



# Staff Report to the Weber County Commission

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on an appeal from the Ogden Valley Planning Commission’s decision regarding CUP 2011-07 for a Digis wireless internet transmission site located on top of the water storage tank within The Legends at Hawkins Creek

**Agenda Date:** Tuesday, January 29, 2013

**Applicant:** Brett LaSorella, Manager for HC20 LLC

**File Number:** CUP 2011-07

### Property Information

**Approximate Address:** The Legends at Hawkins Creek water storage tank

**Project Area:** 18 acres

**Zoning:** Forest Valley 3 Zone (FV-3)

**Existing Land Use:** Common Area “E” within the Legends at Hawkins Creek

**Proposed Land Use:** Digis wireless internet transmission site

**Parcel ID:** 20-102-0043

**Township, Range, Section:** T6N, R1E, Section 24

### Adjacent Land Use

<b>North:</b>	Residential	<b>South:</b>	Common Area
<b>East:</b>	Residential	<b>West:</b>	Common Area

### Staff Information

**Report Presenter:** Sean Wilkinson  
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**Report Reviewer:** RS

## Applicable Ordinances

- Weber County Zoning Ordinance Chapter 8 (Forest Zones F-5, F-10, and F-40)
- Weber County Zoning Ordinance Chapter 22-C (Conditional Uses)

## Background

In November 2011, Digis applied for a building permit for an “electrical upgrade” at an approximate address within The Legends at Hawkins Creek, a subdivision in the Ogden Valley. The Weber County Building Inspection Division inspected the site and upon finding the transmission tower and equipment already in place, informed the contractor that Digis would need to obtain the necessary Planning Commission approvals before the new electrical upgrade could be approved. Digis contacted the Planning Division to discuss the requirements and submitted a Conditional Use Permit (CUP) Application, signed by the managing member of the Legends at Hawkins Creek Home Owners Association, on November 29, 2011. The application was for a 56 square foot wireless internet transmission site located on top of the subdivision’s water storage tank, consisting of a steel frame (weighed down by cinder blocks), four 10-foot tall antennas, two transmission dishes, a control cabinet, and an electrical hookup. All of the equipment was in place prior to submittal of the CUP application. As part of its submittal, Digis also provided a lease agreement with the Legends at Hawkins Creek Home Owners Association (HOA) and statements indicating that the transmission site complied with zoning requirements and produced no detrimental effects on the surrounding community.

The transmission site is located within an FV-3 Zone which allows a “public utility substation” as a conditional use (this transmission site is in the same category as a cellular tower). Digis selected this location because it is high above the valley floor and provides adequate visual line of site, which is required for the wireless transmission to work properly. This site enables Digis to provide better wireless internet service to its customers in the Ogden Valley.

On January 3, 2012 the Ogden Valley Planning Commission unanimously approved CUP 2011-07 for a wireless internet transmission site located on top of the water storage tank within The Legends at Hawkins Creek, subject to “the stipulations

as outlined in the staff report.” These “stipulations” refer to staff’s recommendations that the white transmission dishes be painted camouflage, and that dead landscaping around the water tank be replaced by the end of July 2012. On January 5, 2012 a written Notice of Decision was sent by e-mail to Dennis Watt, an agent for Digis, informing him of the Planning Commission’s decision and the two conditions of approval. The e-mail also informed Mr. Watt that the Planning Division had received a phone call from Brett LaSorella, manager of HC20 LLC, and the owner of Lot 20 with concerns that the transmission site might block the view from a home that would be built on Lot 20 in the future. A formal appeal of the Planning Commission’s decision was filed by HC20 LLC on January 19, 2012 (See Exhibit A). Finally, on January 24, 2012 the Planning Division issued the Conditional Use Permit for Digis to begin operating the transmission site, however, the permit stated “Weber County in no way guarantees approval of access to the site or the location of electric transmission lines for this site.” Digis informed the Planning Division that it would not sign the CUP or operate the transmission site until the appeal was resolved. The CUP remains unsigned and it is the Planning Division’s understanding that the transmission site has never been placed in service.

The appeal hearing was first scheduled to take place in April 2012, but Mr. LaSorella and Digis requested the hearing be postponed in an effort to resolve the issues without the need for the appeal hearing. This happened on several occasions throughout 2012 with the last extension coming in November 2012. At that time, the Planning Division sent notice to both parties that the appeal would be heard by the County Commission in January 2013 because it had been a year since the Planning Commission’s approval.

### **Appeal Information**

Chapter 22C of the Weber County Zoning Ordinance allows for the decision of the Planning Commission to be appealed to the County Commission within 15 days after the written decision of the Planning Commission. As mentioned previously, HC20 LLC filed an appeal within the 15-day period and provided additional information on January 15, 2013 (See Exhibits A and B). HC20 LLC, as the appellant, has the burden of proving that the Planning Commission erred in its decision to approve the CUP.

After reviewing HC20 LLC’s appeal information, the Planning Division has provided the following summary and responses to the information provided. The Planning Division response follows each summarized appeal statement. Please review Exhibits A and B for the complete appeal information.

1. HC20 LLC did not receive notice of the January 3, 2012 Ogden Valley Planning Commission meeting until January 4, 2012.

**Staff Response:** Although this is peripheral information and does not directly relate to the Planning Commission’s decision which is being appealed, it is important to understand that the proper notice procedures were followed. The notice was mailed on December 28, 2011, approximately one week prior to the meeting date. The same notice procedure that the Planning Division follows for all CUP’s was followed for this application as well. It is unfortunate that HC20 LLC did not receive its notice prior to the meeting, but the Planning Division has no control once the notice is mailed.

2. The CUP failed to comply with Chapter 26 Section 4 of the Weber County Zoning Ordinance which requires each “public utility substation” to be located on a lot with adequate access from a street, alley, right-of-way, or easement.”

**Staff Response:** While it is true that the staff report did not specifically mention access to the transmission site, the Planning Division relied on the representation from Digis and the Legends at Hawkins Creek HOA that access was approved in the Lease Agreement, prior to recommending approval of the CUP. Digis represented that access to the transmission site was on the 15 foot waterline easement that runs through Lot 20 to the water tank, and this access was used when staff was given a tour of the transmission site by Digis. The Planning Division’s recommendation of approval, which the Ogden Valley Planning Commission accepted, was based on these representations and the language in Section 6 of the Lease Agreement. This section clearly states that an easement for ingress, egress, access, and passage to the transmission site was granted. Therefore, there is adequate access as required by Chapter 26 Section 4 of the Weber County Zoning Ordinance. Even if the access is located elsewhere in The Legends at Hawkins Creek, other than on Lot 20, an easement for access has been granted by the HOA, which is sufficient to satisfy the requirements of Chapter 26 Section 4. The Planning Commission does not have the responsibility or even the ability in

this case to determine the legitimacy of the easement granted in the lease agreement. If private litigation determines that the access on Lot 20 is not allowed, Digis will have to work with the HOA to find a different access easement.

3. The CUP failed to comply with Chapter 22C Section 4 of the Weber County Zoning Ordinance because there are significant detrimental effects on Lot 20 caused by unauthorized use of HC20 LLC's property in conjunction with the Digis transmission site.

**Staff Response:** The Planning Commission considered potential detrimental impacts caused by the transmission site and recommended that the transmission dishes be painted camouflage and new landscaping be installed around the water tank. Claims of trespass or private property damage associated with the electrical transmission line are not applicable for the Planning Commission to consider. As mentioned previously, if private litigation determines that the electrical transmission line that runs through Lot 20 is not allowed, Digis will have to work with the HOA to find a different location for the transmission line.

4. The Planning Commission's conditions of approval have not been met and the CUP should have been revoked.

**Staff Response:** This issue is separate from and does not apply to the Planning Commission decision being appealed, however, the following explanation is provided for information only: Chapter 22C Section 5 of the Weber County Zoning Ordinance states that the Planning Commission may revoke a CUP approval upon failure to comply the CUP. Digis has not signed the CUP and has not initiated use of the transmission site. While the Planning Commission's approval had time limits for completion which have not been met, Digis has been working with HC20 LLC to negotiate an agreement that would allow for this issue to be resolved. Based on the County Commission's decision regarding this appeal, Digis will be required to return to the Planning Commission to update the conditions of approval.

5. The Lease Agreement between Digis and The Legends at Hawkins Creek HOA did not grant access over HC20 LLC's property.

**Staff Response:** The Planning Division relied on representation from Digis and the Legends at Hawkins Creek HOA that access was approved in the Lease Agreement, prior to recommending approval of the CUP. Digis represented that access to the transmission site was on the 15 foot waterline easement that runs through Lot 20 to the water tank, and this access was used when staff was given a tour of the transmission site by Digis. The Planning Division's recommendation of approval, which the Ogden Valley Planning Commission accepted, was based on these representations and the language in Section 6 of the Lease Agreement. This section clearly states that an easement for ingress, egress, access, and passage to the transmission site was granted. The Planning Commission does not have the responsibility or even the ability in this case to determine the legitimacy of the easement granted in the lease agreement. If private litigation determines that the access on Lot 20 is not allowed, Digis will have to work with the HOA to find a different access easement.

6. The transmission site is located on land designated as Common Area, and The Legends at Hawkins Creek HOA Declaration bars commercial use of common areas.

**Staff Response:** The Planning Commission cannot enforce or interpret the CCR's to determine whether or not the use should be allowed. The transmission site is located on a parcel of land designated as "Common Area E", but Digis and the HOA have represented that the transmission site is allowed on this site. Again, if private litigation determines that the use is not allowed, Digis will have to work with the HOA to find a different location.

## Summary of County Commission Considerations

Chapter 22C states "In considering the appeals, the County Commission may uphold or reverse the decision of the Planning Commission and impose any additional conditions that it may deem necessary in granting an appeal. The decision of the County Commission is final." The County Commission should determine if the Planning Commission correctly applied the Zoning Ordinance criteria in making its decision. In making this decision, the Planning Division recommends that only items 2 and 3 above be considered as part of this appeal because they relate directly to the Zoning Ordinance criteria, which the Planning Commission used to make its decision. Items 1, 4, 5, and 6 do not relate to the criteria and are outside of the Planning Commission's consideration.

The following options are available for the County Commission's consideration:

- **Reverse the Planning Commission decision and deny the use as requested by HC20 LLC:** If the County Commission finds that the Planning Commission decision was incorrect and the use does not meet the applicable Zoning Ordinance criteria, then the HC20 LLC appeal should be granted. The CUP would be denied.
- **Uphold the Planning Commission decision and deny the appeal:** If the County Commission finds that the Planning Commission correctly applied the Zoning Ordinance criteria in making its decision, then the appeal should be denied. The Planning Commission's decision will stand as the County's final decision. Digis will then be required to go back to the Planning Commission to update the conditions of approval.

## Exhibits

- A. HC20 LLC's January 19, 2012 Appeal
- B. HC20 LLC's January 15, 2013 Supplemental Appeal Information
- C. Staff Report and Exhibits from January 3, 2012
- D. Ogden Valley Planning Commission Minutes from January 3, 2012
- E. Lease Agreement (Digis and The Legends at Hawkins Creek HOA)
- F. Planning Commission Notice of Decision
- G. Conditional Use Permit (Issued January 24, 2012)