



Weber County Commission Brief

Weber County Planning Division

Application Information

Application Request: Public hearing to discuss, take comment, and potentially take action on an county-initiated proposal to amend the subdivision ordinance to allow or require private streets in certain circumstances.

Agenda Date: Tuesday, May 25, 2021

Applicant: Weber County

Brief Author: Charlie Ewert (801) 399-8763 cewert@webercountyutah.gov

Applicable Ordinances

§ 106-2-2(a) – Street Dedication
§ 106-2-7 – Subdivision Dedication

Synopsis

The County Commission has put a lot of effort and thought into streets over the last year or two. An emerging theme in their considerations is the natural evolution of streets. From wagon trails a century+ ago to pavement today, it is clear the responsibility for street building is the result of new development, and should be the responsibility of those creating the new development.

When a large development is proposed, it can be easily determined that the effect of the development will significantly impact the need for street improvements, and therefore should be the responsibility of the developer. But for smaller developments, especially those on larger acreage, the demand for new street improvements is not as easily noticeable.

Compound this with the fact that large-subdivision developers have the benefit of economies of scale that a small-subdivision developer does not, determining what street improvements are fair to require of a small-subdivision developer can often be quite obscure, and begs the question: how many lots along a single access, or at what housing density, should a public street be required?

A small subdivision is more likely to be created with terminal streets because they lack the acreage necessary to connect to another street. The cost to operate and maintain dead-ends, stub-streets, and cul-de-sacs that don't provide any good to the general public at this time may be unnecessary. But if we do not require new public street segments to extend toward other public street segments as new development occurs, the public street network will never become interconnected.

In a rural community, this may not seem like a problem today, but the population is and will continue to grow, and development rights are plentiful in both the Ogden Valley and Western Weber. This means that there is an almost certain future in which both communities will cease to be rural. Planning for public street interconnectivity now, as development is proposed will provide for a future in which more aggressive and more expensive means of street connectivity retrofitting, like use of eminent domain or the tearing down of homes, is necessary.

Drawing from the historic evolution of wagon-trails to streets, the solution to these challenges might be to foster the creation of private accesses that will be reserved for possible public street designation as new development locates along it.

The attached ordinance proposal (Attachment A) offers one potential solution that is intended to resolve this multi-faceted problem. It attempts to balance the allowance for the creation of private streets in rural areas in the short-term with the probable demand for those streets to be open to public use in the long-term. It offers landowners another tool in the planning toolbox to create the development of their general

choosing, whilst also preserving opportunities for future public street connectivity by the conversion of private to public when population increases demand it.

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.

Planning Commission Recommendation

The Ogden Valley Planning Commission recommended approval of the proposed ordinance. After reviewing the proposal with the County’s legal department the version the planning commission reviewed has been modified slightly. The version they saw required a “conversion easement” running along the proposed private street and dedicated in favor of Weber County. This version now requires the fee of the land under the private street to be dedicated to the County, but reserves the use and improvement of the street to the adjoining land owners. This will be a much cleaner and more effective way to convert the private streets to public if the Commission chooses to do so in the future.

The Ogden Valley Planning Commission’s recommendation came with the following findings:

1. The current cost of disconnected streets is challenging for a small developer to afford, and the operations and maintenance costs with little to no public benefit to the general public while it remains disconnected can be alleviated.
2. The proposal will reserve future opportunities for street connectivity.
3. The proposal is in the best interest of the public both in the short term and in the long term.
4. The proposal is not detrimental to the general plan.

The Western Weber Planning Commission recommended had a different opinion about private streets. They do not feel, given the likelihood of future development in the area, that private streets should ever be used and would rather maintain the current status quo of requiring public streets in all subdivisions. They did recommend approval of parts of the proposed ordinance, but requested that the private street section not be applied to the Western Weber Planning Area. The attached proposal has been updated to accommodate their recommendation.

The Western Weber Planning Commission’s recommendation came with the following findings:

1. The proposal is in the best interest of the public both in the short term and in the long term.
2. The proposal is not detrimental to the general plan.

Attachment

- A. Proposed Ordinance Amendment.

**WEBER COUNTY
ORDINANCE 2020-[TEMP] PRIVATE STREET ORDINANCE**

NOW THEREFORE, be it ordained by the Board of County Commissioners of the Weber County, in the State of Utah, as follows:

SECTION 1: **AMENDMENT** “Sec 106-2-2 Street And Alley Widths, Cul-De-Sacs, Easements” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-2-2 Street ~~And Alley Widths, Cul-De-Sacs, Easements~~Standards

SECTION 2: **AMENDMENT** “Sec 106-2-2(a) Street Dedication” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-2-2(a) ~~Street Dedication~~Streets Generally

- (a) **Public street requirement.** The standard method of ensuring ease of access, efficient mobility, reduced response time for first responders, effective emergency management, strong neighborhood relationships through interconnectivity, and a more equitable means of access to community opportunities, is by requiring public streets and public street connectivity at the time new development is proposed. As such, the default requirement for each subdivision lot is to provide lot frontage on a street dedicated to the County as a public right-of-way and thoroughfare.
- (1) **Public street dedication.** Each street in a subdivision shall be dedicated to the county as a public street, except when a private street is allowed or required as provided in this section.
- (2) **Standard street cross-sections.** All proposed public streets shall conform to the county street cross-section standards, unless explicitly specified otherwise.
- (b) **Private street option.** In the Ogden Valley Planning Area, the County, and in some cases the applicant, may find benefit from a street being temporarily or permanently private. In those cases, the Land Use Authority may require or an applicant may volunteer a proposed street to be privately owned or privately operated and maintained. Development of or along a private street shall comply with the following:
- (1) **No entitlement.** An applicant is not entitled to make a street private. The Land Use Authority has full discretion, subject to the regulations herein, to allow or require a street to be private.
- (2) **Prohibition.** A private street shall not be allowed if:

- a. It creates a hardship for other landowners in the area to access and develop their land, or
 - b. A public street is needed in the location of the private street, as determined by the Land Use Authority.
- (3) ***Responsibility for construction.*** The applicant shall pay for and construct the private street.
- (4) ***Ownership.*** The final plat shall dedicate the land under the private street to the County for the purpose of future conversion to a public street at a time the governing body determines a public street is necessary, if ever.
- a. ***Street-parcel dedication waiver.*** The Land Use Authority may waive this requirement if development or further development on adjacent lots or parcels to which the street could be extended is extremely unlikely, or to which future public access offers very little public benefit, as determined by the Land Use Authority.
 - 1. ***No street-block waiver.*** A street needed to satisfy the street-block requirements of Section 106-2-3 is not eligible for this waiver unless there is no way in which that street can be configured in the subdivision to support the creation of the street-block.
 - 2. ***Pathway in lieu waiver.*** In circumstances where current or future public access by vehicle is unwarranted, the Land Use Authority may grant a waiver and in lieu require the dedication and installation of a 12-foot wide public easement and pathway or trail connection. The minimum pathway or trail design shall provide for either a 10-foot wide hard-surface pathway with a maximum average grade of 10 percent, or a single-track dirt trail with a maximum average grade of 18 percent.
 - 3. ***Waiver requires joint ownership.*** If a waiver is granted, the street parcel shall be held in joint ownership of the owners of all lots that gain access from it.
 - b. ***Street-parcel configuration.*** The parcel being dedicated to the county shall be the length of the private street and extend to adjacent developable land or another street regardless of whether the private street infrastructure does. The parcel shall be the same width required for a public street right-of-way, and be configured at a grade that will not create an unreasonable burden for future street-building and connectivity given typical grading and construction methods.
 - c. ***Transfer of street-parcel.*** If adjacent parcels to which the private street could connect reach full build-out or otherwise change in a manner that renders a future public street connection extremely unlikely, or if future public access to those parcels offers very little public benefit, the county, at its sole option, may transfer the land, in accordance with all legal requirements, to the joint ownership of the owners of all lots that gain access from it.

- (5) **Operation, maintenance, and use.** Except after the county assumes responsibility for the street, if ever, the operations and maintenance of the installed private street improvements shall be the sole responsibility of the owners of each lot gaining access from the private street. The Land Use Authority may allow these owners to restrict access to the street by the general public, except county officials conducting official county business on a county-owned street-parcel.
- (6) **Building setback standards.** The minimum building setbacks shall be measured from the boundary of the county-owned street-parcel.
- (7) **Private street required.** Unless the County Engineer or the Land Use Authority authorizes otherwise based on the public benefit outweighing the long term operations and maintenance expense, a public street is not allowed in the following circumstances:
- a. **Permanent terminal street.** A non-temporary terminal street;
 - b. **Geologic hazards.** A street that traverses a geologic hazards study area shall be a private street, unless the hazards study, as required by Chapter 108-22, provides compelling evidence that demonstrates the hazard risk to a public street is low.
- (8) **Construction standards.** Unless otherwise required by the local Fire Authority or County Engineer, a private street shall be constructed to public street standards.
- (9) **Plat notes.** On the final plat, the county-owned street-parcel, where applicable, shall be labeled as “Privately operated and maintained street. See note [enter note number here].” The note shall read as follows: “Use of a street labeled as "Privately operated and maintained street" is reserved for the exclusive and private use of the adjoining lot owners until and unless the governing body assumes public responsibility for the street.”
- (10) **Recording requirements.** At the time of final plat recording, the applicant shall record a covenant to run with the land that provides that:
- a. **The owners of all lots that gain access from the private street are solely and equally responsible for operations and maintenance of the street.**
 - b. **If applicable, that by purchasing a lot that gains access from a private street, the owner acknowledges that the street-parcel is owned in fee by the governing body for possible future public street purposes, but that the governing body assumes no responsibility or liability for the street or for the uses thereof or thereon until and unless, if applicable, the governing body assumes responsibility for it.**
 - c. **The owner is responsible for disclosing the nature of the street to prospective purchasers, renters, or lessees.**
 - d. **The landowner of record or authorized representative agree to pay a proportionate amount of the costs associated with improving or restoring the street to operational public street standards at the time the governing body assumes responsibility for it; and agrees to not protest the creation of a special assessment area or other similar revenue**

generating mechanism the governing body deems necessary to bring the private street to operational public street standards.

~~Streets in year round subdivisions shall be dedicated to the county as public streets except that private streets improved to county public street standards may be permitted in a condominium development. Mountain land subdivisions in high mountain areas of the county for seasonal recreation and summer homes shall have private streets built to county private street standards for such subdivisions except that the county may require public dedication for major or loop road access purposes.~~

SECTION 3: AMENDMENT “Sec 106-7-1 Subdivision Dedication” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-7-1 Subdivision Dedication

Each subdivision plat shall provide dedication language that clearly explains what the dedication is, to what public entity it is being dedicated, and for what purpose the dedication is intended. The actual dedication language may vary for each plat based on the circumstances of the subject property, but the following ample language, or language substantially similar, shall be used, to the extent applicable. The terms in brackets indicate a verbiage choice that shall reflect the actual circumstances of the subject property.

“We the undersigned owners of the herein described tract of land, do hereby set apart and subdivide the same into lots and streets as shown hereon and name said tract [name of subdivision].”

“We hereby dedicate, grant and convey to the governing body all those parts or portions of said tract of land designated as”

For public streets. “[public streets, the same to be used as public thoroughfares].”

Parcel for future public street. “[privately operated and maintained streets, the same to be held in fee by the governing body and reserved for future conversion to a public street at a time of the governing body’s choosing].”

For public trails. “[public trails, the same to be used by the public for nonmotorized transportation and recreation].”

For public parks. “[parks, the same to be used as public open space].”

“and do further dedicate, grant, and convey to Weber County, Utah, a perpetual right and easement over, upon, and under the lands designated herein as”

For public utility easements. “[public utility easements, the same to be used for the installation, maintenance, and operation of public utility service lines, storm drainage facilities, irrigation canals, or any other utility or street-related facility as authorized by the County].”

For public drainage easement. “[drainage easement, the same to be used for the perpetual preservation of water channels in their natural state].”

For perpetual open space easement. “[a perpetual open space right and easement on and over the common areas and open space areas to guarantee to Weber County that the common areas and open space areas remain open and undeveloped except for approved recreational, parking, and open space purposes].”

If applicable for private reservations. “Further, we reserve unto the subdivision [[lot] [unit] owners association, whose membership consists of the owners, their grantees, successors, or assigns of said tract of land] [lot owners individually, their grantees, successors, or assigns], all those parts or portions of said tract of land designated as.”

For private streets, rights of way, or common area. “[private streets] [private rights-of-way] to provide access to the individual lots and to be maintained by the [lot owners] [[lot] [unit] owners association], [common areas to be used for recreational and open space purposes] for the benefit of each [lot] [unit] owners association member in common with all others in the subdivision.]”

For private land drain easement. “[reserve unto all owners of lots upon which private land drains are constructed or which are otherwise dependent upon such land drains, an easement over such land drains for the purpose of perpetual maintenance and operation.]”

~~We the undersigned owners of the herein described tract of land, do hereby set apart and subdivide the same into lots and streets (private streets, private rights-of-way) as shown hereon and name said tract, and do hereby dedicate, grant and convey to Weber County, Utah, or its designee, all those parts or portions of said tract of land designated as parks the same to be used as public open space:(name of subdivision)[include as applicable]*Public streets and parks.* Dedicate to public use all those parts or portions of said tract of land designated as streets, the same to be used as public thoroughfares.*Private streets, access, rights-of-way.* Dedicate and reserve unto themselves, their heirs, their grantees and assigns, a right-of-way to be used in common with all others within said subdivision (and those adjoining subdivisions that may be subdivided by the undersigned owners, their successors, or assigns) on, over and across all those portions or parts of said tract of land designated on said plat as private streets (private rights-of-way) as access to the individual lots, to be maintained by a lot (unit) owners' association whose membership consists of said owners, their grantees, successors, or assigns.*Common open space.* Grant and convey to the subdivision lot (unit) owners association, all those parts or portions of said tract of land designated as common areas to be used for recreational and open space purposes for the benefit of each lot (unit) owners association member in common with all others in the subdivision and grant and dedicate to the county a perpetual open space right and easement on and over the common areas to guarantee to Weber County that the common areas remain open and undeveloped except for approved recreational, parking and open space purposes.*Public utility, drainage and canal maintenance easements.* Grant and dedicate a perpetual right and easement over, upon and under the lands designated hereof as public utility, stormwater detention ponds drainage easements and canal maintenance easement, the same to be used for the installation maintenance and operation of public utility service line, storm drainage facilities, irrigation canals or for the perpetual preservation of water channels in their natural state whichever is applicable as may be authorized by the governing authority, with no buildings or structures being erected within such easements.*Private land drain easements.* Grant and dedicate unto all owners of lots upon which private land drains are constructed or which are otherwise dependent upon such land drains, an easement over such land drains for the purpose of perpetual maintenance and operation.~~

(Ord. of 1956)

PASSED AND ADOPTED BY THE WEBER COUNTY BOARD OF COUNTY COMMISSIONERS _____.

	AYE	NAY	ABSENT	ABSTAIN
Gage Froerer	_____	_____	_____	_____
Jim "H" Harvey	_____	_____	_____	_____
Scott K. Jenkins	_____	_____	_____	_____

Presiding Officer

Attest

James H. Harvey, Board of Commissioners Chair, Weber County

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