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VIA EMAIL AND U.S. MAIL

Weber County Commission

Re: Appeal to Commission Regarding Actions Approving Amendments to the Edgewater Beach Resort Site Plan

Dear Commissioners:

The purpose of this letter is to appeal the actions of the Ogden Valley Township Planning Commission (“OVTPC”) and the Weber County Commission (“WCC”) in approving amendments to the Edgewater Beach Resort (the “Development”) site plan. The Development site plan, as amended, is not in conformity with the Ogden Valley General Plan (the “General Plan”). The Development site plan, as amended, improperly reduces the setbacks previously required for the Development, which setbacks were established after extensive review and with public comment. The Development site plan, as amended, was approved by the OVTPC and the WCC without giving adequate notice to adjacent property owner Marian Martin, and without affording Ms. Martin, and others of the public, the opportunity to comment on and object to the proposed amendments. The amendments at issue were recommended and approved during the OVTPC meetings on March 27, 2012, and March 26, 2013, and the WCC meetings on April 10, 2012 and May 21, 2013.

BACKGROUND:

Marian Martin owns a farm west of and adjacent to the proposed development site of the Edgewater Beach Resort. The farm lies on the southern border of Pineview Reservoir near the entrance to the Ogden Canyon. The Farm forms a significant part of the “entrance experience” of the Ogden Valley. In order to preserve the rural atmosphere and natural beauty of the property, Ms. Martin caused the farm to become subject to a conservation easement.

To ensure that the development of surrounding property is compatible with the conservation easement, and that any proposed development complies with the relevant

zoning ordinances and the General Plan, Ms. Martin has actively participated in OVTPC hearings for many years. Participation in such meetings has been complicated by the fact that Ms. Martin lives out of state. Nevertheless, upon receiving notice of any hearing that implicates her interests, Ms. Martin has, when possible, attended the hearings, and has, when attendance was not possible, written letters to be read in the meeting, particularly to address such recurring issues as the density of buildings and the size of the buffer zone between her farm and any buildings on the adjacent property.

Prior to March of 2012, the OVTPC and WCC had consistently concluded that there should be a buffer zone of 50-feet between the Development and Ms. Martin's property to the west, such buffer zone intended to create a transition between the farm and the Development. The number of buildings along the western edge of the Development was also kept at a minimum, with the previously approved site plan only containing two buildings on the side of the Development where the farm was located.

When the earlier version of what is now the Edgewater Beach Resort was approved in 2004, the Planning Commission and the County Commission required a 50-foot setback between Ms. Martin's farm and the Development. *See* OVTPC minutes, April 26, 2011, at 4. The OVTPC rejected an attempt to reduce these setbacks in April of 2011, even though the proposed changes to the site plan also included reduced overall building density. *Id.* at 6. Commissioner Graves stated that "[t]he whole intent along the west side was to have a transition," and that the 50-foot buffer "was put in there for a reason and they need to stick with that." *Id.*

These prior actions in maintaining the buffer zone and limited building density are consistent with the General Plan and zoning ordinances. The stated goals and objectives of the General Plan include "protect[ing] open space and sensitive lands," and "maintain[ing] the Valley's rural atmosphere and rural lifestyle." §§ 2.02, 2.03. The Valley's rural character is to be preserved by "discouraging development within . . . entry corridors, and areas with scenic/aesthetic values." General Plan, § 8.01. Development within the Valley's "open view corridors" and "entrance experiences" should not be "obtrusive or unduly compromise the Valley's aesthetics." General Plan, § 4.04. The General Plan identifies Pineview Reservoir as a view corridor, and U-39 as an entry corridor. *Id.* A setback of 100 feet is required for any building along an entry corridor, and for any development around the reservoir. *Id.* at §§ 4.04, 4.05.

Likewise, the CVR-1 zoning guidelines—which apply to the Edgewater Beach Resort—require that "even though the area is primarily commercial in nature, it should be compatible with the general surrounding natural environment." Weber County Code Ordinance 9C-1. In making land use decisions regarding such developments, the Planning Commission must ensure "that the natural environment is preserved to the greatest possible extent." *Id.*

Further, according to Weber County's Ordinance governing Planned Residential Unit Developments ("PRUD"), the county must ensure that "property adjacent to the PRUD shall not be adversely affected," and that "uses of least intensity or greatest compatibility be arranged around the boundaries of the project." 22-D-6(2).

Considering this background, it is surprising that the OVTPC recently switched course so dramatically to approve a site plan that is inconsistent with the relevant zoning ordinances, the General Plan, and prior committee decisions. In the OVTPC meeting on March 27, 2012, the committee considered a proposal to amend the site plan for the Edgewater Beach Resort. The minutes of the meeting indicate that OVTPC staff member Ben Hatfield characterized the proposed amendments as a "major change" to what was approved in the past. OVTPC minutes, March 27, 2012, at 1. The proposed amendments involved changes to the density of the Development, an increased number of buildings on the west end of the Development, and a reduced buffer zone with Ms. Martin's property. Although this hearing implicated Ms. Martin's interests in a significant way, she was not adequately notified of the meeting, or of the specific proposals at issue.

The Utah Code requires a county commission to give ten days prior notice by mail to each affected party when conducting certain types of public hearings, including those to adopt or modify a land use ordinance. See, e.g., Utah Code § 17-27a-204, 205. The Utah Code likewise requires notice be given to adjacent landowners where county ordinance requires such notice or when a subdivision is amended. Utah Code § 17-27a-206, 207. Weber County Subdivision Ordinance 1-6 requires notice to be mailed to adjacent landowners not less than seven days before the Planning Commission's hearing. The only notice Ms. Martin received of the March 27, 2012 meeting was a letter postmarked March 23, 2012. Thus, the letter was only sent out four days before the meeting occurred, rather than the required ten (or at a minimum seven) days. This letter was delivered to Ms. Martin in Montana, and was not received in time for Ms. Martin to submit a comment or objection at the hearing. As a result of the insufficient notice Ms. Martin received, her ability to properly protect her interests at the meeting was lost.

Also, in conversations with planning staff, and based on the proposed amendment (which provides for four phases to the development), Ms. Martin was led to believe that the hearing only dealt with "Phase 1" of the Development, and that the set-back issues and number of buildings (which Ms. Martin understood related to Phase 3 of the Development) would not be discussed until a later point in time.

Without any input from Ms. Martin, there was no discussion by the OVTPC regarding the 50-foot setback on the west side of the property, on the need for a transition from the conservation easement on the west to the Development on the east, or on the need for meeting the requirements of the General Plan in maintaining open space and a site plan that is compatible with adjacent property. Had Ms. Martin been properly notified of the

meeting and the details of the proposed amendment at issue, she would have ensured that these issues were discussed and that her interests were adequately protected. It was therefore crucial that Ms. Martin be given proper notice and a chance to be heard at this meeting.

The WCC approved the amendments made to the Edgewater Beach Resort site plan at the committee meeting on April, 10, 2012. Ms. Martin was not given notice of this meeting, and there was no objection raised, nor any discussion on the amendments.

On May 21, 2013, the WCC approved a new conditional use permit relating to the Development, and approved a request to amend the site plan for the Development. At this same hearing, the WCC approved the vacation of 6300 East, the former county road that runs between Ms. Martin's property and the Development. Although Ms. Martin did not object to the vacation of 6300 East (provided the developers deeded her a twelve foot strip east of the center line of the road), she, through counsel, stated her objection to the reduction of the setback from fifty to thirty-five feet, and stated her objection to the increase in the number of buildings located on the western edge of the Development. *See* May 21, 2013 minutes at 2.

Ms. Martin now appeals the action of the County Planning Commission in approving the amended sited plan and in granting the conditional use permit.

GROUND FOR APPEAL:

1. Inadequate Notice

Ms. Martin was not given timely notice of the OVTPC meeting that occurred on March 27, 2012, and was not given any notice of the WCC meeting on April 10, 2012. These meetings, particularly the March 27 meeting, involved important proposed changes to the building density and buffer zone of the Edgewater site plan. These are the very changes that Ms. Martin had been opposing for nearly a decade, and clearly implicated her interests in a significant way. Failure to adequately notify Ms. Martin of these meetings prevented her from asserting her interests, and has allowed adjacent property owners to take advantage of her absence.

While some time has passed between the initial commission actions at issue and the filing of this appeal, this appeal is timely. Ms. Martin only recently became aware of the details of the amendments to the Edgewater site plan. As a property owner living out of state, some consideration should be given toward Ms. Martin's unique situation, and to the difficulty inherent in staying informed as to the commission's decisions. Once Ms. Martin became aware of the amendments at issue, she objected by letter in the April 9, 2013 WCC hearing, and she directed that her attorney attend a meeting of the WCC and object to the

amendments to the site plan, which counsel did at the meeting on May 21, 2013. Preventing Ms. Martin from being heard on the substance of her appeal when she was not given statutorily adequate notice constitutes a lack of due process.

Further, the time for appeal is properly calculated based on the date of the most recent approval of the amended site plan. Because Ms. Martin's counsel objected to the amendment to the Edgewater site plan made on May 21, 2013, the date in which the WCC approved the proposed amended site plan, Ms. Martin has fifteen days from the time that the minutes of that meeting were approved to file an appeal. The minutes of the May 21, 2013 meeting were approved on May 28, 2013. Therefore, Ms. Martin has fifteen days after May 28, 2013 to file her appeal.

2. Lack of Fundamental Fairness

Among the stated purposes of Utah's County Land Use, Development, and Management Act is "to provide fundamental fairness in land use regulation." Utah Code § 17-27a-102. The actions of the OVTPC and WCC are not in keeping with the purposes of the Act, as they have failed to provide fundamental fairness in their dealings with Ms. Martin.

The OVTPC in particular has dealt with Ms. Martin for many years, and is familiar with her unique situation as a property owner who is trying to protect her property interests while living out of state. The OVTPC is also familiar with Ms. Martin's efforts to protect the conservation easement, and to collaborate with the OVTPC and her neighboring property owners to ensure that any new developments will harmonize with the natural, undeveloped beauty of Ms. Martin's property by maintaining an appropriate buffer between the conservation easement and the Development.

ORDINANCE APPROVAL CRITERIA AT ISSUE:

1. Is the proposed use allowed in the CVR-1 Zone?

The OVTPC concluded that the proposed amendments to the Edgewater Beach Resort site plan were allowed under the CVR-1 zoning ordinance. This ordinance requires that "even though the area is primarily commercial in nature, it should be compatible with the general surrounding natural environment." Weber County Code Ordinance 9C-1. Further, in making land use decisions regarding such developments, the Planning Commission must ensure "that the natural environment is preserved to the greatest possible extent." *Id.*

The OVTPC made no showing that either of these requirements were met. Previous decisions by the commission had required a 50-foot setback in order to make the

Development compatible with the surrounding natural environment. Departing from this requirement would seem to require more in the way of discussion and analysis than was evident in the minutes of the relevant hearings. The owner of the farm to which these setbacks directly relate should have been given proper notice and a chance to be heard at these hearings.

2. Have criteria for issuance of a conditional use permit been met and have the mitigation of potential detrimental effects been accomplished?

The OVTPC provided no explanation of how the mitigation of potential detrimental effects had been accomplished. It is difficult to understand how such a conclusion was reached when there was no discussion of the need for a transition from the conservation easement to the Development, or on the need for meeting the requirements of the General Plan in maintaining open space and a site plan that is compatible with adjacent property. The lack of discussion of relevant issues was likely due to the fact that no objection or comments were made at the hearing. However, the lack of such objections and comments were due to the County's own failure to provide adequate notice of the meeting. The potential detrimental effects to the aesthetics of the valley and its rural character by making changes to the entry experience into the valley are important issues, and should have involved a substantial discussion and input by interested parties. Since no such discussion was had, and perhaps the most interested party, Ms. Martin, was excluded from participating due to inadequate notice, the criteria for issuance of the conditional use permit should not have been met.

3. Does the proposed PRUD plan have a superior design compared to the existing site plan or a conventional layout of lots?

According to the minutes of the OVTPC meeting, the committee seems to have simply relied upon the planning staff's conclusion that the site plan was found to have a superior design. Due to the lack of proper notice, Ms. Martin was unable to comment or object to the amended site plan design. Although the amended site plan provides for a lower density, the increase in the number of buildings on the western edge of the development, together with the decrease in the required set-back along that western edge, are not in keeping with the General Plan and harm Ms. Martin. Ms. Martin should have been afforded the opportunity to express her concerns with the proposed amendment. By failing to provide the notice required by law, the County deprived her of that right.

PRAYER FOR RELIEF:

Ms. Martin asks that the Weber County Commission revoke the approval of the Conditional Use Permit issued on May 21, 2013. Ms. Martin asks that a stay be put in place

on the Edgewater Beach Resort PRUD site plan during the time that this appeal is under consideration.

Very truly yours,

DURHAM JONES & PINEGAR, P.C.

A handwritten signature in blue ink, appearing to be "Douglas A. Taggart" or "Michael S. Malmborg", written over the company name.

Douglas A. Taggart
Michael S. Malmborg