

MEMORANDUM

To: Western Weber Planning Commission
From: Charles Ewert, AICP
Date: November 4, 2020
Subject: Text Amendment for Substandard Streets/Roads

In the July 14, 2020 Western Weber Planning Commission meeting you held a public hearing regarding a text amendment regarding two subjects within the County's subdivision ordinance: storm water drainage easements and facilities, and substandard roads. In an effort to be efficient, staff combined the two unrelated subjects into one proposal.

In that meeting you tabled the proposed language pending further refinement of the drainage topic. Since then it has been determined that the best way to generate the accurate code language for the topic is to convene a small working committee to flesh out the details and vet final language. The challenge since that time has been aligning committee member's individual schedules in order to meet.

While I do anticipate that this committee will meet in the near future, I know the County Commission wanted the substandard road topic fast-tracked, and the drainage topic is delaying their ability to consider it.

Thus, in the attached ordinance proposal I have separated the topics by only including the substandard road amendment in order that they may run their own courses and timelines. I have also included the July 14, 2020 staff report to help refresh your recollection of the issues.

Feel free to reach out to me if you have any questions.



SECTION 1:**AMENDMENT** “Sec 106-4-1 General Requirements” of the Weber County County Code is hereby *amended* as follows:

A M E N D M E N T

Sec 106-4-1 General Requirements

- (a) The owner of any land to be platted as a subdivision shall, before recording the final plat, either install all improvements required by this chapter or provide a financial guarantee for the completion of the improvements as allowed by section 106-4-3.
- (b) All improvements shall comply with the specifications and standards contained in the county's current "Public Work Standards and Technical Specifications."
- (c) All improvements shall be installed prior to issuance of any land use permit within a newly approved subdivision. The only improvements that may not be required prior to construction of a dwelling are the asphalt, chip and seal, landscaping, street monuments, secondary water (if not in the right-of-way), and curb, gutter, and sidewalk.
- (d) All public and private utilities within the road right-of-way shall be installed prior to the road being asphalted. Cuts within one year of asphalt placement on a new road will require a special permit and include requirements for special backfill and asphalt replacement.
- (e) The applicant shall sign a survey monumentation improvement agreement and pay applicable fees associated prior to the county surveyor signing the final subdivision plat Mylar.
- (f) Upon completion of the construction of roads and utility lines, the developer's engineer shall prepare and submit as-built plans for all improvements for the approval of the county engineer. As-built plans shall include a digital plan (dwg format) and one set of reproducible Mylars prior to county acceptance for maintenance of roads.
- (g) Whenever the applicant develops a subdivision a phase at a time, such development shall be in an orderly manner and in such a way that the required improvements will be made available to the buyers of the lots. The applicant shall be responsible for coordinating the installation of utilities, streets, water lines, fire hydrants, and all other required improvements with the buyers of lots.
- (h) ~~New subdivisions with sole access from a~~ A new subdivision located along a street route that is at any point the single means of access from the subdivision to the greater interconnected public street network shall not be approved unless the entirety of the single-access street route is constructed to the County's public work standards and has the appropriate right-of-way width. ~~substandard street shall not be approved until the substandard street is fully improved to county public work standards and adopted right-of-way width.~~
 - (1) This requirement shall be waived if:
 - a. A traffic study, conducted by a qualified professional and funded by the applicant, demonstrates that the existing single-access street route is adequate and safe, or can be made adequate and safe with

- improvements volunteered by the applicant, for the increased traffic demand of the new subdivision; and
- b. The Planning Director and County Engineer can mutually make the following findings:
1. That due to topographic or other environmental characteristics of the area, it is unlikely that a another street route will be established that provides a second connection from the new subdivision to the greater interconnected public street network within the next 10 years; and
 2. That not providing the new subdivision with a single-access street route that complies with currently adopted standards, or that not providing the new subdivision with a second street route access to the greater interconnected public street network, does not conflict with an applicable general plan, small area plan, master streets plan, or similar adopted planning document.
- (2) In order for the provisions of (h)(1) to apply, owners having interest in the new subdivision shall execute a substandard road agreement and notice to new owners. The content of the substandard road agreement and notice shall be as specified by the county. At a minimum, it shall:
- a. Explain that the new subdivision has only a single street access connecting it to the greater interconnected public street network, and the single street access is not built to the minimum design and safety standards;
 - b. Require a deferral agreement that specifies that the owner or successors and heirs are responsible at a time the governing authority deems it necessary for their roughly proportionate share of improving the parts of the single-access street route that do not conform to County standards;
 - c. Cause for the governing authority, at their option, to withhold any written protest filed by the owner or their successors or heirs under the State Code's Assessment Area Act, Provisions For Local Districts, or any similar government revenue generation mechanism, from the final tally of collected protests, provided that the revenue generated by the mechanism is:
 1. limited to the actual estimated value, adjusted for market changes over time, of improving the substandard public street to the standards applicable at the time of the agreement's execution; and
 2. only applied to:
 - i. improving the substandard street to the standards applicable at the time of the agreement's execution;
 - ii. the larger cost of improving the street to an updated or better standard; or
 - iii. creating a second street route from the subdivision to the greater interconnected public street network; and

d. Be recorded to the property at the time of subdivision recordation or sooner.

(3) No precise mathematical calculation is required to determine the roughly proportionate share of improving the substandard single-access street route, as provided in Section 106-4-1(h)(2). However, an individualized determination shall be conducted for each lot. In determining what is roughly proportionate, the following guidelines apply:

a. The individualized determination is required to show that the established roughly proportionate share is related in both nature and extent to the impact of the developed lot.
b. For each lot, the following factors shall be considered to determine their relevance to the calculation:

1. The minimum lot width of the applicable zone;
2. The actual lot width;
3. The average daily distance travelled;
4. The uses on the lot, the weight of a typical vehicle related to those uses, and the average daily trips related to those uses;
5. The total number of actual daily trips over a given time;
6. The longevity of current ownership and longevity of existing development or uses as they relate to historical property taxes paid; and
7. Any other consideration deemed necessary relative to the lot's impact on the substandard street route.

c. A lot owner may provide the County with a third-party study, conducted by a qualified professional as defined in Section 101-2, to assist in determining the nature and extent of the impact of the lot on the substandard street, or to analyze the financial obligation of the lot owner, or both.

(Ord. of 1952, title 26, § 4-1; Ord. No. 3-82, 1-26-1982; Ord. No. 2012-2, § 1(26-4-1), 1-10-2012; Ord. No. 2017-27, Exh. B, 7-25-2017)

Editor's note—Ord. No. 2017-27, Exh. B, adopted July 25, 2017, amended the catchline of § 106-4-1 from "Owner of subdivision responsible for costs" to read as herein set out.



Staff Report to the Western Weber Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: A public hearing to consider and take action on a request amend Weber County Code to require PUE's to be as specified by the County Engineer and/or Land Use Authority and to enable development along substandard streets under specific conditions.

Agenda Date: Tuesday, ~~May 12, 2020~~ July 14, 2020

Staff Report Date: Tuesday, May 5, 2020

Applicant: Weber County

File Number: ZTA 2020-04

Staff Information

Report Presenter: Charlie Ewert
cewert@co.weber.ut.us
(801) 399-8763

Report Reviewer: RG

Applicable Ordinances

§ Sec 106-2-4 Lots
§ Sec 106-4-1 General Requirements

Legislative Decisions

Decision on this item is a legislative action. When the Planning Commission is acting on a legislative item it is acting as a recommending body to the County Commission. Legislative decisions have wide discretion. Examples of legislative actions are general plan, zoning map, and land use code amendments. Typically, the criterion for providing a recommendation on a legislative matter suggests a review for compatibility with the general plan and existing ordinances.

Summary and Background

Recent development in a cluster subdivision in Western Weber County has brought to our attention that requiring a ten foot public utility easement on every side lot line does not support the reduced sideyard setback of the cluster code. Further, we have found that a number of subdivision plat designers will place ten foot public utility easements along every lot line as their standard mode of operation. These arbitrary and unused easements often lead to problems for resulting landowners who cannot utilize the area in the easement. The attached proposal allows flexible public utility easement widths along with affirmative consent from the County Engineer or Land Use Authority (who is the planning commissions on all subdivisions except small subdivisions) for their placement.

Policy Analysis

The proposed ordinance draft is attached as Exhibits A and B. The following is an analysis of the proposal based on the existing general plan.

General plan. Neither the Ogden Valley General Plan nor the West Central Weber General Plan address public utility easements or substandard streets in the context of this proposal. It can be determined, however, that the proposal will have a positive effect on both plans, since both plans strongly advocate for clustering development onto smaller lots, and an easement on every lot line causes unnecessary hardship on the use of the land. The effect of allowing development to continue along a substandard street, provided a traffic engineer deems it safe, will decrease street impacts and stormwater runoff. Requiring a substandard road agreement will assist the county to obtain a standard street at some point in the future.

Ordinance. Requiring that the County maintain control over what and where public utility easements are required is necessary because, through plat dedication, the County becomes the owner of those easements. The majority of

the time, public utility entities want to locate only across the front of the lot. Side and rear easement may be necessary on a case by case basis given the uniqueness of specific subdivisions and the specific utility, but to enable a surveyor or engineer to arbitrarily place them in an arbitrary or impracticable location on a subdivision plat leads to the county inheriting a host unnecessary private land encumbrances.

Recommending additional development to occur on a substandard dead-end street is atypical in more urban environments. However, there are a number of long substandard dead-end streets in rural areas that exist today as an evolutionary effect of age-old wagon trails, and not as a deliberate and intentional result of new street construction. Thus the public street right of way construction standards have never been applied to many unincorporated streets, and rather, the county has only provided operations, maintenance, and occasional safety improvements. The current ordinance does not allow development along a substandard public street. The proposal will allow development to occur provided traffic safety and road capacity is not reduced to unacceptable levels. It also builds-in a method by which the County can ensure the street is brought to standard over time without significant cost to the general public.

Past Action on this Item

The Western Weber Planning Commission considered this item and offered staff direction in their April 14, 2020 work session.

The Ogden Valley Planning Commission considered this item and offered staff direction in their April 7, 2020 work session.

Noticing Compliance

A hearing for this item before the Planning Commission has been posted for public notice in compliance with UCA §17-27a-205 and UCA §17-27a-502 in the following manners:

- Posted on the County's Official Website
- Posted on the Utah Public Notice Website
- Published in a local newspaper

Staff Recommendation

Staff recommends that the Planning Commission offer a positive recommendation to the County Commission for file ZTA 2020-04, a proposal to require PUE's to be as specified by the County Engineer and to enable development along substandard streets under specific conditions.

This comes with the following findings:

1. That the proposal does not have negative effect on the general plans.
2. The proposal will not place unnecessary burden for offsite street improvements on any single land developer.
3. The proposal will ensure thoughtful and deliberate acquisition of public utility easements in a manner less impactful to land owners.
4. That the proposal is in the best interest of the health, safety, and welfare of the public.

Exhibits

- A. Proposed Ordinance Changes – Track Change Copy.
- B. Proposed Ordinance Changes – Clean Copy.

Revised July 10, 2020

1 **Title 106 Subdivisions**

2 ...

3 **Chapter 106-2 Subdivision Standards**

4 ...

5 **Sec 106-2-4 Lots**

6 ...

7 (i) *Easements*. Lots shall have a ten-foot public utility easement abutting the public street right-
8 of-way and spanning the lot width, except that this easement is not required in zones that
9 allow ~~no a zero~~ front setback. Other public utility easements shall ~~only~~ be provided ~~whereif,~~
10 ~~and only if,~~ authorized ~~or required~~ by the County Engineer ~~or Land Use Authority, who shall~~
11 ~~specify the easement's location and width, with a minimum width no less than five feet. If the~~
12 ~~applicant cannot demonstrate that surface water runoff onto adjacent lots or parcels will not~~
13 ~~exceed historic runoff rates, the land use authority may require that a land drain easement be~~
14 ~~provided by the applicant. The land drain shall be installed as a part of the subdivision~~
15 ~~improvements. easements for drainage through the subdivision and adjoining property be~~
16 ~~provided by the applicant. Easements for water, sewer, drainage, power lines and other~~
17 ~~utilities shall be provided where required, and at a width specified, by the County Engineer,~~
18 ~~but never a width less than five feet. Where a subdivision is adjacent to a parcel with an~~
19 ~~agricultural use, and the agricultural use is at a lower elevation than the subdivision, a~~
20 ~~perimeter land drain easement shall be provided and a land drain shall be installed as part of~~
21 ~~the subdivision improvements in a manner that protects the agricultural use from surface water~~
22 ~~infiltration.~~

Commented [CE31]: New language

23

24 ...

25

26 **Sec 106-4-1 General Requirements**

27 ...

28 (h) New subdivisions with sole access from a terminal substandard public street ~~system, whether~~
29 ~~directly connected or connected via streets that meet county standard,~~ shall not be approved
30 until the substandard street is fully improved to county public work standards and adopted
31 right-of-way width.

32 (1) This requirement shall be waived if a traffic study, conducted by a qualified professional,
33 demonstrates that the existing substandard public street ~~system~~ from which the new
34 subdivision will gain access is adequate ~~and safe, or can be made adequate and safe with~~
35 ~~improvements from the applicant,~~ for the increased traffic demand of the new subdivision,
36 and if the Planning Director and County Engineer can mutually make the following
37 findings:

38 (4)a. That due to topographic or other environmental characteristics of the area, it is
39 unlikely that the terminal substandard street system will make a second connection to
40 the public street network within the next 10 years; ~~and~~

Revised July 10, 2020

41 ~~(2)~~b. That not providing a secondary connection to the public street network does not
42 conflict with a general plan, small area plan, master streets plan, or similar adopted
43 planning document; ~~and~~.

44 (2) In order for the provisions of (h)(1) to apply, owners having interest in the proposed
45 subdivision ~~have executed~~shall execute a ~~deferral~~substandard road agreement and notice
46 to new owners. The content of the substandard road agreement and notice shall be as
47 specified by the county. At a minimum, it shall:

48 a. require a deferral agreement that specifies that the owner or their successors and heirs
49 are responsible for their roughly proportionate share of improving the substandard
50 public street system at a time the county deems it necessary; ~~and~~

51 b. cause for the governing authority, at their option, to withhold any written protest filed
52 by the owner under the State Code's Assessment Area Act, provisions for local
53 districts, or any similar government revenue generation mechanism, from the final tally
54 of collected protests. bind the owners and their successors and heirs to not file a
55 written protest as otherwise allowed in State Code under the creation of a special
56 assessment area, special improvement district~~Assessment Area Act, the provisions~~
57 ~~for local districts, or any similar government revenue generation mechanism, intended~~
58 ~~to improve the terminal fund improvements to the substandard public street system.~~
59 ~~This requirement applies regardless of whether the terminal substandard public street~~
60 ~~later makes a second connection to the public street network. The revenue generated~~
61 by the mechanism shall be:

62 1. limited to the actual value, adjusted for market changes over time, of improving the
63 substandard public street to the standards applicable at the time of the
64 agreement's execution; and

65 2. only reinvested into improving the substandard street to the standards applicable
66 at the time of the agreement's execution, or applied to the total cost of improving
67 the street to an updated or better standard; and

68 c. be recorded to the property at the time of subdivision recordation, or sooner.

69 (3) No precise mathematical calculation is required to determine the roughly proportionate
70 share of improving the substandard public street, as provided in Section 106-4-1(h)(2).
71 However, an individualized determination shall be conducted for each lot. In determining
72 what is roughly proportionate, the following guidelines apply:

73 a. The individualized determination is required to show that the established roughly
74 proportionate share is related in both nature and extent to the impact of the developed
75 lot.

76 b. For each lot, the following factors shall be considered to determine their relevance to
77 the calculation: the minimum lot width of the applicable zone, the actual lot width,
78 average daily distance travelled, number of actual trips, the uses on the lot, average
79 daily trips related to those uses, weight of a typical vehicle related to those uses,
80 longevity of current ownership and longevity of existing development or uses as they

Commented [CE22]: Ogden Valley forwarded a positive recommendation for this text amendment, but asked the County Commission to pay particular attention to the way this paragraph was written, as it didn't sit comfortably with a number of them, but the majority were not ready to say it isn't needed.

I have rewritten this paragraph after their discussion to try to mitigate some of the discomfort. It is now reads less heavy handed in terms of a landowner's ability to file a protest, gives the governing authority more leniency, and limits the governing authority's scope on what can be assessed in one of these taxing areas and on what the additional tax can be spent. Hopefully this mitigates concerns that this provision can lead to the runaway government effect.

Commented [CE23]: New section desired by the Ogden Valley Planning Commission to help quantify what roughly proportionate means. "rough proportionality" has been tested through several court cases. There is no set method to calculate, but the governing authority needs to make the case that through individual development evaluations their determination of roughly proportionate needs to be related both in nature and extend to the impact of the existence of the development.

Revised July 10, 2020

- 81 [relate to historical taxes paid, and any other consideration deemed necessary relative](#)
82 [to the lot's impact on the substandard street.](#)
- 83 [c. A lot owner may provide the county with a third-party study, conducted by a qualified](#)
84 [professional as defined in Section 101-1-7, to assist in determining the nature and](#)
85 [extent of the impact of the lot on the substandard street, or to analyze the financial](#)
86 [obligation of the lot owner, or both.](#)

Revised July 10, 2020

1 **Title 106 Subdivisions**

2 ...

3 **Chapter 106-2 Subdivision Standards**

4 ...

5 **Sec 106-2-4 Lots**

6 ...

7 (i) *Easements.* Lots shall have a ten-foot public utility easement abutting the public street right-
8 of-way and spanning the lot width, except that this easement is not required in zones that
9 allow a zero front setback. Other public utility easements shall be provided if, and only if,
10 authorized or required by the County Engineer or Land Use Authority, who shall specify the
11 easement's location and width, with a minimum width no less than five feet. If the applicant
12 cannot demonstrate that surface water runoff onto adjacent lots or parcels will not exceed
13 historic runoff rates, the land use authority may require that a land drain easement be provided
14 by the applicant. The land drain shall be installed as a part of the subdivision improvements.
15 Where a subdivision is adjacent to a parcel with an agricultural use, and the agricultural use
16 is at a lower elevation than the subdivision, a perimeter land drain easement shall be provided
17 and a land drain shall be installed as part of the subdivision improvements in a manner that
18 protects the agricultural use from surface water infiltration.

19 ...

20 ...

21 **Sec 106-4-1 General Requirements**

22 ...

23 (h) New subdivisions with sole access from a terminal substandard public street, whether directly
24 connected or connected via streets that meet county standard, shall not be approved until the
25 substandard street is fully improved to county public work standards and adopted right-of-way
26 width.

27 (1) This requirement shall be waived if a traffic study, conducted by a qualified professional,
28 demonstrates that the existing substandard public street from which the new subdivision
29 will gain access is adequate and safe, or can be made adequate and safe with
30 improvements from the applicant, for the increased traffic demand of the new subdivision,
31 and if the Planning Director and County Engineer can mutually make the following
32 findings:

33 a. That due to topographic or other environmental characteristics of the area, it is unlikely
34 that the terminal substandard street system will make a second connection to the
35 public street network within the next 10 years; and

36 b. That not providing a secondary connection to the public street network does not
37 conflict with a general plan, small area plan, master streets plan, or similar adopted
38 planning document.

39 (2) In order for the provisions of (h)(1) to apply, owners having interest in the proposed
40 subdivision shall execute a substandard road agreement and notice to new owners. The
41 content of the substandard road agreement and notice shall be as specified by the county.
42 At a minimum, it shall:

Revised July 10, 2020

- 43 a. require a deferral agreement that specifies that the owner or their successors and heirs
44 are responsible for their roughly proportionate share of improving the substandard
45 public street system at a time the county deems it necessary;
- 46 b. cause for the governing authority, at their option, to withhold any written protest filed
47 by the owner under the State Code's Assessment Area Act, provisions for local
48 districts, or any similar government revenue generation mechanism, from the final tally
49 of collected protests. . The revenue generated by the mechanism shall be:
- 50 1. limited to the actual value, adjusted for market changes over time, of improving the
51 substandard public street to the standards applicable at the time of the
52 agreement's execution; and
- 53 2. only reinvested into improving the substandard street to the standards applicable
54 at the time of the agreement's execution, or applied to the total cost of improving
55 the street to an updated or better standard; and
- 56 c. be recorded to the property at the time of subdivision recordation, or sooner.
- 57 (3) No precise mathematical calculation is required to determine the roughly proportionate
58 share of improving the substandard public street, as provided in Section 106-4-1(h)(2).
59 However, an individualized determination shall be conducted for each lot. In determining
60 what is roughly proportionate, the following guidelines apply:
- 61 a. The individualized determination is required to show that the established roughly
62 proportionate share is related in both nature and extent to the impact of the developed
63 lot.
- 64 b. For each lot, the following factors shall be considered to determine their relevance to
65 the calculation: the minimum lot width of the applicable zone, the actual lot width,
66 average daily distance travelled, number of actual trips, the uses on the lot, average
67 daily trips related to those uses, weight of a typical vehicle related to those uses,
68 longevity of current ownership and longevity of existing development or uses as they
69 relate to historical taxes paid, and any other consideration deemed necessary relative
70 to the lot's impact on the substandard street.
- 71 c. A lot owner may provide the county with a third-party study, conducted by a qualified
72 professional as defined in Section 101-1-7, to assist in determining the nature and
73 extent of the impact of the lot on the substandard street, or to analyze the financial
74 obligation of the lot owner, or both.