

Minutes of the Ogden Valley Planning Commission Regular meeting August 26, 2014, in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Ann Miller, Vice Chair; John Howell; Kevin Parson; Greg Graves; Will Haymond; Laura Warburton

Absent/Excused: Pen Hollist, Chair

Staff Present: Sean Wilkinson, Planning Director; Jim Gentry, Principal Planner; Scott Mendoza, Principal Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

Pledge of Allegiance

Roll Call:

1. **Minutes:** Approval of the July 22, 2014 and August 5, 2014 meeting minutes

MOTION: Vice Chair Miller approved the meeting minutes as written.

Vice Chair Miller asked if there was any ex parte communication to declare. Commissioner Warburton stated that she was contacted by Steve Waldrip by email and she sent the response to the Planning Division so they have that on record.

2. **Consent Agenda:**

- 2.1. **CUP 2014-19:** Consideration and action on a Conditional Use Permit (CUP) for the removal and replacement of the existing Sundown Ski Lift located at Powder Mountain Ski Resort in the Forest-40 (F-40) Zone (Summit Mountain Holding Group) SMHG

MOTION: Commissioner Warburton moved to approve consent agenda item CUP 2014-19. Commissioner Parson seconded. A vote was taken with all members present voting aye and Vice Chair Miller said that the motion carried (6-0).

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

- 3.1. **Administrative Items**

- a. **Old Business**

1. **CUP 2014-16: Consideration and action on a Conditional Use Permit (CUP) application for a dog kennel at approximately 5784 E 2300 N in the Agricultural Valley-3 (AV-3) Zone (Stacey Bowman, Applicant)**

Jim Gentry said this item was before the Planning Commission and was tabled for certain items and they have now received those and they are included in the meeting packet. This is a dog kennel that staff considers an accessory use to the main use within the agricultural zone. The zoning ordinance has a couple of standards within the AV-3 Zone: It has to be within 100 feet from the property line; and it has to be 50 feet from any side property line, and those standards have been met. The conditional use criteria for issuance were listed and after reviewing the criteria, the criteria have been met in the following ways: The potential detrimental effects for this kennel to noise, smell, and loose sods have been recently mitigated. Under the conditional use it doesn't have to completely mitigate but reasonably mitigate. Noise is mitigated by the size of the lot, the location of the building, the hours of operation, and the commitment to house accessory noise of barking dogs inside the building. The potential for foul smells is mitigated by removal of animal waste by double bagging with normal trash removal and the urine will be washed and sprayed down daily. The loose sod has been mitigated by having a secured outdoor kennel play area and a building to secure the dogs.

Jim Gentry said that the Ogden Valley Architectural Landscaping and Screened Design Standards do not apply as this is an accessory use to a single family dwelling in the agricultural use and this is not a commercial zone. The applicant is doing additional things as far as improvement to this site. There would be no signs proposed except for the entrance to identify the driveway to the building. The applicant is willing to do an asphalt driveway to the parking stalls at the building. The applicant is willing to construct a metal building with sound proofing insulation that would be air conditioned for the comfort of the dogs. The metal building would be painted similar to the house. A grass area of 420 sq. ft. with two Quaking Aspens and an Evergreen tree will be provided for the dogs.

Commissioner Warburton asked is it true under the current conditional uses, that animal hospitals and animal breeding with a maximum of 500 rabbits are allowed. There is also slaughtering, dressing, and marketing on a commercial scale of chickens, turkeys, or other fowls with no limit of chickens and turkeys. Jim Gentry replied that is allowed under the

current zoning and if this was on a five acre lot, she could slaughter 500 rabbits there. What is under the current ordinance is what they have to work with.

Stacey Bowman, applicant, who resides in Eden, said that she spoke with Dr. Clayne White, Owner of Bayview Veterinary, Farmington UT, and with Becky, Owner of Doggy Day Park in Woods Cross. There is no law or stated fact as to how much footage per dog is needed; the basic recommendation is an area that works for the animal. When she sought out a professional opinion, she noticed Dr. White has a building of about 40 x 50 and he watches up to 100 dogs in that size area. His common area is 60 x 10 feet divided in half, where he takes his dogs for walks and potty breaks. These dogs can be kenneled up to 8 hours per day. As to the size her building, it is more than adequate and the size of the kennel can accommodate the number of dogs she is proposing with both large and small dogs. As far as noise, she looked into a buffer for walls and insulation and the key issue is ventilation for these dogs. With her proposal she knows that noise would not be an issue. The Doggy Day Park that's in Wood Cross is located in a subdivision where the neighbors are within 40 feet and they have 10 houses off of the main street. There are dog parks within a huge subdivision and Idlewire backs up to 300,000 plus homes in South Ogden and they kennel dogs. She is at she is doing a service for a community that doesn't offer anything for people that have a need for this type of service and this would be an asset.

Commissioner Howell asked if these dogs would be able to go outside at night. Stacey Bowman replied no.

Cleon Butterfield, who resides in Bountiful, said he is owner of Lots 1 and 2 adjacent to this proposed use. He is confused about what was allowed under the AV-3 Zone Ordinance, where it states household pets are allowed, but it does not constitute a kennel. In permitted uses it does not allow a kennel, it is only allowed as a conditional use, unless the Planning Commission approves it as a conditional use. According to the ordinance conditional uses may not be appropriate in every location, depending on the terms of a request; there are times where it is appropriate to say no. Staff has made their recommendation based on the listed criteria. The criteria listed in your document states, "shall not authorize unless the evidence presented that it has reasonably mitigated the detrimental effects; and that it is in compliance with all of the regulations, specifically the land use code." This does not meet the standards and Lot 3 is an appropriate place for a dog kennel. The criteria has not been met and there are restrictive covenants and this dog kennel is detrimental to his adjacent lots.

Vice Chair Miller asked Legal Counsel to clarify two issues; whether or not this is a commercial activity and the difference between conforming and nonconforming lots on three acres, and whether it's an accessory kind of use. Chris Allred replied that the ordinance is trying to draw a distinction of what you can do on a conformed lot on three acres or more and nonconforming lots that are smaller. On a nonconforming lot they can only have a dog when it is accessory to a home. The distinction is they don't need a home on three acres; it can stand alone. It cannot stand alone as a use on something smaller than three acres. While it's called out as an accessory use on something smaller than two acres, it can't stand alone and that is what the ordinance is trying to distinguish. The fact that it is listed in the agricultural zone; it is either a permitted or conditional use and suggests that we are treating them as a commercial use. There is a commercial zone in which conditional and permitted uses are listed and those are considered commercial and he understands Mr. Butterfield's position is that it has a commercial aspect to it. For our purpose, it is identified as commercial use in a commercial zone and this does not have the commercial feel to it.

Commissioner Warburton said to clarify on a conditional use that is basically a permitted use with possible detrimental effects, it's the Commission's job to look for those detrimental effects and mitigate them if possible. If it's not possible, state code states very clearly that if it's not, then they can deny it. It is a very high standard, and must be proven in courts as they don't want to be sued, so they have to make sure they are covering the law. Our job is to identify detrimental effects, and they can't base their decision based on the CC&R's but what is in the law.

Kirk Langford, who resides in Eden, said for tonight there are anticipated detrimental affects with 20-30 barking dogs and what is substantially mitigated. Staff has indicated that 150 feet should mitigate these dogs. His house is almost 5,000 feet away from the Browning Ranch who have a couple of Blue Healers and he can hear those dogs barking every evening when coyotes come down. With 20 barking dogs, it is an absolute anticipated detrimental effect and it is not reasonable to mitigate that at 150 feet. He understood about the feces being bagged and hauled away but what about the urine; where does that go after the applicant sprays it down? It's not the commission's job, but the Health Department's job to have those permits issued before this is granted as a conditional use, and it's clear in the ordinance that they are required to have those first before the permit is issued. Let's approve this conditional use for one year and see whether

the dead space will mitigate the barking dogs, if squirting out the building will take care of the urine and smell, or if the traffic coming and going will not affect the children coming and going since there are not sidewalks in this area.

Commissioner Warburton said that the Utah State Ombudsman came to give them some training, and they specifically talked to him about putting in time limits, and there is nothing in code that gives them that right to do that, so they can't legally stipulate a time limit of one year. What is in place is if there are enough complaints, then they can pull the permit, but this Planning Commission does not issue permits; that is left to the various departments when the permit is issued.

Steve Waldrip, who represents the landowners to the north, said it doesn't seem that the permits are in place but his question to Legal Counsel is the definition of detrimental effects. Detrimental effects is a broad, vague standard; and intentionally so because that gives the Planning Commission the opportunity to investigate all possible outcomes, detriments, and negative impacts of a conditional use. Although this commission does not have any jurisdiction on CC&R's, it does give them notice that there is one in place and would seem to be a detrimental effect if this goes into a lawsuit and it would seem wise to have this resolved prior to granting any conditional use. What is the definition of detrimental effect and how do they define that sufficiently that they are not putting it back to two people that have an issue with each other. The other question is in reference to noise and there should be some sort of standard as to what is acceptable, at what distance, and noise abatement that would be more concrete than I hear a dog barking.

Vice Chair Miller said they base their decision according to the ordinances and the CC&R's is a separate issue as to whether or not they follow the ordinances to see if they are mitigated.

Cleon Butterfield asked to clarify if that meant that the Planning Commission never says no to a conditional use. Vice Chair Miller replied that she has found out that they do approve conditional uses, and they do look at mitigation factors and work with those factors, but it is difficult to say no unless there is an overwhelming circumstance.

Steve Waldrip said that he didn't hear of what standard is being proposed if there is an issue with noise or odor to any future complaints would be. Commissioner Parson replied that our complaints are the standard and it falls upon the community.

Commission Warburton asked Mr. Gentry if there was a way that they could mitigate more of the noise and what detrimental effect could possibly happen. Jim Gentry suggested not having dogs in the dog runs after 10 p.m. and not allowing them out prior to seven in the morning.

MOTION: Commissioner Parson moved for approval of a Conditional Use Permit CUP 2014-16, for a dog kennel at approximately 5784 E 2300 N in the AV-3 Zone. Commissioner Howell seconded.

DISCUSSION: Commissioner Parson said he appreciated the work the applicant did to mitigate noise, how to house dogs, and seeking professional people in looking at the insulation panels, putting up some landscaping, and learning how the neighbors feel about this kennel. He takes his dogs to Miller Kennels, one of the best facilities of dog kennels, it maintains 75-100 dogs that stay outside, and it is out in the industrial part of town so it can handle all that noise. He suggested that the applicant look at the commercial aspect of berming and she would be better off doing that.

Commissioner Warburton said she would like to see a restriction placed of operating from 8 a.m. to 9 p.m. She asked if they could require that the applicant have bark collars on hand, they are very humane, could take care of the barking problem. She asked if everyone was comfortable with the time of 8 a.m. to 9 p.m. Vice Chair Gibson Miller replied that is too restrictive, they should set it up like the campgrounds from 7 a.m. to 10 p.m. Commissioner Parson said it should relate to work, from sunup to sundown. Commissioner Warburton said that she appreciated the comment but believes saying from sunup to sundown needs to be more specific, so she is okay with saying from 7 a.m. to 10 p.m. As for the shock collars, if it was set on a low setting it seems to be okay. Chris Allred said that they could be bordering upon unreasonable to institute that as a requirement, because some people think of shock collars as inhumane and he didn't think they could put her in that position. Sean Wilkinson said if the dog becomes a nuisance and they have substantiated claims with the Sherriff's office visiting and those reports are provided, those are grounds for the Planning Commission to reconsider this conditional use and revoke it if it's approved. Commissioner Haymond asked what happens if they revoked the conditional use permit, as she already had her structure and business there. Sean Wilkinson replied at that point the use goes away.

FRIENDLY AMENDMENT: Commissioner Warburton suggested that the dogs are not out any earlier than 7 a.m. and are put away by 10 p.m. Commissioner Parson said he was okay with the amendment.

AMENDED MOTION: Commissioner Parson moved for approval of Conditional Use Permit CUP 2014-16, for a dog kennel at approximately 5784 E 2300 N in the AV-3 Zone contingent upon staff and review agency requirements based on the proposed kennel complying with applicable Land Use Code standards listed in the staff report and to include the hours that the dogs cannot being outside the kennel prior to 7 a.m. and after 10 p.m.

VOTE: A vote was taken with Commissioner’s Warburton, Howell, Graves and Chair Miller voting aye and Commissioner’s Parson and Haymond voting nay. Vice Chair Miller said motion carried (4-2).

- 4. **Public Comment for Items not on the Agenda:** No public comments.
- 5. **Remarks from Planning Commissioners:** Commissioner Parson said that they need to revisit the zoning for the AV-3 Zone because some of the conditions in there were made a long time ago. They have looked at this but maybe it was just the commercial aspect. Commissioner Graves said it is one thing that they need to consider when looking at some of these uses. They are getting a mix of urban and rural starting to come together. Something that they need to keep in mind is what they want this community to be when they are done. If they eliminate every single thing that has a rural feel because somebody objects, let’s not get it in their heads that they are going to maintain rural character of the valley when they made a law that prohibited all the stuff that made it that way to exist.
- 6. **Report of the Planning Director:** Sean Wilkinson said they sent out an email asking for responses to those that are interested in attending the APA Conference coming up in October; be sure to get those responses to Sherri within the next few days. Also, there is potentially going to be some asphalt paving on Powder Mountain and with that comes additional trucks hauling the asphalt up and down Wolf Creek Drive. They don’t have a specific date but it will potentially be in the next few weeks.
- 7. **Remarks from Legal Counsel:** Chris Allred said that this Planning Commission had some training from the State Ombudsman and he hoped that was useful and informative. If they would like some additional information or training, he would be happy to provide that.
- 8. **Adjourn to a Work Session:**

WS1. Cluster Subdivision Bonus Density Discussion

Sean Wilkinson introduced the new Planner II Ronda Kippen from Morgan County who has replaced Steve Parkinson who transferred to a position in Roy.

Scott Mendoza said that tonight’s discussion is about the Ogden Valley Cluster Subdivision Bonus Density. He wanted to just review a couple of things and just remind the members of what they did in the last couple of work sessions as it related to the Cluster Subdivision Code and what do they want to do with Ogden Valley Cluster Subdivision Bonus Densities.

1. Review of previous work sessions:

On March 4th they did talk about TDR’s and the question was if they could be made mandatory and it would be within the code and the answer is yes. They also decided that there was going to be Utah State University student presentation coming up and they were hoping to get more information, background, and education on TDR’s. They didn’t get much information but students did get the concept of the TDR’s. Staff prepared an outline on the effect of TDR’s to date and there was only one project to report on and that was Snowbasin.

On June 24th they presented the first three sections of the draft cluster subdivision code: The purpose and intent, the approval procedure section, and the sketch plan endorsement section. They went through the draft in the first three sections and have continued work on the draft. The draft is to a point where they need guidance on where they would like to go on Cluster Subdivision Bonus Densities.