

# Exhibit L (Jan. 24)

Minutes of the Ogden Valley Township Planning Commission meeting held January 24, 2012, in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Kevin Parson, Chair; Pen Hollist, John Howell, Laura Warburton, Dennis Montgomery, Ann Miller

Absent/Excused: Greg Graves

Staff Present: Rob Scott, Director; Jim Gentry, Planner; Sean Wilkinson, Planner; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Sherri Sillitoe, Secretary

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## ***Pledge of Allegiance***

## ***Roll Call***

### **1. Minutes:**

#### **1-1. Approval of the December 06, 2011 meeting minutes**

Commissioner Warburton asked Chris Allred, Legal Counsel to review and clarify section 5-2 on Page 2. On Page 3 regarding stipends, Commissioner Warburton noted that she agreed that as a planning commissioner she would rather have the ability to be trained instead of receiving a stipend.

Chair Parson declared the minutes approved as amended.

### **2. Regular Agenda Items:**

#### **2-1. CUP 2012-01 Consideration and action on a conditional use application for a heliport located in an F-40 Zone east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac - Timothy Charlwood, Applicant**

Sean Wilkinson presented a staff report and indicated that on January 3, 2012 the Weber County Commission adopted amendments to the Weber County Zoning Ordinance regarding heliports in the Ogden Valleys. On the same day, the applicant submitted a conditional use application for a heliport located in an F-40 Zone east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac. The proposed heliport location and an additional 446 acres owned by the applicant currently have final approval as a six-lot subdivision known as The Sanctuary (the subdivision is pending). The application originally showed three sites on the applicant's property that were proposed for this use, however, it was discovered that two of the sites were located in an F-5 Zone, which does not allow heliports. Only the location in the F-40 Zone is now being proposed for the heliport site.

The applicant is proposing to operate the heliport on a seasonal basis as a pick-up and drop-off site for heli-skiing operations. This site will be used for a maximum of three days per week, only during daylight hours, with no more than ten operations (either take-off or landing) per day due to FAA regulations as described in the staff report. The proposed heliport has no permanent structures or facilities. There is also no signage or lighting proposed. The landing area is on an existing rock surface, which is free from trees and other obstructions. Refueling may occur on site as necessary, but a fuel truck will not be parked at the site on a permanent basis. The refueling operation is subject to Health Department and Fire District approval. If the refueling operation is not approved by the Health Department due to a potential contamination risk in a Drinking Water Source Protection Zone 2, refueling will not be allowed on site. A portable latrine will be used at the site as necessary and may be removed when flights will not occur for several days.

Access to the proposed heliport is through Green Hill Country Estates, which has private roads. The applicant has provided staff with an agreement between the Green Hills Home Owners Association and the former owner of the property, which grants access on the Green Hill private roads to the applicant's property. The applicant has represented that the agreement allows those invited to his property to also use the private roads. However, this is a private matter between the applicant and the Green Hills HOA and should not be discussed by the Planning Commission. This information was included in the staff report because staff has

received questions about access to the heliport from property owners in the Green Hill Subdivision, and it is anticipated that the Planning Commission will receive similar questions.

As part of the recent zoning ordinance amendments, the F-40 Zone now allows heliports as a conditional use subject to the following standards:

1. A heliport must be located on a single parcel of record which is not less than 40 acres in area.
2. A heliport must be located at an elevation of at least 6,200 feet above sea level. The proposed heliport is at approximately 6,300 feet above sea level.
3. A heliport must be located at least 200 feet from any property line. The Planning Commission may grant exceptions to the setback requirement if it can be demonstrated that locating the heliport closer than 200 feet to the property line provides a more beneficial situation for purposes of safety, noise abatement, access, or other valid reasons as determined by the Planning Commission.
4. The heliport landing surface must be dust-proof and free from obstructions. The landing surface will be covered with snow as it is proposed as a seasonal operation.
5. Prior to issuance of a conditional use permit for a heliport, written approval from the Federal Aviation Administration (FAA) is required, if necessary.

The heliport meets the definition of "intermittent use" under the Code of Federal Regulations (CFR) Title 14 Part 157.1.c and, therefore, does not require notification to or inspections from the FAA. Staff recently spoke with the FAA Salt Lake City Flight Standards District Office about this issue and it was confirmed that this heliport would require no inspections because it is seasonal, nothing is being constructed, and it meets the definition of "intermittent use." Staff submits that the standards for a heliport in the F-40 Zone have been met.

In order for a conditional use permit to be approved it must meet the requirements listed under "Criteria for Issuance of Conditional Use Permit." The Planning Commission needs to determine if the proposed heliport meets these requirements. The reasonably anticipated detrimental effects for this heliport include safety, noise, dust, and impacts to wildlife. Each of these issues is addressed in the staff report. The proposed heliport complies with the regulations and conditions specified in the F-40 Zone including parcel area, elevation, setbacks, landing surface, and FAA regulations. The heliport must comply with all other reviewing agency provisions.

Commissioner Howell questioned the sentence; "Therefore the heliport complies with the important wildlife habitat areas section. Sean Wilkinson stated that the Sensitive Hazards Ordinance does not address. The county has no jurisdiction over flight. Staff has spoken with Pam Kramer of the Wildlife Resources who asked questions.

Commissioner Hollist asked staff to clarify what is meant by "original application pending" as listed in the staff report." Sean Wilkinson clarified that the original application is a subdivision that has received final approval from the Planning Commission but not the County Commission; the applicant is still working on that subdivision. Commissioner Hollist asked what is meant by "a private matter between the applicant and Greenhills HOA." Mr. Wilkinson replied that the county does not have jurisdiction over the private roads in the Greenhills Subdivision; however, several years ago there was an agreement between the Green Hills HOA and the former owner of the property where the heliport is proposed, which outlined the use of those roads and the development of the applicant's property. Staff has a copy of that agreement and based on staff's reading and understanding of the agreement and from the applicant's representation to the staff, they believe it is fairly clear that the use is allowed and that the roads can be used by the applicant for this use. Commissioner Hollist, asked if the home owners disagreed with that position what could they do? Sean Wilkinson said it is a civil matter between the two parties.

Regarding noise, Commissioner Hollist questioned the statement in the staff report: "Helicopters using the site are minimal because..." Noise was a consideration was part of all previous discussions to amend the ordinance, so therefore he was wondering Mr. Sean's use of the word "minimal." Sean Wilkinson said that his description is based on the location of this property versus what was proposed previously that the Planning

Commissioner Hollist felt was inadequate, which was a helicopter in the commercial area in Eden. Commissioner Hollist said they looked at decibel level tables and other examples and it was still a hard call. Mr. Wilkinson said this proposal is two-thirds of a mile from the nearest dwelling; they figured that was much more than what was proposed previously that they had seen and the location being that far away would naturally reduce the noise. In addition to the two-thirds a mile that there was some shielding by a rise of land or a ridge between the home owners? Sean Wilkinson replied that there is a gradual slope up.

Regarding dust, it was hard for him to establish the scale of the included photo in their packet. Rotor wash covers an extensive area of property and he was wondering if the rock cropping covers the ends of the rotors or does it just cover the spot where the skids set down. Mr. Wilkinson replied that the landing area is fairly large.

Commissioner Hollist said in other applications that they have seen some of them if not all of them have considered parking. Mr. Wilkinson said if they are parking their own vehicle, Chapter 24 has a provision where seasonal operations are allowed to have a non-hard surface parking area but it would have to be located away from the landing area.

Commissioner Howell indicated that he would like to see the site. Mr. Wilkinson indicated that there is a gate on the property that would have to be unlocked.

Commissioner Warburton indicated that once the subdivision is built out, does that impede on the property. Sean Wilkinson said all of the lots in that subdivision are at least 40 acres in area and a heliport would be located on one of those lots.

Commissioner Howell asked Chris Allred, Legal Counsel what would the homeowners recourse be if they did not want this proposal. Mr. Allred said the homeowners had a chance to attend this meeting and if a conditional use permit were issued with attached conditions and the application was not complying with those conditions, the neighbors could ask that the Planning Commission review the permit.

Commissioner Warburton asked in any conditional use situation, if there were complaints, by law would it come back to the Planning Commission for possible revocation. Sean Wilkinson indicated that if it was a clear violation of the ordinance, then there is a clear process to follow. Rob Scott indicated that every complaint is investigated. The Planning Commission has the power to revoke a conditional use permit. Chris Allred said if it potentially arose to the level of a nuisance then it could be abated. If somehow they issued a land use permit and it was onerous and affecting people to the point of becoming a nuisance, then it could be abated. It is very speculative.

Tim Charlwood, Applicant, invited people to come up and view the land with perspective people looking at creating a recreational trust ownership of the land. He has been observing the flight conditions in the area as he is also a pilot. He has spent a lot of time with disabled skiers and has spoken with the program director of the ability center who is excited. Diamond Peak said they would be happy to fly skiers from the ability center. Mr. Charlwood said he is in support of the national ability center and in support of selling the land and put in a trust. He has done a lot of work in the area such as grooming the trails, etc., and is aware of how sensitive Green Hills Subdivision property is. This proposal is at the very back of the canyon and the landing site cannot be seen from the nearest home.

Before Mr. Charlwood started the process, he took pilots up there and discussed various issues such as wildlife impacts, avalanche control, noise, etc. The property is also in the flight path of DWR. In all the years he has owned the property, he has never seen an elk on his land and the property is not across from the wildlife migration area. His observations are that they are not disturbing any herds; the herds are at least a half mile away and across the river. He has had trespassers and violations on his property and someone has also created a gun range. He has cameras in the area up there for the last two years. He is trying to observe the ordinance regulations.

Commissioner Warburton asked his relationship with Diamond Peaks. Tim Charlwood said he would use Diamond Peaks to fly people to observe his land.

Commissioner Hollist asked Tim Charlwood to explain what is meant by recreational trust ownership. Mr. Charlwood said the National Ability Center located in Park City is being supported by a large trust of three families.

Commissioner Warburton asked Mr. Charlwood indicated that the helicopter company would act like an agent and bring their clients up to his property. There would be no more than six cars during the entire day. The heliskiiers would be brought up to the site in a vehicle and they would take the helicopter from there. Commissioner Hollist asked Mr. Charlwood to address noise. They are 600 ft. above the elevation from any home and any noise generated would be buffered by the hills. He spoke with the pilots and they do not need to make any approach over the two canyons.

Commissioner Hollist stated regarding dust; the rotor wash and the rock pad shown on the elevation. Mr. Charlwood said the landing area is covered with heavy shale and the helicopter would be landing on snow. Commissioner Warburton voiced her concern that the heliskiing would be considered a business. She asked the applicant if he could use whatever helicopter agency he wants to and Mr. Charlwood replied yes. The ability center is a passion of his; he clarified that he would have his clients come in to look at the property with the idea of ownership in their minds. He is just trying to promote his land. The Ability Center would pay all costs to bring the skiers to his land for heliskiing. Commissioner Warburton asked if the helicopter company would also do their own business. Tim Charlwood said he is asking them to bring their own clients up there to look at his property. It is a tool used to promote his land. The access road through Greenhills Subdivision is the only access to his property. He had an agreement for access and construction of 13 homes, although he is only asking for six.

Ron Gleason said that the Board of Directors of the Homeowners Association asked him to address their concerns. They ask the Planning Commission to table the application because there has not been adequate time to review the existing agreement and the right of way over the private roads. They would also like time to obtain an outside legal opinion regarding the agreement. Mr. Gleason asked that the statement by Sean Wilkinson be rescinded where he stated that he had looked at the agreement and that obviously it allows access. To him that is an inflammatory statement where he has given an opinion and staff has rendered an opinion to the Planning Commission that this is a good agreement. If the county is staying out of it, then that statement should be rescinded and the comment removed from the minutes of this meeting. Chris Allred said that he does not see any grounds to take the comment out of the meeting because the minutes are a reflection of what took place in the meeting whether it is right or wrong. Rob Gleason then restated their request and asked Sean Wilkinson to come up and rescind that statement and not influence what the planning commission thinks about that agreement.

Ron Gleason indicated that the Homeowners Association asked the application be tabled until the Division of Wildlife Resources can issue an opinion in writing. The approximate 1,000 acres of open space around the Greenhills development was put into a wildlife easement in 1998 between the original developer of Greenhills and the Department of Natural Resources Wildlife Resources Division. The values of the conservation easement was to protect and promote good water quality critical winter habitat for big game species such as deer, elk and moose and provide a high quality habitat for other wildlife. There are restrictions on access to the Greenhills open space, which specifically states, "to minimize the service of big game and species during critical wintering period January 1 to March 31 with the exceptions to designated trails as long as it does not disturb wintering habitat on the property. They also ask that the request is tabled until the Planning Commission members have the opportunity to visit the site

Regarding fire suppression, there is no running water or infrastructure up there so how will fire suppression occur. The noise issue will come up a lot with this use. It is an acoustical canyon and noise travels down to the residential properties.

Commissioner Hollist said as to the issue of Mr. Wilkinson's presentation both he and the Chair recognized that there were some words that they did not understand which is why he asked the second question to Sean and he believes he made it perfectly clear that whatever question there is about roads, that is an issue between the applicant and the home owners association. The staff, the planning commission, the county is entirely outside of that so he does not believe there is reason to expunge minutes and he believes Mr. Wilkinson has made it abundantly clear.

Commissioner Hollist clarified Mr. Gleason's statements that the HOA believes that there are restrictions there and they need time for a board and a third-party review of that agreement. The second point is the conservation easement and the legal ramifications of the proposed land use and that easement. Mr. Gleason replied that they also want to know if there is a detriment to the surrounding lands that is in a conservation easement. Commissioner Gleason said that the conservation easement owned by DWR and he asks that this issue be tabled and that staff asks DWR for a written response and interpretation whether this land use would have a detrimental impact to that conservation easement. The homeowners association is requesting that the issue is tabled.

Patti Danks, a member of the Greenhills Water and Sewer District, said the County did not contact them so they were not able to review this application. The proposed heliport will be in their sensitive lands. The area where the heliport is proposed should be protected from any possible contamination. Greenhills has filed a well-head protection plan which was approved by the State, and the County also adopted a drinking water source protection plan. The county's ordinance states that the source zones should be protected and the proposed heliport is in Zone 2 of their water protection plan. On Page 4 of the applicant's application, there is something that says that the proposed use will not lead to the deterioration of the environment or the ecology of the general area nor will produce conditions or emit pollutants of such a type or of such a quantity so as to detrimentally affect the area. They feel that this land use would be detrimental to their water source. Commissioner Hollist said it is true that when the skids of the helicopter or bird leave the ground, the controlling entity is not the planning commission it is the FAA. While it is on the ground, they are well aware of the threat to the drinking water source protection area zone 2, Mr. Wilkinson briefed them in their pre meeting and in the staff report. Ms. Danks said the Water and Sewer District is asking that this issue is tabled and that they receive adequate information for their review.

Commissioner Warburton asked if special districts (water and sewer) receive their permits from the State. Ms. Danks said Bona Vista Water is an area to check off on the application so she believes Greenhills Water and Sewer should have been on the application too. Greenhills Water and Sewer District is a Special District authorized by the State of Utah.

Lee Schussman, Eden, said at the distance of two-thirds of a mile to the closest residence. At the nearest house, the noise is compared to a Harley at approximately 80 decibels. His question is would they be permitting a heliskiing business only. He realizes they can have nothing to say about a helicopter once it lifts off the ground but his question is that he heard that it is a heliskiing endeavor business and they would want to maximize the flight time. Commissioner Warburton said she believes it is the anticipation of harm that worries them, not the fear of noise similar to a Harley. Commissioner Hollist thanked Mr. Schussman for giving them noise tables. Chair Parson said this is a heliport application with ten flights a day three times per week. Mr. Schussman asked if they have the ability to permit something as a business. Commissioner Warburton said her previous question was that she wanted it on record of what was going to happen, not just what was written down for future use.

Commissioner Miller stated that she would like to have a definite timeline.

Jacques Behar, River Drive, has seen Moose, Elk and Deer in the area. He believes the conservation easement should be considered. The agreement talks about 13 homes but not commercial, it talks about building, but not commercial use or who maintains the roads. The agreement was a (NASS agreement), a settlement agreement signed in 2004, which was a civil lawsuit brought about several of the homeowners of Greenhills against the former owner and his multiple companies. The agreement was very clear that the ordinances that

apply were those of that day and that day only, not new ordinances. It was only January of this year that the heliport ordinance was adopted. He believes there is no reason for a heliport to advertise the land. Commissioner Hollist said that the Planning Commission could not consider the agreement as it is a civil matter. They are being very careful to stay away from that agreement.

Commissioner Miller asked the timetable for notification. Sean Wilkinson indicated that they sent a courtesy notice one week ago.

Don Kelley, an adjacent property owner, presented a map of the area. In the original information that was presented in the staff information, the wrong parcel was indicated. Wildlife management limits activity in the winter months on property that surrounds the parcel in question. He wonders about the Planning Commission's possible bias with the situation, but was happy to see some of the questions answered tonight. Maple Canyon is a very steep road and he doubts that you could drive a vehicle on that road today. He believes this is a commercial operation. Once this project is approved, in a VFR flight plan, the helicopter pilot could go in any direction.

Cheryl See, Kelley Drive, was concerned with snow dust, parking, and amplified noise. Her son is a member of the National Ability Center and knows that they only ski in Park City. She also expressed fire suppression and wildlife concerns. The residents have seen Golden Eagle, a mountain lion, elk, moose, and deer in the area and believes they may need an EPA study done.

David Crim, a resident on lower Maple Canyon, said he believes there will be a direct line of sight to the proposed landing pad. He is concerned about the safety of the children that play near the roads with the increased traffic a business would bring there. He asked that the integrity of the 30-year homeowners association agreement be recognized.

Ron Gleason said he was comfortable with the way the new ordinance was drafted. He believes the noise issue was outside of the discussion and the parameters that they talked about in prior discussions. Port-a-potties should be allowed no longer than six months if at all in the winter. He believes they can deal with the noise issue by having test flights.

Dian Robinson, Treasurer of the home owners association said sometimes with the logistics of the roads she cannot get home in the winter in her two wheel drive vehicle.

Steve Clarke, Eden, said since the HOA has not had adequate time to review, the review by the DWR has not been submitted, the water protection issue needs to be addressed, The question of 6-12 month period of approval seems very wise to him. He suggests the following: 1) a heliport is not required to bring potential buyers to the applicant's property, 2) what happens if he sells the property where the heliport is approved there, and 3) The idea of an on-site visit by the Planning Commission is justified.

Toni Mure, Maple Drive, said she is concerned with how the domestic animals especially mules and horses would be impacted. She believes the Planning Commission should visit the site and see the relevant issues.

Pam Kramer, from the Utah Division of Wildlife Resources said she heard about this application yesterday from her boss. They have several concerns but have not had adequate time for further review of the project. From a Big Game Impact standpoint area, they are concerned of what impact the heliport would have on those species. In that general area, they could have a little less than 500 deer, 2-300 elk, and two dozen moose. From Jan 1-March 31 the intent was to protect wintering habitat on a conservation easement. The heliport is proposed within 2-300 feet from the edge of the property that they manage.

Louis Cooper, Greenhills Subdivision, said he was on the Planning Commission when they were evaluating Red Moose Lodge. He recommends that they have a site visit and evaluate. The PC has discretion on what conditions can be placed on the heliport use and that needs to be done carefully.

Jeannie Allen, a resident on the last house on Maple Drive, said that she has horses and she is concerned with the possible noise impact. She has had deer on her property. People have seen moose and deer on the hill before she owned the property. She can hear the guns going off every morning for avalanche control and she is concerned with the possible heliport noise. She likes peace and quiet.

Brenda Cooper, Maple Drive, believes that the wildlife habitat should be preserved. She believes the Planning Commission should visit the site and see the relevant issues.

Rosie Droubay, Huntsville, said they live there for the peace and quiet, the clean air and the clean water. Their area is quiet and you can see and hear the wildlife.

Tim Charlwood in rebuttal said there is 1 ¼ as it goes over their land. In his sense of commercial, he is trying to sell his land. There is a pilot's log and anyone is entitled to go over that log.

**MOTION:** Commissioner Hollist moved to table 2.1 for the following reasons: (1) to allow review of the agreement between the Greenhills HOA and the applicant, 2) to investigate thoroughly the wildlife preserve conservation easement by Pam Kramer and to receive a letter relative to that easement and 180 degrees around Greenhills, 3) to allow time for all seven members of the Ogden Valley Planning Commission to visit the site and make an assessment, 4) to thoroughly vet the Source Protection II and this particular proposal on this Water Source Protection, 5) to actually conduct test flights with a decibel meter so they know exactly what the decibel reading is at the site, the nearest house and several below that (possibly to Pineview Drive), plus the conditions listed in the staff report, and that they have before them the Health Department and the Fire District their report before any action is taken. Commissioner Warburton seconded the motion.

**Friendly Amendment:** Commissioner Warburton added that the applicant should address the issue of having a business and do they have a business license. Commissioner Miller said she would like definition on the time. She believes there needs to be some time limitations as part of the permit.

Chris Allred said regarding the requirement of metering the sound, how and who needs to meter it? (Does the applicant agree to provide a helicopter). Commissioner Warburton said there should be a time certain. Rob Scott said the Red Moose Lodge helicopter evaluation was done on the spur of the moment (they were going to be flying that day). No sound measurement was taken at Red Moose Lodge. Heliskiing will probably not going to be happening within the next two weeks. The point is that the Planning Commission has unanswered questions at this point.

David Krem said he believes it would be the most beneficial to use the exact helicopter that would be used. Commissioner Warburton said clearly they missed something in the ordinance. This issue was discussed for some time at great length. This is a learning situation for all of them. Once an ordinance is approved, it becomes law. The citizens should become educated and participate during the ordinance amendment process.

Mr. Charlwood indicated that there is more than one helicopter. They are flying over Greenhills if they are flying out of Mountain Green every day several times a day. He asked if the Planning Commission could give consent for this season and they can evaluate it. Mr. Charlwood indicated that it takes three minutes just to touch down and takeoff – Mountain Green and to the land and back is 20 minutes.

Sean Wilkinson said staff would work with Mr. Charlwood and try to work out a time and then try to get with the Planning Commission, as they are able. Chris Allred said he would recommend they keep it within one month. Rob Scott said they would try within to arrange a field trip within two weeks.

FRIENDLY AMENDMENT

Commissioner Warburton indicated that she would remove from the motion that they are giving them time to work out the HOA and the road issue because it is not within their purview.

VOTE: A vote was taken and Chair Parson said the motion carried by a unanimous vote.

Commissioner Hollist took over the meeting as Vice Chair at this time.

- 2.2. ZTA 2012-01 Consideration and action on a zoning text amendment to Chapter 15 (Forest Residential FR-3) of the Weber County Zoning Ordinance to allow a Night Watchman unit as part of Homeowners Association’s common facility building for an onsite employed manager or night watchman – John Lewis, HOA Vice President of Moose Hollow and Cascade at Moose Hollow, Applicant

Jim Gentry presented a staff report and stated that the applicant is requesting to amend the FR-3 Zone to allow a night watchman unit as part of a Homeowners Association’s common facility building, such as space within a clubhouse, for an on-site employed manager or night watchman. The proposed changes are because of issues with vandalism, theft, burst waterlines, and other problems.

Staff report questions:

Why is there an issue with how many? Jim – there may not be an issue. Some projects are very large.

Commissioner Warburton asked if they have a precedence set for any others in the Ogden Valley?

On the staff summary: How is the HOA sure that they cc – can they get it notarized and a copy of which is in the file. (Jim this can be accommodated) He may also be required to

Commissioner Warburton John’s daughter and her daughter are best friends but she believes that she is more than capable of

John Lewis VP of their they have 214 units with one clubhouse. They have grown over 12 years and they are finding that they have great managers, but they don’t stay there. They were vandalized and security is a big concern to them. Wolf Lodge has an onsite manager that lives there.

He believes it will be a benefit to the community in general.

Howell, will this person live there all the time – a full time on-site job. Yes, they are at the point of needing someone there all the time.

The night watchman will live in the basement of perhaps a rented hall. John –yes. Will they have a guard shack? Yes, He believes that anything over 100 units a night watchman dwelling should be an allowed use. He would recommend it be a permitted use with any number of units.

Commissioner Miller believes a key point would be that they could not sell it or rent the unit. He is not requesting that they increase the number of units allowed.

Commissioner Howell asked Mr. Lewis if they do a background report and he replied yes. The manager does not have a vehicle. Peak to Peak Management does a great job at present, but at some point they may need or want their own person.

Commissioner Warburton asked if staff is comfortable with this being a permitted use. Staff replied yes.

Vice Chair Hollist said the following to address staff’s questions:

- 1)It makes sense
- 2)No, it doesn’t constitute a dwelling unit
- 3)Yes – the reasons are clearly stated
- 4)one dwelling unit



## Exhibit L (Feb. 28)

Minutes of the Ogden Valley Township Planning Commission meeting held February 28, 2012, in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Kevin Parson, Chair; Pen Hollist, Greg Graves, John Howell, Laura Warburton, Ann Miller, Dennis Montgomery

Staff Present: Rob Scott, Director; Jim Gentry, Planner; Sean Wilkinson, Planner; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Sherri Sillitoe, Secretary

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### ***Pledge of Allegiance***

### ***Roll Call***

#### **1. Minutes:**

- 1-1. Approval of the January 3, 2012 and the January 24, 2012 regular meeting and work session minutes  
Commissioner Warburton indicated that on the January 3, 2012 minutes, she nominated Pen Hollist as Vice Chair and on Page 2, Para. 4, "hostage" should replace "responsible."

Steve Clarke submitted minor changes to the minutes prior to the meeting. Chair Parson declared the minutes approved as amended.

#### **2. Regular Agenda Items:**

- 2-1. **CUP 2012-01 Consideration and action on a conditional use application for a heliport located in an F-40 Zone east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac - Timothy Charlwood, Applicant**

Sean Wilkinson indicated that the Planning Commission tabled this issue at the January 24, 2012 meeting to receive additional information and to arrange a site visit.

Staff provided the Utah Resource Development Coordinating Committee (RDCC) with the information that was presented to the Planning Commission on January 24. The RDCC comment period closed on February 22 but staff had not yet received any comments as of today. Staff spoke with a DWR representative who said the review was on her supervisor's desk. More information will be provided to the Planning Commission as it becomes available.

A field trip was held on February 4, 2012, where five of the seven Planning Commissioners, staff, and members of the public attended. The field trip consisted of a drive from the Maple Street cul-de-sac to the heliport site, a short question and answer session at the site with the applicant, followed by a return trip to the Maple Street cul-de-sac and more discussion. Unfortunately, a helicopter did not land at the site, so no decibel readings were obtained.

The Green Hills Water District recently provided staff with a copy of its Drinking Water Source Protection Plan. With the refueling being removed from the application, the Weber-Morgan Health Department has no concerns with this use.

Test flights were not conducted at the site, so there are no decibel readings available for the Planning Commission to consider. However, three decibel (db.) charts and one calculation have been provided to give a general understanding of the noise levels that can be expected. Based on these charts and the calculation, the heliport will generate a maximum of 70 decibels at 3,500 feet or two-thirds of a mile. The charts list various comparisons for 70 db. including radio/television audio, a vacuum cleaner, normal conversation at 3-5 feet, and an automobile. Based on the expected noise levels and the limited heliport operations, it appears that potential issues with noise are adequately mitigated.

The Weber Fire District responded with no concerns after the after the applicant withdrew the refueling operation.

The definition of heliport in the Zoning Ordinance clearly allows commercial operations. If this site is determined to be a commercial heliport that needs a business license, then a business license will be required. However, if the use that takes place does not require a business license, or if a license has been obtained in another area, where the business transactions actually occur, then a business license may not be necessary. Regardless of the type of use – private or

commercial – the applicant is requesting a conditional use permit for a heliport, which has very specific criteria. The criteria, rather than the private or commercial use should be the Planning Commission's focus.

The Planning Commission must now determine if the new information and compliance with the existing Zoning Ordinance criteria are sufficient to approve the applicant's request. Staff recommends approval of the proposed heliport, subject to agency review requirements, based on its compliance with applicable ordinance requirements as described in the staff report.

Tim Charlwood stated that he went to Mountain Green where he was able to record helicopter noise with a cell phone application. He had a 50 db. level at two thirds a mile as measured on the approach. At 100 ft., the level on his phone read 120 db. A medical helicopter is twice the size and noisier than the helicopter he would use.

Chair Parson allowed brief public comment.

Diana Robinson Wise, 1168 Maple, asked the members if they are going to approve the Conditional Use permit that they set the operating hours to 9 a.m. to 4 p.m. and have a review in one year.

Lee Schussman, Eden, said he believes a 50-70 decibel level is significant in a quiet valley. There were multiple studies done that helicopters noise at this level was a problem for people in the vicinity. At the U.S. Marine Station in Miramar, Almost from the beginning since the Marines took over the naval station, the residents have complained about the noise. It is a significant factor to have a 50-70 decibel level. He urged the Planning Commission to have the applicant fly a helicopter to the site so that the noise could be observed. A pilot he spoke to said it was best to fly a helicopter into the site from the lower ground up.

Roxanne Taylor indicated that her house is at the top of Kelly Drive and there are tremendous echoes in the Ogden Valley. The homeowners carry the liability insurance for their private roads, and she believes the applicant should be required to provide his own insurance for the extra traffic on the private roads.

Lynn Turner indicated his concern that the DWR response would not be available to the Planning Commission. He believes that a review should occur in a year and then maybe the DWR can respond.

Tim Charlwood indicated that the DWR accepted that they fly over this area 8 ft. over the livestock as a regular occurrence. The noise level evidence that Mr. Schussman gave prior compared a helicopter to a Harley Davidson. The community does not have an acceptable sound level on record.

Commissioner Miller asked Mr. Charlwood's timeline. Tim Charlwood indicated that the helicopter would fly during daylight hours.

Chair Parson read a correcting statement from Lee Schussman who indicated, "...that he made an incorrect statement previously and wanted to clarify that the noise level of a helicopter would be compared to a Harley Davidson at 100 ft."

Commissioner Hollist asked if there is anything in the law indicating that a conditional use could only be for one year, and could it be six months. Chris Allred, Legal Counsel, said there is no provision in the law regarding time limitations, the permit is either granted or not granted based on what is proposed and knowing if there are violations, they can look at revoking the permit. They can call for a review with specific concerns in mind so that they can have something to look for.

In answer to a question by Commissioner Miller, Chris Allred stated that the Planning Commission could place requirements on the permit based on reasonable detrimental effects.

MOTION: Commissioner Warburton moved to approve CUP 2012-01 subject to a review in one years' time from today's date, specifically for noise and any other detrimental effects that are overwhelming. She believes the parameter of operating during daylight hours is appropriate at this time. Commissioner Graves seconded the motion.

Commissioner Montgomery said he visited the site earlier than the other members did on the morning of the field trip. He lives on 7800 E 1120 N and while he was in his garage on the west edge of the valley that morning, he heard a helicopter go by twice.

Commissioner Howell said they do not have a report from the DWR; even the County Engineer was concerned that there was no report from the DWR. They were not able to observe a helicopter and its associated noise at the site and to him that is the most important thing. The Planning Commission and the residents need to hear the helicopter in order to make their own judgment.

Commissioner Miller said that she believes that data could be obtained within a month.

Friendly amendment: Commissioner Miller moved that the applicant be allowed to operate from February 28 to March 31 so the Planning Commission could review the noise and other data prior to June 1, 2012.

- Commissioner Warburton rejected the friendly amendment.

Jim Gentry indicated that there is a 15-day appeal period for Conditional Use Permit decisions.

Commissioner Graves said he does not want to grant something only for a month. It would seem to him that they should table it until staff receives the DWR letter and other desired noise information.

Commissioner Hollist said that everything that they have read boils down to the wildlife impact concerns and the noise, both of which have not been addressed.

Sean Wilkinson said he does not know if the Resource Development Coordinating Committee (RDCC) would allow the DWR to make comments due to the DWR, missing the RDCC's deadline. Staff sent review materials to the RDCC and the DWR did not respond during the timeline that they had.

Commissioner Hollist said that the Planning Commission members should be aware that the Legislature is in session and time could have been a factor for DWR.

- VOTE: The motion failed by a unanimous vote.

Chris Allred read the code regarding conditional uses: "The Planning Commission shall not authorize a conditional use permit unless evidence is presented to establish:

1. Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts are odor, vibration, light, dust, smoke, or noise..." They are focusing on what the reasonably anticipated detrimental effects are.

MOTION: Commissioner Graves moved to table CUP 2012-01 because of the detrimental effect of noise and to address that noise level; they need to get a decibel reading from a decibel meter.

Chris Allred said they held this conversation at the last meeting and it was deemed problematic. Commissioner Graves said he read the noise level on his cell phone tonight and the conversation decibel levels read from 60 to 70 db.

Commissioner Hollist asked if they could grant a permit for three or even 6 months so that they have a period where someone else pays for the helicopter to come in and out of that site and do the actual measurements. He believes the meters on phones or the borrowed meters should be adequate for a decibel reading at least before the next ski season. In addition, could they cajole the DWR to respond and have a governor-approved statement in the file?

Commissioner Miller said she thought March would be a good month for data collection. She also believes that they need to find out if DWR is willing to make a statement.

- Commissioner Graves withdrew his motion.

MOTION: Commissioner Hollist moved to approve CUP 2012-01 with the primary conditions: 1) an opportunity for the flight operations anticipated by Tim Charlwood would be allowed to be conducted with whatever variables he desires, such as whichever way the pilot chooses to approach the site, etc., that there is a condition that he can conduct the flight operations for a period of six months and that during that six-month period of time, the Planning Commission obtain an official statement from DWR regarding their assessment on the impact on the wildlife. Commissioner Miller seconded the motion.

Chair Parson said he believes that the helicopter should be fully loaded in order to give a true noise representation. He believes it would be fantastic for Mr. Charlwood to give a heads up to the Planning Commission of when a helicopter is flying. The onus is on the Planning Commission to be there after that notification.

AMENDMENT: Commissioner Hollist said he believes a smart phone decibel recording application would be satisfactory to record the helicopter noise. He believes the onus could be on the homeowners to record the noise and not the Planning Commission. Since Commissioner Graves monitored tonight's conversation at 60-70 decibels and the data they have been provided indicated that normal conversations are 60-70 db and intermediate to medium helicopters are between 69-77 db., and normal piano playing at 60-70 db., he would approve the conditional use permit with the stipulation that the helicopter noise level could be no more than 70 db., which is substantially less than what the applicant has said in several conversations as measured from homes to the top of Maple Canyon, but not on Mr. Charlwood's property.

Commissioner Miller said she does not know enough at this point to know if 70 db. is adequate. Chris Allred said as evidence homeowners could submit their decibel level readings

- Commissioner Hollist withdrew his friendly amendment.

Commissioner Warburton clarified that the motion does not require anyone to provide a helicopter test flight for the Planning Commission so it is based on how the residents in the area feel. The six-month period would be until August.

Commissioner Montgomery asked the applicant to give the Planning Commission a heads up if he will be operating on a weekend. Mr. Charlwood said he would anticipate having three weeks at the most. He believes it would be helpful to know what sound level the Planning Commissioners would be comfortable with.

Chair Parson said there was a motocross track in his back yard. It was hard for him to have his peace and quiet taken from him. He believes this is the basis of respect. They did not consider as a Planning Commission whether the noise could be mitigated in the F-40 Zone when the ordinance was amended and he believes they blew it.

Commissioner Warburton urged the public to participate in the planning process. The residents are not victims to the process because anyone can petition to amend the ordinance.

Commissioner Howell said his position is that they are putting the cart before the horse. He believes they should hear the noise and then make a judgment. Commissioner Hollist said they have to have a period to test it where the heli-skiers are paying for the flight and for the Planning Commission's opportunity to hear it. He proposed six months in his amendment knowing that they have a month and a half to make their observations.

AMENDMENT: Chair Parson proposed a friendly amendment that if the snow dries up and there is no more backcountry skiing this year, and then he would propose that the applicant have three months from the start of January through March 31, 2013.

- Commissioner Hollist rejected Chair Parson's friendly amendment with understanding that if they are going to review in six months and there was not opportunity to conduct flight operations so they can monitor it, then at that time they can accomplish what Chair Parson just suggested.

Commissioner Warburton said she believes the best people to review the noise are the homeowners. She would trust the homeowners and their decibel readings.

Commissioner Miller said she still would like notification of a flight.

Tim Charlwood said if the helicopters were too noisy, he would stop it anyway. If they do any flying, he would like to have it recorded from an independent person. However, he would like to know what decibel level is unacceptable to the county. He has tried to mitigate the potential impacts and has gone over and above what was required by law. He is willing to record noise levels. Chair Parson agreed that Mr. Charlwood has done what was asked of him, but it is subjective to the neighboring community.

Chris Allred said the Planning Commission could not defer their decision to the neighbors; they could hear the neighbor's opinions or observations on how it was but the Planning Commissioners would have to justify any decision they would make.

VOTE: Chair Parson said the Motion carried 5-2 with Commissioners Hollist, Miller, Warburton, Montgomery, and Graves voting aye and Commissioners Howell and Chair Parson voting nay.

**2.2. CUP 2011-06 Consideration and action on a conditional use permit application for a public utility substation (cellular site at approximately 95 Ogden Canyon Road) in the Forest Residential 1 Zone (FR-1) (Doug Kofford, Agent for TAIC, and David Hardman, Owner)**

Staff presented the following report:

The applicant is requesting approval of a conditional use permit for a public utility substation (cellular site). The FR-1 Zone allows a "public utility substation" as a conditional use. This site is the fifth, and center, of a series of cell sites that have recently been constructed in the Ogden Canyon. This site is on an 11.37-acre property owned by the Ogden Weber Chamber of Commerce.

The site consists of a 34 foot by 34 foot leased area, which will be surrounded by an 8 ft. tall cedar fence. This fenced area will have 12 Manzanita shrubs and 6 alpine current shrubs along with additional grasses to help screen this facility. One 26 foot by 12 foot by 10.5-foot tall equipment shelter will house the mechanical equipment for the site and will be connected to an 85-foot tall monopine cellular pole. This monopine pole will have a diameter of 2.5 feet at the trunk and some branches attached as to simulate a live tree. Affixed to the pole will be an array of 12 antenna panels (8 foot) at a height of 76 feet that will be grouped together in three groups of four panels. The shelter has been placed so that the doors and equipment will be away from the street side, any vents or equipment that is needed to be facing the street will be painted in earth toned colors as to match the building. The side of the shelter is made of an aggregate of small rocks and painted a tan color. There are no lights associated with this cellular site. A 12 ft. steel gate with 4-foot diameter boulders on the sides will protect the access to the site from the parking lot.

Staff recommends approval of this conditional use application subject to the applicant meeting the conditions of approval in this staff report and any other conditions required by the Planning Commission. This recommendation is based on the following findings: (1) The proposed use is allowed in the FR-1 Zone and meets the appropriate site development standards, and (2) The criteria for issuance of a conditional use permit have been met and the mitigation of potential detrimental effects has been accomplished.

Commissioner Warburton asked if birds build their nests in this "tree."



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Ogden Valley Township Planning Commission  
**NOTICE OF DECISION**

March 2, 2012

Tim Charlwood  
PO Box 980400  
Park City, Utah 84098-0400

Case Number: Conditional Use Permit (CUP 2012-01)

You are hereby notified that your Conditional Use Permit application for a heliport on your property (Parcel # 21-001-0010) located east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac was heard by the Ogden Valley Township Planning Commission in a public meeting on February 28, 2012, after due notice to the general public.

The Ogden Valley Township Planning Commission voted 5-2 to approve this application for 6 months (until the August Planning Commission meeting) to allow an opportunity for the flight operations anticipated by Tim Charlwood to be conducted with whatever variables may occur, with the following conditions:

- Flights (landings and take-offs) shall be measured by decibel meters and the findings shall be presented to the Planning Commission.
- An official review from the Utah Division of Wildlife Resources shall be obtained during the 6 month approval period for review by the Planning Commission.

The minutes from the February 28, 2012 Ogden Valley Township Planning Commission meeting will be available from the Weber County Planning Division Office in approximately one month. To obtain a copy of the minutes please contact Sherri at 801-399-8794.

Sincerely,

Sean Wilkinson  
Weber County Planning Division