



## Staff Report to the Western Weber Planning Commission

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Public hearing to discuss and take comment on a proposal to amend the following sections of Weber County Code: Definitions (§101-1-7), Additions and enlargements (§108-12-3), Subdivision plat requirements for nonconforming lots; exemptions (§108-12-11), and Enlarging nonconforming lots (§108-12-12). The proposed amendment will allow parcels created prior to July 1, 1992 containing a permitted single family dwelling to be considered a Lot of Record.

**Agenda Date:** Tuesday, December 12, 2017  
**Staff Report Date:** Tuesday, December 5, 2017  
**Applicant:** Weber County Planning Division  
**File Number:** ZTA 2017-16

#### Staff Information

**Report Presenter:** Steve Burton  
sburton@co.weber.ut.us  
801-399-8766  
**Report Reviewer:** CE

### Applicable Ordinances

- Weber County Land Use Code, Sec. 101-1-7 (Definitions).
- Weber County Land Use Code, Title 108, Chapter 12 (Noncomplying Structures, Nonconforming Uses, and Nonconforming Lots).

### 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

There are currently a number of parcels in unincorporated Weber County created prior to July 1, 1992, that contain lawfully permitted dwellings that are not considered a "Lot of Record" because they were not the first or second division of property and did not meet the zoning requirements at the time they were created. The county currently considers these parcels illegal and will not issue any land use permits for new structures proposed to be built on them. The owners of these parcels have difficulties selling their homes because the parcels are considered illegal.

The proposed text amendment will allow parcels containing a lawfully permitted dwelling prior to July 1, 1992 to be considered legal and a "Lot of Record". The proposed text amendment will also incorporate the new definition of "Lot of Record" into the chapter of LUC that regulates noncomplying structures, nonconforming uses, and nonconforming lots.

### Policy Analysis

The term "Lot of Record" was first adopted into the Weber County Land Use Code on March 2, 2010 in order to restrict the use and development of lots that had not undergone the subdivision process and did not meet zoning requirements. Since the adoption of the term the county has been able to withhold land use/ building permits as well as record notices of noncompliance on the title of illegal parcels.

The proposed text amendment includes the date "prior to July 1, 1992" in order to remain consistent with the circumstance in the existing definition of "Lot of Record" that states "A parcel/lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder in between January 1, 1966, and June 30, 1992, which complied with the zoning requirements in effect at the time of its creation and was shown to be the first or second division of a larger parent parcel..." The proposed text amendment is also a clean-up of certain sections of the noncomplying structures, nonconforming uses, and nonconforming lots chapter (LUC 108-12) to provide for a more efficient administration of the Land Use Code.

### **Conformance to the General Plan**

The West Central Weber General Plan indicates that "preservation of property rights" is a primary concern of the residents of West Central Weber County (West Central Weber General Plan, Introduction, Page 1-5). The proposed text amendment will add to the definition of "Lot of Record" allowing certain parcels with existing homes on them to be considered legal, thereby preserving the development rights of those parcels.

### **Past Action on this Item**

No action has occurred on this item.

### **Noticing Compliance**

A hearing for this item was published 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 Western Weber Planning Commission recommend approval of the text included as Exhibit A and Exhibit B of this staff report based on the following findings:

1. The changes cause no adverse effect on the intent of the general plans.
2. The changes will provide for a more efficient administration of the Land Use Code.
3. The changes will enhance the general welfare of County residents.

### **Exhibits**

- A. Proposed Ordinance – Clean Copy.
- B. Proposed Ordinance – Track Change Copy.

1 **Title 101 - GENERAL PROVISIONS**

2 ...

3 **Sec. 101-1-7. - Definitions.**

4 *Lot of record.* A lot of record is defined as any one of the following circumstances:

5 (1) A parcel of real property identified as a building lot on an unrecorded subdivision plat  
6 that has been approved by Weber County and is on file in the Weber County Planning  
7 Office; or

8 (2) A parcel of real property identified as a building lot on a subdivision plat that has been  
9 approved by Weber County and recorded in the office of the Weber County Recorder;  
10 or

11 (3) A parcel or lot described in a deed, sales contract or survey that was recorded in the  
12 office of the Weber County Recorder before January 1, 1966; or

13 (4) A parcel or lot described in a deed, sales contract or survey that was recorded in the  
14 office of the Weber County Recorder in between January 1, 1966, and June 30, 1992,  
15 which complied with the zoning requirements in effect at the time of its creation and  
16 was shown to be the first or second division of a larger parent parcel; or

17 (5) A parcel or lot that was created in its current size and configuration and contained a  
18 lawfully permitted single family dwelling prior to July 1, 1992; or

19 (6) A parcel/lot that does not fall within any one of the previously listed circumstances but  
20 has received a variance from the Weber County Board of Adjustment which has  
21 otherwise deemed a particular parcel/lot as a lot of record.

22 ...

23 **Title 108 - STANDARDS**

24 ...

25 **CHAPTER 12. - NONCOMPLYING STRUCTURES, NONCONFORMING USES, AND**  
26 **NONCONFORMING LOTS**

27 **Sec. 108-12-1. - Purpose and intent.**

28 The purpose and intent of this chapter is to provide standards for the development and use  
29 of noncomplying structures, nonconforming uses, and nonconforming lots. These structures,  
30 uses, and lots are considered legal, despite not meeting the current requirements of the zone in  
31 which they are located.

32 **Sec. 108-12-2. - Maintenance, repairs, and alterations.**

33 (a) Maintenance, repairs, and structural alterations may be made to noncomplying structures  
34 on lots of record.

35 (b) Dwellings or other structures built on lots or parcels which were once legal, but have since  
36 been modified in a manner that is in violation of applicable laws, shall not be issued land  
37 use or building permits, unless the structure is being strengthened or restored to a safe

38 condition, or the lot or parcel is made to conform to current zoning regulations. In restoring  
39 the structure to a safe condition, no expansion of the structure is allowed.

40 **Sec. 108-12-3. - Additions and enlargements.**

41 (a) Except as provided in subsection (c), a structure which is occupied by a nonconforming use  
42 shall not be added to or expanded in any manner, unless such expansion is made to  
43 conform to all yard and use regulations of the zone in which the structure is located,

44 (b) Except as provided in subsection (c), a noncomplying structure (main or accessory) shall  
45 not be added to or enlarged in any manner, unless such addition or enlargement conforms  
46 to all the regulations of the zone in which it is located, or conforms to the reduced yard  
47 setbacks as allowed in section 108-12-13.

48 (c) A legally constructed dwelling or other structure on a lot of record, which has yard setbacks  
49 that are less than the required yard setbacks for the zone in which it is located, shall be  
50 allowed to have an addition, provided that:

51 (1) The addition does not encroach into the required yard setbacks further than the  
52 existing dwelling or other structure; and

53 (2) The addition is located completely on the same property as the existing structure and  
54 does not encroach into a road right-of-way or on to adjacent property.

55 (d) A legally constructed dwelling or other structure on a lot of record, which is located within a  
56 stream corridor setback (as defined by the Weber County Land Use Code sections 108-7-  
57 23 and/or 104-28-2), may be added to or enlarged, provided that:

58 (1) The addition does not encroach into the stream corridor setback further than the  
59 existing dwelling or other structure; and

60 (2) The addition meets the yard setback requirements of the zone in which it is located or  
61 conforms to the reduced yard setbacks as allowed in section 108-12-13; or

62 (3) The addition does not encroach into the required yard setbacks further than the  
63 existing dwelling or other structure.

64 **Sec. 108-12-4. - Alteration where parking insufficient.**

65 A structure lacking sufficient automobile parking space as required by this chapter may be  
66 altered or enlarged, provided additional automobile parking space is supplied to meet the  
67 requirements of the Weber County Land Use Code.

68 **Sec. 108-12-5. - Moving noncomplying structures.**

69 A noncomplying structure shall not be moved in whole or in part to any other location on a  
70 lot or parcel, unless every portion of such structure is made to conform to all regulations of the  
71 zone in which it is located, or made to conform to the reduced yard setbacks as allowed in  
72 section 108-12-13.

73 **Sec. 108-12-6. - Restoration of damaged buildings.**

74 A noncomplying structure which is damaged or partially destroyed by fire, flood, wind,  
75 earthquake, or other calamity, act of God, or the public enemy, may be restored and the  
76 occupancy or use of such structure or part thereof, may be continued or resumed, provided that  
77 such restoration is started within a period of one year, by obtaining a land use permit, and is  
78 diligently pursued to completion.

79 **Sec. 108-12-7. - One-year vacancy or abandonment.**

80 (a) A legal structure, or portion thereof, which is occupied by a nonconforming use, and which  
81 is or hereafter becomes vacant and remains unoccupied for a continuous period of one  
82 year, except for dwellings and structures to house animals and fowl, shall not thereafter be  
83 occupied except by a use which conforms to the use regulations of the zone in which it is  
84 located. Wherever a nonconforming use has been discontinued for a period of one year,  
85 such use shall not thereafter be re-established and any future use shall be in conformance  
86 with the current provisions of the Weber County Land Use Code.

87 (b) Any building or structure for which a valid building permit has been issued and actual  
88 construction was lawfully begun prior to the date when the structure became noncomplying,  
89 may be completed and used in accordance with the plans, specifications and permit on  
90 which said building permit was granted. The term "actual construction" is hereby defined to  
91 be the actual placing of construction materials in their permanent position, fastened in a  
92 permanent manner, actual work in excavating a basement or the demolition or removal of  
93 an existing structure begun preparatory to rebuilding; provided that in all cases actual  
94 construction work shall be diligently carried on until the completion of the building or  
95 structure involved.

96 **Sec. 108-12-8. - Change of use.**

97 The nonconforming use of a legal structure may not be changed except to a conforming  
98 use. Where such a change is made to a conforming use, the use shall not thereafter be  
99 changed back to a nonconforming use.

100 **Sec. 108-12-9. - Expansion of nonconforming use.**

101 A nonconforming use may be extended to include the entire floor area of the existing legal  
102 structure in which it was conducted at the time the use became nonconforming; provided,  
103 however, that a land use permit is first obtained for such extension of use.

104 **Sec. 108-12-10. - Legal use of nonconforming lots.**

105 Development on a nonconforming lot is permitted. Development on a nonconforming lot is  
106 limited to only those permitted and conditional uses allowed on the smallest minimum lot size for  
107 the applicable zone. A new use on a nonconforming lot is prohibited if the proposed use  
108 requires a lot size larger than the smallest lot size permitted in the zone. A legally established  
109 use may continue on a nonconforming lot regardless of the lot size requirements of the use.

110 **Sec. 108-12-11. - Subdivision plat requirements for nonconforming lots; exemptions.**

111 All lots and parcels shall be platted as part of a subdivision in conformance with the  
112 requirements of title 106 of this Land Use Code, unless otherwise exempted by state code or  
113 this Land Use Code. The platting of nonconforming lots, and the amendment to a platted  
114 subdivision containing nonconforming lots are governed as follows:

115 (1) The following rules govern the treatment of an unplatted lot that does not conform to  
116 the current lot standards and may not have complied with the requirements of the  
117 subdivision code in effect at the time of the lot's creation:

118 a. If the existing lot can be defined as a lot of record, as defined in section 101-1-7,  
119 the lot shall be exempt from subdivision platting requirements.

- 120           b. If the existing lot was created prior to July 1, 1992 and contained a lawfully  
121 permitted single family dwelling unit, then the lot shall be exempt from subdivision  
122 platting requirements, and is a nonconforming lot.
- 123           c. If the existing lot was created prior to July 1, 1992, and does not qualify for the  
124 provisions of subsections (1)a. and (1)b., then the lot shall be platted in  
125 accordance with title 106 of this Land Use Code. Lot standards applicable for such  
126 subdivision lot may be reduced to meet the minimum standards of the zone in  
127 effect at the time of the lot's creation so long as it does not create any more lots  
128 than currently exist, and the current lot size is not materially reduced from its  
129 current acreage, except for minor adjustments necessary to facilitate a more  
130 accurate legal description. All such platted lots that do not conform to current  
131 zoning standards shall thereafter be considered nonconforming lots. A lot that  
132 does not meet the minimum standards of the zone in effect at the time of the lot's  
133 creation may be reconfigured upon platting to comply with such standards as long  
134 as the reconfiguration does not cause any other lot to become nonconforming or  
135 more nonconforming. A lot platted pursuant to this subsection may be further  
136 reduced in size to accommodate any right-of-way dedication as may be required  
137 by title 106 of this Land Use Code. No unplatted lot or parcel governed by this  
138 subsection shall be granted a land use permit prior to subdivision platting.
- 139       (2) Any lot legally platted within the bounds of a subdivision that was created pursuant to  
140 the standards of the zoning code and subdivision code in effect at the time of its  
141 creation, but no longer complies due to subsequent changes to these codes, may be  
142 amended pursuant to the minimum standards in effect at the time of its creation. The  
143 amendment shall not create any new lots. An amended plat shall be required.

144 **Sec. 108-12-12. - Reconfiguring nonconforming lots.**

145       Nonconforming lots may be reconfigured in a manner that complies with the standards of  
146 the zone in effect at the time of the lot's creation if the reconfiguration does not create any more  
147 lots than currently exist. The reconfiguration shall not cause any other lot to become  
148 nonconforming or more nonconforming. If the nonconforming lot is part of a platted subdivision  
149 an amended subdivision plat is required.

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115 subdivision containing nonconforming lots are governed as follows:

116 (1) The following rules govern the treatment of an unplatted lot ~~that was created in~~  
117 ~~conformance with the lot standards in effect at the time of the lot's creation and,~~  
118 ~~because of subsequent changes to the Land Use Code, that~~ does not conform to the  
119 current lot standards; ~~the lot may not~~ and ~~may not~~ have ~~conformed~~ complied with the  
120 requirements of the subdivision code in effect at ~~that the~~ time of the lot's creation:

121 a. If the existing lot can be defined as a lot of record, as defined in section 101-1-7,  
122 the lot shall be exempt from subdivision platting requirements.

123 | b. If the existing lot was created prior to July 1, 1992, ~~and,~~ contained a lawfully  
124 | permitted single family dwelling unit, ~~then and complied with the standards of the~~  
125 | ~~zone in effect at the time of the lot's creation,~~ the lot shall be exempt from  
126 | subdivision platting requirements, and is a nonconforming lot.

127 | c. If the existing lot was created prior to July 1, 1992, and does not qualify for the  
128 | provisions of subsections (1)a. and (1)b., then the lot shall be platted in  
129 | accordance with title 106 of this Land Use Code. Lot standards applicable for such  
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131 | effect at the time of the lot's creation so long as it does not create any more lots  
132 | than currently exist, and the current lot size is not materially reduced from ~~its~~  
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135 | zoning standards shall thereafter be considered nonconforming lots. A lot that  
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138 | as the reconfiguration does not cause any other lot to become nonconforming or  
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140 | reduced in size to accommodate any right-of-way dedication as may be required  
141 | by title 106 of this Land Use Code. No unplatted lot or parcel governed by this  
142 | subsection shall be granted a land use permit prior to subdivision platting.

143 | (2) Any lot legally platted within the bounds of a subdivision that was created pursuant to  
144 | the standards of the zoning code and subdivision code in effect at the time of its  
145 | creation, but no longer complies due to subsequent changes to these codes, may be  
146 | amended pursuant to the minimum standards in effect at the time of its creation. The  
147 | amendment shall not create any new lots. An amended plat shall be required.

148 | **Sec. 108-12-12. - ~~Enlarging~~ Reconfiguring nonconforming lots.**

149 | Nonconforming lots may be reconfigured in a manner that complies with the standards of  
150 | the zone in effect at the time of the lot's creation if the reconfiguration does not create any more  
151 | lots than currently exist. The reconfiguration shall not cause any other lot to become  
152 | nonconforming or more nonconforming. If the nonconforming lot is part of a platted subdivision  
153 | an amended subdivision plat is required.

154 | ...

155