Minutes of the Ogden Valley Planning Commission Regular meeting October 2, 2018 in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Jami Taylor, Chair; John Howell, John Lewis, and Shanna Francis, Chris Hogge, Steven Waldrip

**Absent/Excused:** Robert Wood

Staff Present: Rick Grover, Planning Director; Charlie Ewert, Principal Planner; Ronda Kippen; Principal Planner;

Courtlan Erickson,Legal Counsel; Kary Serrano, Secretary

***Pledge of Allegiance***

***Roll Call***

Chair Taylor asked if anyone had a conflict of interest or ex parte communication. There were none.

***Pledge of Allegiance***

***Roll Call***

**1. Minutes: Approval of the June 05, 2018 and June 27, 2018 Meeting Minutes**

Chair Taylor approved the meeting minutes as presented.

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

**2.1. Administrative Items**

**a. New Business**

**1. UVS080118: Consideration and action on preliminary approval of Sunshine Valley Estates Subdivision, a two phased subdivision consisting of nine lots, located at 940 S 9270 E, Huntsville in the Forest Valley (FV-3) Zone. (Lowe Properties, LLC, Applicant; Chris Cave, Representative)**

Director Grover said this is an administrative item, and Ms. Kippen will orient to the project, and then the applicant, Jeromy Draper, will explain the project, and then Ms. Kippen will follow up with how it complies with the code.

Ronda Kippen said this is a preliminary approval for a nine lot subdivision, located in the FV-3 Zone, on approximately 32.68 acres. The lots range in size from 3 to 3.56 acres, the lot width varies from 55 to 1261, a 66 ft. wide county road off of 9500 East through Phase 2. They will be accessing first part of Phase 1, off of 9275 so everything that is in the red is owned by Lowe Properties LLC. During the subdivision process they will need to build new county roads and go through the final subdivision process. They will need construction drawings submitted; and an analysis to make sure this is a viable project. They will need to meet zoning standards, setbacks, natural hazards, and that wetland areas do not fall into any natural hazard geologic units. A wetland delineation report is required for the final subdivision; and a seasonal stream running through the proposed subdivision will need to delineate that stream corridor.

Jeremy Draper, Reeves and Associate, Riverdale UT, said we are representing this project, and we have a nine lot subdivision on this project. The project is located within the FEMA Floodplain, and with that there are additional processes that we have to follow. We do have a conditional letter with a map revision that we have submitted to FEMA at this time. We also have a stub road that goes to the north for future planning purposes.

Commissioner Hogge asked about the well locations and the protection zones. Some of those if not all are within the flood plain. Are there requirements as far as well protection outside of the flood plains? Mr. Draper replied the well protection zones can be within the flood plain zones. When we do actually develop those wells; if those wells are in the flood plain zones, they need to be elevated and protected from the base elevation of the flood plain itself. So the well heads will need to be set higher and typically what it is, is 2 foot of three-quarter buff end base soil elevation. That’s one thing we take into consideration when those lots are designed; then some of that flood plain will be relocated on the properties.

Commissioner Waldrip asked will there be a note included on the plat of the final structures; relative to the flood plain elevations? What is your stand on the flood plain zones; and is there anything to subterranean structure,

basements, or habitable space below grade when you have flood plain? Mr. Draper replied we will have a note on the final plat that indicates there are flood plains within the property; we will defer to the local jurisdiction to the county code for those final elevations of the flood plain. We have been working with three of the city engineers in Nevada; and part of my duties was flood plain manager, so it can be different for each property. It would be similar to have a basement within a flood plain, and FEMA does provide some guidance for that.

Commissioner Francis said previously with the cost of wetlands to consider the cluster and open space; have they looked at that option? Mr. Draper replied we did not consider doing cluster because the code requires a three-acre parcel. As far as delineating the wetlands in there; we need to complete the study there and see where those would land within plat itself.

Commissioner Howell said for people who purchase these lots, there will be full disclosure as far as flood plains and wetlands. Mr. Draper replied anytime you develop within a flood plain; even if the building itself is not on the flood plain, if they have a federally bank mortgage, they will be required to have flood insurance.

Ronda Kippen reviewed what was exempt of the well protection head in Zone One and Zone Two. Based on that where Zone One and Zone Two allows for that, and based on the information provided by Mr. Draper, the well heads will be protected in the flood plain. The engineers and surveyors review this as final subdivision; they have several conditions that need to be taken care of to get those approvals. Staff’s condition of approval, they must provide wetland assessment report when they submit for their final subdivision. Based on the review agencies comments and conditions prior to final; before they can submit their final drawings.

**MOTION:** Commissioner Lewis moved to approve UVS080118 consideration and action on preliminary approval of Sunshine Valley Estates Subdivision, a two phased subdivision consisting of nine lots, located at 9400 S 9270 E, Huntsville subject to conditions, recommendations, and findings listed in the staff report; and to all county and agencies requirements to include wetlands delineation prior to final. Commissioner Hogge seconded.

**DISCUSSION:**  Commissioner Waldrip asked do we want to add anything about making sure there’s a note on the plat for elevation of the structures, and restrictions of subsurface dwellings. Is that appropriate to do that now. Director Grover replied you definitely could do that; and you may also include with findings with the approval. Chair Taylor said we need a motion to amend. Mr. Erickson said I would suggest making a motion to amend the existing motion. Vote on the motion to amend and then come back on your motion originally or as amended.

**MOTION:** Commissioner Waldrip made a motion to amend the motion to add that the final plat as submitted include notes that will clearly indicate that final dwelling structural elevations need to be sufficiently above whatever the findings are the wetlands delineation study, as well as restricting the subsurface structure being habitable. That the elevation on the plat based upon the International Building Code recommendations and the wetlands delineation study, and that the note also include a restriction on habitable space below grade. Commissioner Francis seconded.

**VOTE:** A vote was taken to amend the motion with Commissioners Howell, Lewis, Francis, Hogge, Waldrip, and Chair Taylor voting aye. Motion Carried (6-0). This brings us to the original motion.

Jeremy Draper suggested for the Planning Commission to consider a condition that subsurface living spaces be in compliance with FEMA regulations, and also Weber County Regulations. FEMA does provide guidance and cobalt new oven before developing any flood plains for surfaces, for basements, crawlspaces, and things like that. We are in compliance with the basement elevations; they are still above the base elevation. If we can have that motion amended; that we follow the code and FEMA Regulations; and no subsurface living spaces would be preferable.

Chair Taylor asked Director Grover for some guidance here where it’s deficient. Director Grover replied you may want to include the FEMA again just for clarity sake, if you want to include that, if you don’t that’s up to you. Chair Taylor I entertain a motion to amend and include FEMA.

**AMENDED MOTION:** Commissioner Waldrip moved to amend the previous motion that specifies the below surface dwelling limitation will be subject; based upon the FEMA findings and as per county code and county recommendations based upon those findings. To include the Geotechnical findings based upon the county’s staff recommendations following the review of those findings. Commissioner Howell seconded. A vote was taken to amend the motion with Commissioners Howell, Lewis, Francis, Hogge, Waldrip, and Chair Taylor voting aye. Motion Carried (6-0). A vote was taken on the original motion as amended with Commissioners Howell, Lewis, Francis, Hogge, Waldrip, and Chair Taylor voting aye. Motion Carried (6-0)

**3. Training: Planning Commission Training – Courtlan Erickson**

Courtlan Erickson said Director Grover asked us to provide some training to both Ogden Valley and Western Weber Planning Commissions. There are three topics: The duties and roles of the Planning Commission regarding General Plan Amendment, Rezones, and Due Process.

* **General Plans Amendments:**
* Purposes of General Plan –Title 17, Chapter 27a, Utah Code
* Accomplish the purposes of Charter (CLUDMA)
* Purposes of CLUDMA
* General Plan Requirement, Options, and Procedure
* Plan Preparation or Comprehensive Amendment: Section 17-27a-403
* Planning Commission Public Hearing, Section 17-27a-404
* Effect of General Plan: Section 17-27a-405 and 406
* **Rezones (Utah Code Ann. Title 17, Chapter 27a Part 5 Weber County Code Title 102, Chapter 5**
* Statue Governing
* Planning Commission Role: Section 17-027a-503
* Planning Commission Process: Section 17-27a-502
* Rezone Requirements County Code Chapter 102-5
* Chapter 102-5-1
* Chapter 102-5-2
* Chapter 102-5-3
* Chapter 102-5-4
* Chapter 102-5-5
* Rezone Limitations
* Not many
* If an ordinance could promote the general welfare, then courts will play typically uphold it
* A rezone decision
* Fair House Act
* A rezone that violates due process
* **Due Process US Constitution**
* 5th Amendment
* 14th Amendment
* What is Due Process?
* Procedural Due Process
* Substantive Due Process
* Due Process – Real Example (Green Hill HOA v. Weber County and Timothy Charlwood)
* **Lessons:**
* Make sure decision have a rational basis
* State finding upon which decisions are based on
* Follow requirements found in statutes and ordinances
* Avoid Conflicts of interest or anything else that could lead to impartiality

There was a discussion on the lesson and Courtlan gave a sample that happened and the results of that.

**4. Public Comment for Items not on the Agenda:** None

**5. Remarks from Planning Commissioners:**  None

**6. Planning Director Report:** Director Groves said this coming week, the APA State Conference if you need a ride we are leaving the office on Thursday morning. He provided information on his trip to Washington DC where they talked about S32-31, looking at task force for affordable housing. The other thing we chatted was the CBDG Funding which benefits Ogden City and it also benefits us with 3.3 million dollars which is allocated state wide. This is something that we are very proactive and trying to take a lead on some of those things.

**7. Remarks from Legal Counsel:** None

**8. Adjourn to Work Session:**

**WS-1: A discussion regarding a proposal to change the Ogden Valley General Plan specifically related to forest firefighting management of roadless areas on Forest Service Land. The focus of this discussion will be on the County’s limited role in offering the state and the forest service guidance as to appropriate forest management principles.**

Charlie Ewert said this work session to discuss changing the General Plan since it was adopted. Because this is the first time breaking into that General Plan; just thought you should see it in a work session before moving it into a public hearing. The state has asked us to run this amendment. The Federal Government has a rule called FLPMA (Federal Land Policy & Management Act); and part of FLPMA requires the Federal Government to cooperate and coordinate with the local government when they create their Federal Land Management Plan. Every federal agency and state agency has a land management plan if they are responsible for land. The Forest Service has theirs, but in this area of land they’ve got rules that are related to Pineview Reservoir because the Forest Service governs that. When they make changes to the plan; they are required by FLPMA to come to the county and talk about those changes, cooperate, and in some cases negotiate with us. The State of Utah and others have filed a lawsuit; trying to figure out who should who would public lands. Last year in both legislative sessions, the state ran bills to require a State Resource Management Plan. One thing that they’ve noticed; when it comes to Federal Land Management there isn’t enough discourse on how to appropriately manage forest lands.

Charlie Ewert said one of the issues is the Federal Government has a rule that’s called the Robust Rule of 2001; Forest Service Regulation that restricts active forest management on some National Forest Land. What I handed out was Utah’s Roadless Rules petition; and basically this roadless rules prohibits the Forest Service from building new roads. Even if it’s building new roads to get access to land that you wouldn’t otherwise wouldn’t have gotten access; for instance like falling dead timber and harvesting timber. In some cases, opening things up for recreational opportunities. In most of our roadless areas in Weber County the rules apply; you just can’t build a road. The Forest Service in order to do an effective forest management, they have to go in with chainsaws, people, and small equipment without the need to cut a road and mitigate after they cut. The state of Utah follow exception to the rule; they need to cut a road in, but they don’t have the ability and mitigate that road after they cut it. So the State of Utah is doing that now; and asking the Federal Government for an exception to the rule, in doing so the state is trying to establish categories for effective roadless management.

Charlie said this is not our draft, so we don’t have any ability to change what’s in this; and the state will have to figure out how this works. What the state wants from us; is for us to put in their proposal that they have come up with which are four categories of roadless areas. They have asked us to categorize our roadless areas so they can put it in their plan; so they know what to ask the government for in our area. There are four categories: prima various areas, forest restoration areas, forest steward areas, and forest re-inventory or boundary adjustment areas. Prima various areas are areas where road building would not be allowed. Basically this is what we have in Weber County currently.

Charlie Ewert said go to Management Area 2: Forest Restoration Areas; Currently conditions, forest restoration areas are areas where human use may or may not be present. These areas may also show evidence of vegetative manipulation like the prima various; forest restoration areas include a broad range of train and vegetative types. The desired future is while areas managed as forest restoration areas made a slight increase evidence of management activities, these areas will generally retain their roadless character. The Idea here isn’t to allow the roads to go everywhere; the idea here is like in Category 2; so it doesn’t stay there forever; not open for unlimited public use and just forest management.

Charlie Ewert said for Stewardship: Current condition for Stewardship Areas; include locations that may display high levels of human use. Including roads, facilities, evidence of vegetative manipulation, and mineral exploration extraction. The desired future would be, these areas may over time display increased levels of human use including roads, facilities, and evidence of vegetative manipulation, forest stewardship areas will also include watershed restoration and/or mitigation activities despite higher levels of human use than forest restoration areas for stewardship areas will still retain in some of their roadless qualities. It’s not saying unlimited roads can be built; it’s just saying a little more than what’s permitted.

Charlie Ewert said this is a map that we put together with the state’s help. So the green areas are the documented inventory of the roadless areas; it doesn’t mean that there are absolutely no roads in these areas, but for the most part

there are not any. The purple areas are beetle kill; and that’s one that the state really wanted to hone in on; because it’s creating all that dead dry fire fuel. After we met with the Forest Service, they have been advised by their higher up, to

offer no recommendation to the county. They want us to make up our own minds; they are doing so because they know there is a volatile relation between the state and the feds when it comes to Federal Land Management. Fortunately for us, it’s more between the BLA and the state. The Forest Service has said that it would be nice if that was just left a primitive area; it’s just a let it burn area. The Fire Marshall and the Fire Chief have training annually in Causey Estates specifically. They do State Training in Causey Estates because it’s such a great area to train firefighter to fight fires. This area has been really well covered on how to take care of forest fire.

Charlie Ewert said the red area is in case someone wants to build a condo over Mount Ogden, which is what Ogden City was proposing to support Snow Basin. The blue areas would be Category 2, not proposing any significant roads throughout the area, but enabling to build a road to get access to provide Forest Management and remove the road later.

Charlie Ewert said the Forest Service told us at this point; what the roadless rule that’s in place if they do get permission to build a ski resort up there; everything is going to have to be airlifted. This could help open that up a little bit. Over on the Snowbasin side after they were done, they reclaimed that road, it was a few years old and they went and planted new trees on top of that.

Charlie Ewert said this is in your Utilities and Public Services Chapter. We have Goal 5: The goal of Weber County is to improve public safety in Ogden Valley. The next page on 5.2. Principle under Public Safety: Maintain the ability for the community to respond promptly, efficiently, and effectively in the event of major natural and human disaster. He reviewed 5.2.1, 5.2.2, and 5.2.3 underneath 5.2. This is stuff that is already happening with the exception of adopting the map, and it refers right back to that map. We will be having a public hearing at your next meeting; and I will post notice prior to that meeting. The state was hoping that we would be done by the end of the year; and we will get done when it’s done.

There was a discussion between the Planning Commission and Planning Staff and the following are concerns from the Planning Commission:

* Special interests riding on this:

Response: Firefighters are really concerned about some of the federal management; and even some of the Forest Service agencies are concerned, because this limits their ability to get in and do an effective management. Because we are distinguishing these fires, the forest can’t naturally manage itself and all that thick undergrowth is staying in there.

* When Yellowstone was on fire, it got out of hand, how do they plan to prevent that:

Response: It was a decision to just let it burn, by the same people who have the authority to put it out. One of the reasons they let it burn is to allow for the forest to thin out itself out so it isn’t such a problem. The state is trying to help the Forest Service minimize the problem that is currently existing where it’s thick vegetation where it can’t be managed when a forest fire does start.

* Is the table something that is being proposed. Are the uses currently allowed, if so what is the differences?

Response: What the state is proposing to the Federal Government. If you look at the prima various areas, the current condition in the prima various areas show little evidence of historical or human use, natural processes are predominant, people visiting these areas can find opportunities for recreation. Areas managed as prima various would continue to show little evidence of historical or human use; natural processes of the area will continue to predominate

* What are the consequences if they didn’t have a hearing?

Response: There are a number of open houses that are scheduled throughout the state right now; there is a new one at the end of the month, or it might be in November. Most of them are in rural areas.

* Concern about beetle kill and what is being done:

Response: Without effective roads to get to the beetle kill area, it’s really hard for them to manage it. So one effective way of doing it is cutting roads everywhere, opening it up to commercial loggers, and private industry to do business. That is not what the Forest Service is proposing, nor is it what the state is asking for.

* What is the whole issue with the different accesses?

Response: They can’t get anything on the road without access permit. In order to effectively manage the ski resort maintained, the line, the ski lifts, the gondolas, and all that kind of stuff; there may need to have roads. We are trying to think about the Economic Development side of it things, as well as the Environmental side of things, and making sure both sides are equally balanced.

Chair Taylor asked so we will take public comment at that time and what is our role, do we have a recommendation? Mr. Ewert replied the recommendation will be one whether or not the General Plan Amendment that we’re proposing to you would be favorable with a recommendation to the County Commission. If you don’t like it, send it to the County Commission with a negative recommendation; and we will just run it through the process and let the County Commission that you weren’t comfortable for these reasons, if that’s what it is.

3. Adjournment: The meeting was adjourned at 7:00 p.m.

Submitted: Kary Serrano, Secretary;

Weber County Planning Division