



Staff Report to the Ogden Valley and Western Weber Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: To hold a joint planning commission public hearing and discussion/decision regarding a proposal to amend the subdivision ordinance, Title 106, to add a letter of credit as an additional subdivision completion financial guarantee; ZTA 2017-10.

Agenda Date: Tuesday, July 11, 2017

Staff Report Date: Wednesday, July 5, 2017

Applicant: Weber County Planning Division

File Number: ZTA 2017-10

Staff Information

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

Report Reviewer: RG

Applicable Ordinances

§106-4: Subdivision Improvements Required

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

After a subdivision with new proposed improvements receives final approval the developer has a choice to either install those improvements prior to recording the plat or submit to the County a financial guarantee for the cost of the improvements. This is done to ensure the proposed improvements get installed to the County's satisfaction. This is especially important for proposed public improvements.

During the recession the County amended the subdivision code to exclude all forms of financial guarantee except a cash escrow. The cash escrow is held in a County account and earns whatever interest the account earns. Because the money is only being held for the developer to ensure proper performance, all interest earned is returned to the developer.

For larger developments it can be challenging for a developer to have sufficient cash on-hand to offer a complete cash escrow for their subdivision. In these cases the developer must incur the debt necessary to offer the County the escrow. The debt interest can be many times the interest that the County's account earns, thereby potentially costing the developer significantly over the life of the loan.

Prior to the recession the County allowed the use of a letter of credit. A letter of credit can essentially be viewed as a line of credit (but it is not technically a line of credit – it is a promise for a line of credit). The developer is required to get approved for the letter of credit similar to a loan, however, rather than releasing all of the credit to the developer on the front end, they allow the developer to accrue the debt over time and in increments as the time to pay for the installation of improvements come due.

As seen from the County's previous action to remove the allowance of a letter of credit during the recession, a letter of credit is not as secure as funds being held by the County. The success of a letter of credit depends on the solvency of the financial institution being used. As banks were failing during the recession the County was put at

risk of losing funds needed to complete improvements in failed subdivisions.

This policy shift boils down to risk analysis. We believe the way the proposal is drafted helps to significantly reduce the risk associated with a letter of credit. It should offer the County optimal protection in the event of a future economic crisis wherein the developer and his or her financial institution fail.

Policy Analysis

The attached Exhibit B displays the proposed changes. The proposal redrafts and revises parts of the “subdivision improvements required” section of the subdivision code to better offer general clarity and grammatical edits. The substantial changes are in **§106-4-3** “guarantee of improvements.”

§106-4-3:

Part (a) better clarifies that the County expects a financial guarantee that is 110% of the total cost of required improvements. This is the maximum amount that can be required as per state law.

Part (a)(1) specifies in better clarity the expectations for escrows and escrow funds.

Part (a)(2) provides the new provision for allowing a letter of credit. This section puts the following limits on the use of a letter of credit, each aimed at avoiding the problems that were persistent for many jurisdictions during the recession:

- Only projects that are valued over \$1 million may use a letter of credit. This relies on the financial industry to vet their creditees to verify they can repay over a million in credit. This should filter many of the developers looking to gain on someone else's dollar and/or credit who may be less responsible in executing his or her contractual or credit obligations. It also has a likelihood of requiring a developer to put up significant collateral to give the financial institution security against default, which means that .
- Only developers with a good track record with Weber County may use a letter of credit. Because developers often set up individual developments into separate legal entities (most often a limited liability company) we felt it is necessary to also include in this qualification that the developer's subsidiaries, members, and shareholders can also be included in the County's determination of past positive performance.
- The applicant's financial institution must also have a history of positive performance. There are a number of ways that the County Treasurer can verify positive performance, including bond ratings and the Utah Department of Financial Institutions.
- The letter of credit has to be on our form – not on the financial institution's form. This gives the County the ability to offer itself optimal protection.
- The County Attorney, County Treasurer, and County Commission must all sign off on a letter of credit.
- The developer is still required to deposit a cash escrow for the revegetation of the development in the event the development and financial institution both fail. During the recession this was not an infrequent occurrence. However, as long as the site is reseeded to offer erosion and dust control the impact a partially completed subdivision has on the surrounding community is generally limited to a visual nuisance. When the economy bounces back and the development becomes marketable again the market swiftly resolves this issue.

Part (b) offers a system of partial releases of an escrow or letter of credit funds. This is required by state code.

Part (c) better specifies what occurs within a period of time after improvements have been completed. It calls this phase “conditional acceptance.” During the conditional acceptance phase there is also a warranty period where the County retains 10% of the financial guarantee to assure that the improvements perform to the satisfaction of the County Engineer. If the improvements fail to perform the County will require the developer to fix the problem. State code limits a warranty period to one year unless there is evidence in the record of poor past performance by the developer or unstable soils in the development. The warranty period can be restarted for items that fail during the warranty period. A developer's failure to fix the problem constitutes a default on the subdivision improvement agreement, at which time the County can claim the 10% funds to fix the problem.

Part (d) better specifies what occurs after the improvement warranty period ends and what occurs after the

County takes final acceptance of the improvements.

Analyzing risk. A solvent financial guarantee is not the only form of assurance the County has that a subdivision will be completed correctly. However, in lieu of the improvements being installed prior to a plat being recorded (meaning none of the subdivision lots exists, and therefore cannot be sold), a solvent financial guarantee is a very simple and effective mechanism to assure compliance. Here are a few other more challenging methods to assure a subdivision is completed correctly:

- *Withhold building permits.* The challenge with this method is that because lots are recorded they may also be sold and after they are sold the County has multiple others who have an interest in the subdivision getting completed. The greater the various interests the more challenging the politics of withholding permits, maintenance, etc, becomes. This is especially pronounced if the County begins to issue building permits at a time when positive developer performance is occurring, but then later withholds permits when the developer starts to fail.
- *Withhold building inspections.* This is a potential method to compel subdivision completion. This is even more challenging, both politically and legally, to execute because money has already been spent on buildings by owners who might not be the developer.
- *Withhold certificates of occupancy.* The challenge here is the same as above, but significantly more pronounced due to the value of a complete building being unusable.
- *Withhold other land use permits.* Even if a development fails to perform after a certificate of occupancy for a building has been issued, LUC §102-4-2(c) requires the County to withhold permits for properties where a violation exists. This could apply pressure to the building owner to find ways to get the subdivision completed.
- *Withhold approval of future phases.* For subdivisions that have future phases the County could withhold approval of future phases.
- *Record a notice of nonconformance.* As is the case with any land use code violation, a notice of noncompliance could be recorded to the property's title. This would make it difficult for a title company to insure it, leading to a high likelihood that existing owners or future purchasers can leverage the property for debt purposes (mortgage, second mortgage, etc.).

Each of the methods listed above, except withholding approval of future phases, involves drawing resulting lot owners into the conflict of the incomplete subdivision. These new owners are often unaware of the risks associated with purchasing lots in a development that has not been completed. Transferring a developer's failed responsibilities onto unsuspecting resulting lot owners is uncomfortable for all involved, and offers little to no consumer protection.

This sort of risk is avoided if the County is holding cash to be used in the event the developer fails (a cash escrow). The risk cannot be completely avoided if a letter of credit is used. In the event both the developer and the financial institution offering a letter of credit fail, the resulting lot owners – or if those lot owners are able to successfully lobby the County for reprieve, then tax payers – are on the hook for completing the subdivision. The combination of these failures occur infrequently, however many jurisdictions can suffer the effects of this occurring during a recession.

Balancing risk. The question for the Planning Commission(s) to determine is whether the risks of a letter of credit, as minimized by the limitations in the proposed ordinance, is balanced by the positive outcomes of allowing a letter of credit. The above risk analysis is posed only from the perspective of the County (vis-à-vis financial liability). A developer's perspective is going to be significantly different. Below are a couple of challenges a developer may have without the allowance of a letter of credit:

- If the developer fronts a cash escrow with his or her own funds then those funds are no longer earning the interest the developer could otherwise be earning through his or her conventional investments.
- If the developer gets a loan to front the cash escrow then the developer is immediately paying interest on that loan – as opposed to the funds being released by the financial institution over time as the developer needs to pay for the improvements.

The reason use of a letter of credit may be worth the risk to the County is because the cash-flow loss caused by loan-interest payments or the loss of investment-interest could negatively affect the overall success of a developer. This, in turn, could affect economic growth. The loss of interest can also be viewed as an inhibitor when trying to attract development-oriented economic growth by making the County less marketable to other

developers.

Given the strong restrictions governing the use of a letter of credit, as proposed in the draft ordinance, staff feel that a substantial portion of the risk of using a letter of credit can be mitigated, and this reduced risk is balanced by the economic benefits of the use of a letter of credit.

Conformance to the General Plan

The Ogden Valley General Plan broaches the subject of financial security for certain improvements. On page 39, the plan addresses security for improvements and restoration. The context of this section is more relevant to the installation of utility facilities; however, the concept remains the same when it comes to new subdivision improvements.

The West Central Weber General Plan is not specific to financial securities. The proposed ordinance does not run contrary to the general plan.

Noticing Compliance

A hearing for this item with the Planning Commission has been posted 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 approve the proposed amendments to **§106-4: subdivision improvements required** with the following findings:

1. The changes are generally supported by the 2016 Ogden Valley General Plan.
2. The changes are not contrary to the vision, goals, or objectives of the West Central Weber General Plan.
3. The changes are necessary to reduce conflicting provisions in the Land Use Code.
4. The changes are necessary to provide clarity in the Land Use Code.
5. The clarifications will provide for a more efficient administration of the Land Use Code.
6. The risk of the proposed changes could be balanced by the positive economic outcomes.

Exhibits

- A. Key to Proposed Changes.
- B. Proposed Ordinance [Track-Changes]
- C. Proposed Ordinance [Clean Copy]

Exhibit A: Key to proposed changes

Key to reading track changes:

Three periods (...) indicates that there are codes sections that have been left out of the proposed changes. These code sections will remain unchanged.

Language that has been added is shown in blue underline

~~Language that has been moved to a new location is shown in green double strikeout~~

~~Language that has been deleted is shown in red strikeout~~

Language that has been moved from an old location is shown in green double underline

1 CHAPTER 4. - SUBDIVISION IMPROVEMENTS REQUIRED

2
3 Sec. 106-4-1. - ~~Owner of subdivision responsible for costs~~ General requirements.

- 4 (a) The owner of any land to be platted as a subdivision shall ~~at his own expense install or provide an~~
5 ~~escrow with Weber County for improvements prior to~~, before recording the final plat ~~according to~~,
6 either install all improvements required by this chapter or provide a financial guarantee for the
7 completion of the improvements as allowed by section 106-4-3.
- 8 (b) All improvements shall comply with the specifications and standards contained in the "County's
9 current Public Work Standards and Technical Specifications" ~~adopted January 26, 1982.~~
- 10 (c) All improvements shall be installed prior to issuance of any land use permit within a newly approved
11 subdivision. The only improvements that may not be required prior to construction of a dwelling are
12 the asphalt, chip and ~~under the inspection of~~ seal, landscaping, street monuments, secondary water
13 (if not in the right-of-way), and curb, gutter, and sidewalk.
- 14 (d) All public and private utilities within the road right-of-way shall be installed prior to the road being
15 asphalted. Cuts within one year of asphalt placement on a new road will require a special permit and
16 include requirements for special backfill and asphalt replacement.
- 17 (e) The applicant shall sign a survey monumentation improvement agreement and pay applicable fees
18 associated prior to the county surveyor signing the final subdivision plat Mylar.
- 19 (f) Upon completion of the construction of roads and utility lines, the developer's engineer ~~Septic tanks~~
20 ~~shall be installed according to the specifications and under the inspection of the county health officer.~~
21 shall prepare and submit as-built plans for all improvements for the approval of the county engineer.
22 As-built plans shall include a digital plan (dwg format) and one set of reproducible Mylars prior to
23 county acceptance for maintenance of roads.
- 24 (g) Whenever the applicant develops a subdivision a phase at a time, such development shall be in an
25 orderly manner and in such a way that the required improvements will be made available to the
26 buyers of the lots. The applicant shall be responsible for coordinating the installation of utilities,
27 streets, water lines, fire hydrants, and all other required improvements with the buyers of lots.
- 28 (h) New subdivisions with sole access from a substandard street shall not be approved until the
29 substandard street is fully improved to County Public Work Standards and adopted right-of-way
30 width.

31
32
33 Sec. 106-4-2. - Improvements required.

34 (a) *Water supply.*

35 (1) *Public system.*

- 36 a. Where an approved public water supply is reasonably accessible or procurable, the
37 applicant shall install water lines, or shall contract with the local water distributing agency
38 to make the water supply available to each lot within the subdivision, including laterals to
39 the property line of each lot. Water lines and fire hydrants shall be operational before
40 building permits are issued for any structures.
- 41 b. Capacity assessment letter is required prior to final approval from the planning
42 commission. A construct permit from the Utah State Department of Environmental Quality
43 Division of Drinking Water for expansion of the water system and water lines serving the

subdivision is required prior to the subdivision receiving final approval from the county commission.

(2) *New system.* Where an approved public water supply or system is not reasonably accessible nor procurable, the applicant shall install a water distribution system and provide a water supply to each lot from a source meeting the requirements of the Utah Division of Drinking Water and/or the Weber Morgan Health Department.

(3) *Wells.* If individual well permits are issued by the Utah State Division of Water Rights, one well permit must be obtained along with a letter of feasibility from the Division of Water Rights and the Weber Morgan Health Department, which states that well permits can be issued in the proposed area by the Division of Water Rights for exchange purposes. The owner of record of the proposed subdivision property shall record a covenant to run with the land which advises the new lot owner of the requirements to be fulfilled before a building permit can be obtained. This shall include but not be limited to:

- a. that a well permit must be obtained;
- b. the time it may take to obtain the permit;
- c. the well must be drilled;
- d. water quality to be satisfactory; and
- e. water quantity to be sufficient as required by the Weber County Health Department, before a building permit can be obtained.

If well permits cannot be obtained, the lot will no longer be deemed a buildable lot.

(b) *Sewage disposal.*

(1) Where any part of a building situated within the unincorporated areas of the county is within 300 feet of any street, alley, court, passageway or area in which a public sewer or sewer owned or operated by any special improvement sanitary sewer district is in existence and use, or where the building is close enough in the determination of the county health officer to require a connection, the applicant shall connect sanitary sewer and provide adequate lateral lines to the property line of each lot. Sewer systems shall be approved by the county health official, and connections shall comply with the public work standards of the county. Where the construction of a sewer trunk line is required to serve the subdivision, the applicant shall be required to construct the trunk line in accordance with plans and specifications approved by the county and sewer improvement district. The new trunk line shall be designed with sufficient capacity for the service area as determined by the county engineer. The applicant may be entitled to reimbursement for the oversized costs through impact fee or development agreement within the service area for a period of ten years from the date of acceptance by the county.

(2) Where a public sanitary sewer is not accessible, the applicant shall obtain approval from the county health officer for individual sewage disposal for each of the lots. Written approval from the county health officer shall be submitted to the planning division at the time the subdivision application is submitted. Septic tanks shall be installed according to the specifications and under the inspection of the county health officer. Where a sewer treatment facility is being approved by the State of Utah Department of Environmental Quality Division of Water Quality, a letter of feasibility is required for preliminary approval and a construct permit from the state is required before final approval can be granted by the planning commission.

(c) *Stormwater.*

(1) The county engineer shall require the applicant to dispose of stormwater, if such provision is deemed necessary, and provide drainage structures so that runoff from the subdivision does not exceed the runoff under undeveloped or natural conditions. If easements are required across abutting property to permit drainage of the subdivision, it shall be the responsibility of the applicant to acquire such easements.

(2) When drainage structures such as storm water detention and/or retention facilities are required by the county engineer, the county, at its option, may require the facility to be dedicated or otherwise transferred to Weber County or ~~it's designate~~ its designee. Weber County may also require the developer of the subdivision which the detention and/or retention facility serves, to form a Homeowners Association of all homes in the subdivision with articles of incorporation and by-laws filed with the department of commerce. Provision shall be made in said association for the contracting with the county engineer to do periodic inspections and maintain the drainage facilities. The purpose of the association shall be to own and maintain the detention and/or retention facility in satisfactory condition as specified by the county engineer. In such cases, the County shall be granted an easement over the detention/retention facilities to guarantee such facilities will remain and be used as intended for stormwater detention purposes.

(d) *Street grading and surfacing.* All public and private streets and private access rights-of-way shall be graded and surfaced in accordance with the public work standards.

(e) *Curbs and gutters.* Curbs and gutters shall be installed on existing and proposed streets by the applicant. Deferrals for curb and gutter will be required for lots in the Ogden Valley. Curb and gutter shall be installed by the applicant in subdivisions along ~~the~~ abutting Utah State Highways, if required by Utah State Department of Transportation.

(f) *Sidewalks.* Sidewalks shall be required by the planning commission for reasons of safety and public welfare, and where the proposed subdivision is located within the walking distance ~~as~~ established by the local School District. Deferrals for sidewalk will be required for lots in the Ogden Valley. Weber County will not waive sidewalk requirements on state highways unless the Utah State Department of Transportation has waived the sidewalk requirement. If a letter is provided by the Utah State Department of Transportation for a waiver, then a deferral agreement may be approved by the county commission. Approved walking paths may be substituted for sidewalks.

(g) *Street monuments.* Permanent street monuments shall be accurately set at points necessary to establish all lines of the street. Street monuments shall be of a type specified by the county surveyor.

(h) *Street trees.* Street trees shall be planted by the applicant when so required by the planning commission and of a variety and location as approved by the planning commission.

(i) *Street signs.* Street signs shall be installed by the applicant at locations designated by the county engineer. Signs shall be a type and material prescribed by the county engineer. The county commissioners shall have the option to install signs and charge the costs to the applicant.

(j) *Fencing or piping of canals, etc.* A solid board, chain link, or other non-climbable fence not less than five feet in height shall be installed on both sides of existing irrigation ditches or canals which carry five second feet or more of water, or bordering open reservoirs, railroad rights-of-way or non-access streets, and which are located within or adjacent to the subdivision, except where the planning commission determines that park areas including streams or bodies of water shall remain unfenced. Fencing or piping of canals, etc., shall not be required on subdivisions of four or fewer lots, or where canals are located 600 feet from the homes.

(k) *Staking subdivision corners.* Survey markers shall be placed at all subdivision corners and lot corners to completely identify the boundaries on the ground. This shall be performed and confirmed by the surveyor's office before the subdivision is recorded.

(1) The minimum standard for a boundary or lot corner monument shall be a number five rebar 24 inches in length and visibly marked or tagged with the registered business name or the letters P.L.S. (Professional Land Surveyor) followed by the registration number of the surveyor in charge. Where ground conditions do not permit such monumentation, substitute monuments shall be noted on the subdivision plat and must be durably and visibly marked or tagged with the registered business name or the letters "P.L.S." followed by the registration number of the surveyor in charge.

(2) If the monument is set by a public officer, it shall be marked with the official title of the office.

- (l) *Peripheral fencing.* The planning commission may require fencing along the periphery of a subdivision in an agricultural zone to provide protection to adjacent farming lands from the adverse ~~affects~~effects of residential living and vice versa.
- (m) *Secondary water.* The term "secondary water" shall mean water furnished for other than culinary purposes. Where a subdivision is proposed within an existing culinary water district or service area of an existing water corporation or within a water district or water corporation service area created to serve such subdivision, the planning commission shall, as part of the approval of the subdivision, require the applicant to furnish adequate secondary water and install a secondary water delivery system to the lots in the subdivision sufficient to conform to the public works standards, if such water district or company files or has filed a written statement with the Weber County Planning Division which specifies that the policy of such water district or company is to the effect that its water is not to be used for other than culinary purposes and will not permit culinary water connections unless secondary water is provided by the applicant, ~~a.~~ A certified copy of the minutes of the board of trustees of such water district or company showing the enactment of such policy must be furnished to the planning commission. If secondary water is to be by shallow well, then a copy of the approved well permit shall be submitted, and the shallow well shall be pump tested with a copy of the test results submitted for review prior to the subdivision being recorded. When subdivisions are within the service area of a secondary water provider company or district, the applicant shall install a secondary water system in accordance with the provider's requirements or standards.
- (n) *Transfer of irrigation water rights.* Where the county, on behalf of a culinary water agency, requires irrigation water to be provided to each lot in a subdivision as part of the required improvements, the applicant shall provide for the transfer of irrigation water rights by either of the following methods as determined by the planning commission.
- (1) The applicant shall form a lot owners association as a non-profit corporation for owning the irrigation water rights or stock for the lots in the subdivision. The applicant shall transfer to the association at the time of subdivision recording, sufficient rights or stock as required by the irrigation agency for the number of lots in the subdivision. The articles of incorporation of the association shall provide, in addition to the association owning the required water rights or shares on behalf of each and every lot owner, that each lot owner shall automatically be a member of the association, is entitled to a pro rata share of irrigation water, is subject to a water distribution schedule and procedure established by the association, and is responsible for his share of the costs of ditch and system maintenance and assessments as made by the association from time to time, or
 - (2) The applicant shall provide the county with evidence that sufficient irrigation water rights or shares for all of the lots in the subdivision are held by the developer/property owner. At the time of recording the approved subdivision plat, the developer/property owner shall record a covenant to run with the land that these rights or shares will not be disposed of except to the lots in the subdivision and with the sale of each lot, a transfer at no cost, the required water rights or shares needed to properly irrigate the lot, to the lot purchaser who is to be responsible for the proper use of the water as outlined in the irrigation water district or company's distribution schedule and procedures.
- (o) *Fire protection.*
- (1) A letter from the Weber Fire District approving the fire protection method shall be provided prior to final approval of the subdivision by the planning commission. Before a land use permit is issued, the fire protection method shall be operational, and a letter to that ~~affect~~effect will be required from the Weber Fire District.
 - (2) Subdivisions located in the Forest and Forest Valley Zones shall have requirements in the Subdivision Covenants, Conditions, and Restrictions on Wildfire mitigation as outlined by the Weber County Fire District.

Sec. 106-4-3. - Guarantee of improvements.

~~(a) Deposit and escrow.~~

~~(1) All improvements shall be installed prior to issuance of any land use permit within a newly approved subdivision. The only improvement that may not be required prior to construction of a dwelling is the asphalt, chip and seal, landscaping, street monuments, secondary water (if not in the right-of-way), and curb, gutter, and sidewalk. 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.~~

~~(2) The applicant shall guarantee the installation of improvements by depositing the financial guarantee funds into the Weber County Engineer's Escrow which will allow the recording of a subdivision.~~

(a) Financial guarantee for the completion of improvements. An applicant who desires to record any subdivision plat prior to the completion of improvements shall provide a financial guarantee for the completion of the improvements. The applicant shall furnish and file with the county an escrow agreement or a letter of credit in an amount equal to 110% of the future cost of the installation of the improvements at the termination of the two-year improvement completion period, as estimated by the county engineer, to assure the installation of improvements within two years.

(1) Escrow agreement. An escrow agreement, and the associated funds, requires the approval of the county commissioners and county attorney. Escrow funds shall be deposited with the county treasurer at the time the escrow agreement is executed.

(2) Letter of credit. An applicant may only use a letter of credit if the following conditions are met:

a. the engineer's cost estimate for installation of the improvements exceeds one million dollars;

b. the applicant and, if applicable, the applicant's subsidiaries and the applicant's member's or shareholders has a history of positive performance in its development related contractual obligations with Weber County, and has a history of positive performance in completing developments in Weber County;

c. the applicant's financial institution has a history of positive performance in fulfilling its financial obligations, as determined by the county treasurer and based on typical conventions of the financial industry;

d. the applicant's financial institution provides the letter of credit on a standard letter of credit form supplied by Weber County or in a form that provides equal or greater financial protection to the county, as determined by the county attorney; and

e. the county attorney, county treasurer, and county commissioners approve the letter of credit, which they shall do if all of the conditions above are met unless they have reasonable, objective indications of a substantial risk that either the applicant or the applicant's financial institution will not fulfill its obligations related to the completion of improvements or the financial guarantee;

f. a cash escrow is deposited with the county treasurer at the time the letter of credit is executed equal to the full cost to revegetate any removed vegetation in the event the applicant, his successors or heirs, or his financial institution fails to perform.

(3) Acceptance of financial guarantee. A financial guarantee under this section is accepted when the county commissioners approve and sign a subdivision improvement agreement between the county and the applicant, and an escrow agreement or letter of credit. After the subdivision improvement agreement is approved, the applicant may record the subdivision, as long as all other recording requirements have been met. The recording of the subdivision will allow the developer to sell the lots, but not allow building and/or land use permits to be issued until all improvements are installed, except as listed above.

~~(3) The applicant shall furnish and file with the county commission the escrow of the Weber County Engineer in an amount equal to the future cost of the installation of the improvements at the termination of the financial guarantee period as estimated by the county engineer, to assure the installation of improvements within two years. The escrow shall be approved by the county commissioners and county attorney.~~

~~(4) 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 the county acceptance for maintenance of roads.~~

~~(b) Upon completion of all improvements, ten percent of the approved financial guarantee shall be retained by Weber County for a period of one year at which time, upon recommendation of the county engineer, the roads may be accepted for maintenance by the county.~~

(b) *Partial release of financial guarantee.* Unless otherwise specified by the terms of the subdivision improvement agreement, the county is only obligated to offer a partial release of the financial guarantee for an independent improvement system, including but not limited to those specified in Section 106-4-2, that is completed to the satisfaction of the county engineer.

(c) *Warranty, and conditional acceptance of improvements.* Upon satisfactory completion of all improvements, as determined by the county engineer, the improvements shall enter a conditional acceptance period. Ten percent of the approved financial guarantee shall be retained by the county for an improvement warranty period as defined by UCA §17-27a-103. At the discretion of the county engineer, the warranty period may restart for any individual improvement needing replacement or repairs prior to the end of the conditional acceptance period.

~~(c) 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. The applicant shall be responsible for coordinating the installation of utility, street, water lines, fire hydrants, and all other required improvements with the buyers of lots.~~

~~(d) The county engineer, at the request of the applicant, may release portions of the escrow agreement when all obligations have been fully performed by the installation of the improvements.~~

~~(e) The applicant shall deposit with the County Engineer at the time of final plat approval, an amount of money equal to the estimated cost of purchase and installation of the traffic control and street name signs.~~

~~(f) 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.~~

~~(g) New subdivisions having to utilize a road that is substandard in road right-of-way width and/or improvements shall not be consider for approval or extension, until the substandard road is fully improved to County Public Work Standards.~~

(d) *Final acceptance of improvements* After the warranty period has expired, if the improvements have performed to the county engineer's satisfaction, the county engineer shall release the remainder of the financial guarantee. At this time the county engineer may also offer final acceptance of the improvements. Final acceptance may be withheld if circumstances unforeseen at the time of conditional acceptance become known that expose the county or the public to unreasonable financial or safety risk. The county is not responsible for operations or maintenance of public improvements that have not received final acceptance.

Sec. 106-4-4. - Inspection of improvements.

285 The county engineer, building inspector, county surveyor, and county health officer shall inspect all
286 buildings, structures, streets, street monuments, fire hydrants, water supply, and sewage disposal
287 systems in the course of construction, installation or repair, etc. Excavations for fire hydrants, water and
288 sewer mains, and laterals shall not be covered over or back-filled until such installations have been
289 | approved by the County Engineer, or utility ~~owner's~~owner's representative. If any installation is covered
290 before being inspected and approved, it shall be uncovered after notice to uncover has been issued to the
291 responsible person by the County Engineer.

CHAPTER 4. - SUBDIVISION IMPROVEMENTS REQUIRED

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 substandard street shall not be approved until the substandard street is fully improved to County Public Work Standards and adopted right-of-way width.

Sec. 106-4-2. - Improvements required.

(a) *Water supply.*

(1) *Public system.*

- a. Where an approved public water supply is reasonably accessible or procurable, the applicant shall install water lines, or shall contract with the local water distributing agency to make the water supply available to each lot within the subdivision, including laterals to the property line of each lot. Water lines and fire hydrants shall be operational before building permits are issued for any structures.
- b. Capacity assessment letter is required prior to final approval from the planning commission. A construct permit from the Utah State Department of Environmental Quality Division of Drinking Water for expansion of the water system and water lines serving the subdivision is required prior to the subdivision receiving final approval from the county commission.

(2) *New system.* Where an approved public water supply or system is not reasonably accessible nor procurable, the applicant shall install a water distribution system and provide a water supply to each lot from a source meeting the requirements of the Utah Division of Drinking Water and/or the Weber Morgan Health Department.

(3) *Wells.* If individual well permits are issued by the Utah State Division of Water Rights, one well permit must be obtained along with a letter of feasibility from the Division of Water Rights and the Weber Morgan Health Department, which states that well permits can be issued in the proposed area by the Division of Water Rights for exchange purposes. The owner of record of the proposed subdivision property shall record a covenant to run with the land which advises the new lot owner of the requirements to be fulfilled before a building permit can be obtained. This shall include but not be limited to:

- a. that a well permit must be obtained;
- b. the time it may take to obtain the permit;
- c. the well must be drilled;
- d. water quality to be satisfactory; and
- e. water quantity to be sufficient as required by the Weber County Health Department, before a building permit can be obtained.

If well permits cannot be obtained, the lot will no longer be deemed a buildable lot.

(b) *Sewage disposal.*

(1) Where any part of a building situated within the unincorporated areas of the county is within 300 feet of any street, alley, court, passageway or area in which a public sewer or sewer owned or operated by any special improvement sanitary sewer district is in existence and use, or where the building is close enough in the determination of the county health officer to require a connection, the applicant shall connect sanitary sewer and provide adequate lateral lines to the property line of each lot. Sewer systems shall be approved by the county health official, and connections shall comply with the public work standards of the county. Where the construction of a sewer trunk line is required to serve the subdivision, the applicant shall be required to construct the trunk line in accordance with plans and specifications approved by the county and sewer improvement district. The new trunk line shall be designed with sufficient capacity for the service area as determined by the county engineer. The applicant may be entitled to reimbursement for the oversized costs through impact fee or development agreement within the service area for a period of ten years from the date of acceptance by the county.

(2) Where a public sanitary sewer is not accessible, the applicant shall obtain approval from the county health officer for individual sewage disposal for each of the lots. Written approval from the county health officer shall be submitted to the planning division at the time the subdivision application is submitted. Septic tanks shall be installed according to the specifications and under the inspection of the county health officer. Where a sewer treatment facility is being approved by the State of Utah Department of Environmental Quality Division of Water Quality, a letter of feasibility is required for preliminary approval and a construct permit from the state is required before final approval can be granted by the planning commission.

(c) *Stormwater.*

(1) The county engineer shall require the applicant to dispose of stormwater, if such provision is deemed necessary, and provide drainage structures so that runoff from the subdivision does not exceed the runoff under undeveloped or natural conditions. If easements are required across abutting property to permit drainage of the subdivision, it shall be the responsibility of the applicant to acquire such easements.

(2) When drainage structures such as storm water detention and/or retention facilities are required by the county engineer, the county, at its option, may require the facility to be dedicated or

otherwise transferred to Weber County or its designee. Weber County may also require the developer of the subdivision which the detention and/or retention facility serves, to form a Homeowners Association of all homes in the subdivision with articles of incorporation and by-laws filed with the department of commerce. Provision shall be made in said association for the contracting with the county engineer to do periodic inspections and maintain the drainage facilities. The purpose of the association shall be to own and maintain the detention and/or retention facility in satisfactory condition as specified by the county engineer. In such cases, the County shall be granted an easement over the detention/retention facilities to guarantee such facilities will remain and be used as intended for stormwater detention purposes.

- (d) *Street grading and surfacing.* All public and private streets and private access rights-of-way shall be graded and surfaced in accordance with the public work standards.
- (e) *Curbs and gutters.* Curbs and gutters shall be installed on existing and proposed streets by the applicant. Deferrals for curb and gutter will be required for lots in the Ogden Valley. Curb and gutter shall be installed by the applicant in subdivisions along abutting Utah State Highways, if required by Utah State Department of Transportation.
- (f) *Sidewalks.* Sidewalks shall be required by the planning commission for reasons of safety and public welfare, and where the proposed subdivision is located within the walking distance established by the local School District. Deferrals for sidewalk will be required for lots in the Ogden Valley. Weber County will not waive sidewalk requirements on state highways unless the Utah State Department of Transportation has waived the sidewalk requirement. If a letter is provided by the Utah State Department of Transportation for a waiver, then a deferral agreement may be approved by the county commission. Approved walking paths may be substituted for sidewalks.
- (g) *Street monuments.* Permanent street monuments shall be accurately set at points necessary to establish all lines of the street. Street monuments shall be of a type specified by the county surveyor.
- (h) *Street trees.* Street trees shall be planted by the applicant when so required by the planning commission and of a variety and location as approved by the planning commission.
- (i) *Street signs.* Street signs shall be installed by the applicant at locations designated by the county engineer. Signs shall be a type and material prescribed by the county engineer. The county commissioners shall have the option to install signs and charge the costs to the applicant.
- (j) *Fencing or piping of canals, etc.* A solid board, chain link, or other non-climbable fence not less than five feet in height shall be installed on both sides of existing irrigation ditches or canals which carry five second feet or more of water, or bordering open reservoirs, railroad rights-of-way or non-access streets, and which are located within or adjacent to the subdivision, except where the planning commission determines that park areas including streams or bodies of water shall remain unfenced. Fencing or piping of canals, etc., shall not be required on subdivisions of four or fewer lots, or where canals are located 600 feet from the homes.
- (k) *Staking subdivision corners.* Survey markers shall be placed at all subdivision corners and lot corners to completely identify the boundaries on the ground. This shall be performed and confirmed by the surveyor's office before the subdivision is recorded.
 - (1) The minimum standard for a boundary or lot corner monument shall be a number five rebar 24 inches in length and visibly marked or tagged with the registered business name or the letters P.L.S. (Professional Land Surveyor) followed by the registration number of the surveyor in charge. Where ground conditions do not permit such monumentation, substitute monuments shall be noted on the subdivision plat and must be durably and visibly marked or tagged with the registered business name or the letters "P.L.S." followed by the registration number of the surveyor in charge.
 - (2) If the monument is set by a public officer, it shall be marked with the official title of the office.
- (l) *Peripheral fencing.* The planning commission may require fencing along the periphery of a subdivision in an agricultural zone to provide protection to adjacent farming lands from the adverse effects of residential living and vice versa.

(m) *Secondary water.* The term "secondary water" shall mean water furnished for other than culinary purposes. Where a subdivision is proposed within an existing culinary water district or service area of an existing water corporation or within a water district or water corporation service area created to serve such subdivision, the planning commission shall, as part of the approval of the subdivision, require the applicant to furnish adequate secondary water and install a secondary water delivery system to the lots in the subdivision sufficient to conform to the public works standards, if such water district or company files or has filed a written statement with the Weber County Planning Division which specifies that the policy of such water district or company is to the effect that its water is not to be used for other than culinary purposes and will not permit culinary water connections unless secondary water is provided by the applicant. A certified copy of the minutes of the board of trustees of such water district or company showing the enactment of such policy must be furnished to the planning commission. If secondary water is to be by shallow well, then a copy of the approved well permit shall be submitted, and the shallow well shall be pump tested with a copy of the test results submitted for review prior to the subdivision being recorded. When subdivisions are within the service area of a secondary water provider company or district, the applicant shall install a secondary water system in accordance with the provider's requirements or standards.

(n) *Transfer of irrigation water rights.* Where the county, on behalf of a culinary water agency, requires irrigation water to be provided to each lot in a subdivision as part of the required improvements, the applicant shall provide for the transfer of irrigation water rights by either of the following methods as determined by the planning commission.

(1) The applicant shall form a lot owners association as a non-profit corporation for owning the irrigation water rights or stock for the lots in the subdivision. The applicant shall transfer to the association at the time of subdivision recording, sufficient rights or stock as required by the irrigation agency for the number of lots in the subdivision. The articles of incorporation of the association shall provide, in addition to the association owning the required water rights or shares on behalf of each and every lot owner, that each lot owner shall automatically be a member of the association, is entitled to a pro rata share of irrigation water, is subject to a water distribution schedule and procedure established by the association, and is responsible for his share of the costs of ditch and system maintenance and assessments as made by the association from time to time, or

(2) The applicant shall provide the county with evidence that sufficient irrigation water rights or shares for all of the lots in the subdivision are held by the developer/property owner. At the time of recording the approved subdivision plat, the developer/property owner shall record a covenant to run with the land that these rights or shares will not be disposed of except to the lots in the subdivision and with the sale of each lot, a transfer at no cost, the required water rights or shares needed to properly irrigate the lot, to the lot purchaser who is to be responsible for the proper use of the water as outlined in the irrigation water district or company's distribution schedule and procedures.

(o) *Fire protection.*

(1) A letter from the Weber Fire District approving the fire protection method shall be provided prior to final approval of the subdivision by the planning commission. Before a land use permit is issued, the fire protection method shall be operational, and a letter to that effect will be required from the Weber Fire District.

(2) Subdivisions located in the Forest and Forest Valley Zones shall have requirements in the Subdivision Covenants, Conditions, and Restrictions on Wildfire mitigation as outlined by the Weber County Fire District.

Sec. 106-4-3. - Guarantee of improvements.

- 191 (a) *Financial guarantee for the completion of improvements.* An applicant who desires to record any
192 subdivision plat prior to the completion of improvements shall provide a financial guarantee for the
193 completion of the improvements. The applicant shall furnish and file with the county an escrow
194 agreement or a letter of credit in an amount equal to 110% of the future cost of the installation of the
195 improvements at the termination of the two-year improvement completion period, as estimated by the
196 county engineer, to assure the installation of improvements within two years.
- 197 (1) *Escrow agreement.* An escrow agreement, and the associated funds, requires the approval of
198 the county commissioners and county attorney. Escrow funds shall be deposited with the county
199 treasurer at the time the escrow agreement is executed.
- 200 (2) *Letter of credit.* An applicant may only use a letter of credit if the following conditions are met:
- 201 a. the engineer's cost estimate for installation of the improvements exceeds one million
202 dollars;
- 203 b. the applicant and, if applicable, the applicant's subsidiaries and the applicant's member's
204 or shareholders has a history of positive performance in its development related
205 contractual obligations with Weber County, and has a history of positive performance in
206 completing developments in Weber County;
- 207 c. the applicant's financial institution has a history of positive performance in fulfilling its
208 financial obligations, as determined by the county treasurer and based on typical
209 conventions of the financial industry;
- 210 d. the applicant's financial institution provides the letter of credit on a standard letter of credit
211 form supplied by Weber County or in a form that provides equal or greater financial
212 protection to the county, as determined by the county attorney; and
- 213 e. the county attorney, county treasurer, and county commissioners approve the letter of
214 credit, which they shall do if all of the conditions above are met unless they have
215 reasonable, objective indications of a substantial risk that either the applicant or the
216 applicant's financial institution will not fulfill its obligations related to the completion of
217 improvements or the financial guarantee;
- 218 f. a cash escrow is deposited with the county treasurer at the time the letter of credit is
219 executed equal to the full cost to revegetate any removed vegetation in the event the
220 applicant, his successors or heirs, or his financial institution fails to perform.
- 221 (3) *Acceptance of financial guarantee.* A financial guarantee under this section is accepted when
222 the county commissioners approve and sign a subdivision improvement agreement between the
223 county and the applicant, and an escrow agreement or letter of credit. After the subdivision
224 improvement agreement is approved, the applicant may record the subdivision, as long as all
225 other recording requirements have been met. The recording of the subdivision will allow the
226 developer to sell the lots, but not allow building and/or land use permits to be issued until all
227 improvements are installed, except as listed above.
- 228
- 229 (b) *Partial release of financial guarantee.* Unless otherwise specified by the terms of the subdivision
230 improvement agreement, the county is only obligated to offer a partial release of the financial
231 guarantee for an independent improvement system, including but not limited to those specified in
232 Section 106-4-2, that is completed to the satisfaction of the county engineer.
- 233 (c) *Warranty, and conditional acceptance of improvements.* Upon satisfactory completion of all
234 improvements, as determined by the county engineer, the improvements shall enter a conditional
235 acceptance period. Ten percent of the approved financial guarantee shall be retained by the county
236 for an improvement warranty period as defined by UCA §17-27a-103. At the discretion of the county
237 engineer, the warranty period may restart for any individual improvement needing replacement or
238 repairs prior to the end of the conditional acceptance period.

(d) *Final acceptance of improvements* After the warranty period has expired, if the improvements have performed to the county engineer's satisfaction, the county engineer shall release the remainder of the financial guarantee. At this time the county engineer may also offer final acceptance of the improvements. Final acceptance may be withheld if circumstances unforeseen at the time of conditional acceptance become known that expose the county or the public to unreasonable financial or safety risk. The county is not responsible for operations or maintenance of public improvements that have not received final acceptance.

Sec. 106-4-4. - Inspection of improvements.

The county engineer, building inspector, county surveyor, and county health officer shall inspect all buildings, structures, streets, street monuments, fire hydrants, water supply, and sewage disposal systems in the course of construction, installation or repair, etc. Excavations for fire hydrants, water and sewer mains, and laterals shall not be covered over or back-filled until such installations have been approved by the County Engineer, or utility owner's representative. If any installation is covered before being inspected and approved, it shall be uncovered after notice to uncover has been issued to the responsible person by the County Engineer.