purpose and intent of design review by the planning commission is to secure the general purposes of this chapter and the master plan and to ensure that the general design, layout and appearance of buildings and structures and the development of property shall in no case be such as would impair the orderly and harmonious development of the neighborhood or impair investment in and occupation of the neighborhood. [LUC Sec. 108-1-1(a)]*
- b) *The purpose and intent of the architectural, landscape and screening design standards is to preserve the rural, mountainous landscape that exists in the Ogden Valley, and also accommodate new growth in commercial and industrial uses. The design standards include the following specific purposes: (1) Provide for commercial, industrial development that is aesthetically pleasing and compatible with the rural nature and natural setting of the Ogden Valley. (2) Provide a variety of colors, textures and forms in the environment that blend together in a harmonious manner. (3) Protect and preserve the appearance, character and public health, safety and welfare of the Ogden Valley. (4) Minimize the harmful impacts of noise, dust and other debris, motor vehicle headlight glare and other objectionable activities or impacts conducted or created by an adjoining or nearby uses. [LUC Sec. 108-2-1]*
- c) *Considerations relating to buildings and site layout. a. Consideration of the general silhouette and mass of buildings including location of the site, elevations, and relation to natural plant coverage, all in relationship to adjoining buildings and the neighborhood concept. b. Consideration of exterior design and building materials in relation to adjoining structures in height, bulk, and area openings, breaks in facade facing on a street or streets, line and pitch of roofs, and the arrangements or structures on the parcel. [Sec. 108-1-4 (a) & (b)]*
- d) *In order to preserve the rural character and public values of the Ogden Valley, this chapter is intended to regulate the permitted use of outdoor artificial illuminating devices*

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*emitting undesirable rays into the night sky, glare to oncoming traffic, intrusion of light onto adjacent properties, and light pollution in general, which may have a detrimental effect on the welfare and safety of the populace, as well as the ambiance and rural character of the valley. [Sec. 108-16-1]*

- e) Considerations relating to *traffic safety and traffic congestion*. a. The effect of the development on *traffic conditions on abutting streets*. [Sec. 108-1-4(1)(a)]
- f) *Pathways shall be required in all subdivisions*, although some pathways may be of the shared roadway type described in subsection (1) a.4. of this section. The planning commission shall consider the master pathways map and determine whether a pathway corridor should be set aside and what the exact route and width of the corridor should be. Land set aside in this manner shall count toward the provision of open space for clustering and other requirements. [Sec. 108-17-4.(2)]

### **In Chapter 1, General Provisions, we define what a conditional use is**

- g) Use, conditional. The term "conditional use" means a use, because of characteristics peculiar to it, or because of *size*, technological processes, or type of equipment, or because of the exact *location with reference to surroundings*, streets and existing improvements or demands upon public facilities, *requires a special degree of control that mitigates or eliminates any detrimental impacts the use might have on the county, surrounding neighbors, or adjacent land uses* and makes such uses consistent and compatible with other existing or permissible uses in the same districts, and assures that such uses shall not be *adverse to the public interest*. [LUC Sec. 101-1-7]

### **In Chapter 1 we define the term "compatible", which is used three times in the applicable standards.**

h) "The term "compatible" means capable of *orderly efficient integration and operation with adjacent developments*. A development is compatible with an existing on or off-site development or property if its *architectural features, building height and materials*, approved uses, intensity of such use and other features are complementary and do not have a significant adverse economic and aesthetic impact *on the existing development or property*."

### **The CUP process and application form further define our standards and communicate quite clearly the types of applications that will be denied:**

- i) Conditional uses not necessary or desirable or do not *contribute to the general well being of the community*. [CUP application form]
- j) Conditional uses *detrimental to the general welfare of persons or injurious to property or improvements in the community*. [CUP application form]
- k) Conditional uses that are not *compatible with and complementary to the existing surrounding uses*, buildings and structures when considering building design and location. [CUP application form]
- l) Conditional uses that do not conform to *the goals, policies and governing principles and land use of the General Plan for Weber County*. [CUP application form]
- m) Conditional uses that will lead to the *deterioration of the environment or ecology* of the general area. [CUP application form]
- n) Conditional uses that will produce conditions or emit pollutants of such a type or of such a quantity so as to *detrimentally effect, to any appreciable degree, private properties*

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*including the operation of existing uses thereon, in the immediate vicinity of the community or area as a whole. [CUP application form]*

In our opinion It is clear that OVPC has the authority and obligation, both under state and county law, to anticipate harmful effects a CUP would have. The OVPC must then consider the intents and purposes of the Land Use Code and the General Plan in making judgments as to the extent of those harmful effects. If the OVPC finds sufficient, significant harmful effects, it must then asses and judge the degree to which the applicant will be able to mitigate them, and it must deny the application unless it is proven that the harmful effects are reduced to an acceptable level (as judged by OVPC).

Finally, there are meta “reasonably anticipated detrimental effects” that are not included in our LUC, but are certainly important in reality. All occur fairly regularly in CUP purgatory and our entire county planning process should seek to substantially mitigate them.

1. The detrimental effect of creating unwanted precedent
2. The detrimental effect of losing the public trust in the planning process and authority
3. The detrimental effect of bankruptcy when applicants fail in business
4. The detrimental effect of piecemeal approvals in the absence of a neighborhood plan
5. The detrimental effect of loopholes that undermine the intent of our LUC
6. The detrimental effect of pitting neighbors against neighbors

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CUP2014-29 provided the impetus for this paper. Addendum 1 lists the specific issues we believe OVPC should consider in deliberations about CUP2014-29; all are based on specific sections of our Land Use Code. These concerns represent reasonably anticipated detrimental effects of the proposed use and many will be difficult or impossible to substantially mitigate to achieve compliance with the intent of the ordinances.

### **Addendum 1**

1. The mass, bulk, and height of the structure are not consistent with design norms for Ogden Valley. A structure of this size diminishes the rural, mountainous landscape and the appearance and character of Ogden Valley. The structure is a 71 foot high, 190,000 square foot building on 3.2 acres of land. The structure is extraordinary in height, bulk and mass by any reasonableness standard, but it helps to visualize its supersize with examples. The structure is the size of sixty-five 3,000 square foot residences stacked in a little over three acres. It has the square footage of a Walmart Super Center or four Home Depots. There is no structure within ten road miles that is even one-third the square footage size, and there is no building this tall along any county or state access route all the way to I-15. The detrimental impact of a precedent-setting building of this size, mass and bulk cannot be mitigated.
2. Existing residences directly south and adjacent to the structure will suffer significant adverse economic and aesthetic impact. Their views will be replaced by a five story building, averaging 54 feet high and running for 250 feet. Their decks are level with apartment block balconies and the building climbs to 71 feet in some places. Already their efforts to sell their homes are clouded by the prospect of a supersize condominium project within a few hundred feet of their bedrooms. The detrimental impact on the adjacent property owners cannot be substantially mitigated.
3. A structure of this size requires extraordinary measures to mitigate or eliminate any detrimental impacts the use might have on adjacent land uses.
  - a) The mass, bulk, and height of the structure impairs the orderly and harmonious development of a neighborhood in existence long before the CVR1 zone was created. Because of its size and location, It will have a detrimental impact on close by neighbors.
  - b) The mass of the proposed structure relates poorly to adjoining buildings and the neighborhood concept.
  - c) The structure is considerably oversized *in proportion to the recreational amenities* it is intended to service and clearly intended as its own attraction rather than as a service facility to the recreation asset. The Weber County Attorney stated in the December 2 OVPC meeting that such lack of proportionality is not allowed.
  - d) The proposed facility and uses to satisfy the 10% commercial requirement are not consistent with the intent of CVR1 zone.
  - e) Because of its bulk and mass, the 71 ft. high structure will create a "lantern effect," spewing light pollution. *[CUP application requirements]*. Light pollution from a building as tall as the planned Pine Canyon Lodge will affect all who have it in their view shed. Light pollution will have the detrimental effect of destroying the economic value potential for the Valley through accreditation of North Fork Park.
  - f) The 54 lockout rooms can effectively double the impact of traffic generation during peak seasons.<sup>i</sup>

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- g) Using a conditional use “loophole” in CVR1 to justify a 71-foot tall structure undermines the intent of County land use code. The use of CVR1 to enable high-density housing without going through any form of area or resort planning undermines the intent of County land use code.
- h) The condominium units are being sold as “residences,” a use not allowed in CVR1 zone.
- i) The condominium units are being sold as though nightly rentals are the norm, but nightly rentals are specifically excluded in CVR1. <sup>ii</sup>
- j) Granting this application is contradictory to actions taken in the past by the OVPC and sets precedents for other high-rise development in any of the other commercial zones in the Ogden Valley. Previous planning commissions have considered the overall “visual impacts” and the “heights” of planned structures very seriously. In the past, applicants have been directed to specifically show why exemptions from the visual impact and height requirements should be made if their buildings exceed the parameters in the zoning ordinances.

For example, before the commission granted a permit for the Wolf Creek Sewer building, which is 39 feet high, only 4 feet higher than the limit, the OVPC required that the applicant supply specific data documenting why the exemption to the height limit should be granted. (Ogden Valley Planning Commission; July 25, 2006; CUP #19-2006). Only after data was presented that the height was an engineering necessity to house the waste processing equipment inside and a desirable roof design would the commission approve the height.

Another example, also from 2006, was a request to rezone land to CVR1. The OVPC approved the rezone, but with this restriction included in the motion to approve: *“with the stipulation that there not be any expectation that a Conditional Use Permit would be issued to adjust the height of the Condo\Hotel”*. [Zoning Petition ZP#09-2006].

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<sup>i</sup> The CUP requests, as a conditional use, a lockout room attached to every dwelling unit. This conditional use essentially doubles the effective density of the project with respect to the detrimental effects of traffic and congestion caused by lockout rooms during peak seasons. In the 2006 Recreation Element addition to the General Plan, the threat of excessive density was acknowledged and various strategies were proposed to avoid “killing the golden goose” by reducing overall density. LUC Sec. 108-7-25 is intended to mitigate the detrimental impact of lockout rooms by restricting them to a minimum three-day rental in CVR1 zone. However, the county has proved unable to enforce and control effective density in lockout units; indeed, the applicant is currently representing to potential buyers that (illegal) nightly rentals are permitted in the structure (“...nightly/vacation rentals are allowed...” The detrimental density effect of lockout rooms cannot be mitigated.

<sup>ii</sup> *The rental of a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than three days is considered a nightly rental. Nightly rentals are allowed only when listed as either a permitted or conditional use in a specific zone or when approved as part of a planned residential unit development (PRUD).* [LUC Sec. 108-7-25.]

## Exhibit E- Public Comment

**Kippen,Ronda**

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**From:** Jody Smith [jodybobandjj@gmail.com]  
**Sent:** Tuesday, December 23, 2014 3:48 PM  
**To:** Kippen,Ronda  
**Subject:** Conditional use application - Nordic

Hi Rhonda,

We are in complete agreement with the letter from Kim Wheatley/GEM on the conditional use application for Nordic Valley. We would like to add our names to the letter and our voices to the opposition of the scope of this project.

Thanks,

Bob and Jody Smith  
4263 E. 3450 N.  
Eden, UT 84310