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Weber County Planning Division

Delivered Via Email

**RE: Appeal of Ogden Valley Planning Commission decision approving Sunshine Valley Estates Subdivision dated February 26, 2019**

To Whom It May Concern:

I wish to appeal the decision of the Ogden Valley Planning Commission approving the Sunshine Valley Estates Subdivision dated February 26, 2019 under Sec. 102-1-7 of the Weber County Code.

I am a neighboring landowner and a concerned citizen. This issue came to my attention because I am the Vice President and majority owner of the Co-Op Farm Irrigation Company that historically provided irrigation water to the land that will become the Sunshine Valley Estates subdivision. The Ogden Valley Planning Commission is misreading the ordinance governing the approval of subdivisions, especially as it relates to secondary irrigation water. The County's reading of the ordinances shown below will allow the developer, Matt Lowe, to subdivide and sell building lots without first acquiring State Engineer approval to drill the necessary wells to supply culinary and secondary water to each lot and without requiring him to drill and pump test those wells to prove that adequate water exists in the aquifer to supply the culinary and secondary water to this subdivision. The required approval process through the State Engineer's office is intended to offer the neighbors a chance to protest approval of the wells to insure that the new wells will not interfere with all of the other culinary wells immediately adjacent to Lowe's subdivision.

At the time this subdivision was proposed, Lowe pledged shares of stock in the Co-op Farm Irrigation Company as his means of providing irrigation water. If you look at the documentation shown on Miradi it clearly shows a copy of 54 irrigation shares in Co-op and they are listed as the irrigation water to be provided. The problem is that Lowe

had previously pledged these same shares of stock to his previous subdivision, Silver Summit Estates. Lowe only delivered to the homeowners in Silver Summit 40 of the promised 94 shares. The remaining 54 shares were then pledged a second time for the Sunshine Valley subdivision. When I discovered this, the County agreed to halt the approval of the Sunshine Valley subdivision until this issue was resolved. Unfortunately, the County, rather than requiring Lowe to return the 54 shares to the homeowners in Silver Summit and requiring him to provide a new source of secondary water for Sunshine, instead opted to approve the new subdivision under a highly dubious scheme that will surely leave the unsuspecting lot purchasers in the new subdivision in the same unhappy (and dry) circumstances as all of the owners in the Silver Summit subdivision. The reason the County has opted to do this is because of their interpretation of the ordinance. Keep in mind that my reading of the ordinance protects the unsuspecting lot purchasers from buying an unbuildable lot and puts the responsibility to prove an adequate water supply on the shoulders of the developer. The County's reading of the ordinance helps the developer subdivide and sell lots that have little to no irrigation water and may not even have a culinary water supply!

The County's ordinance is somewhat confusing and is divided between culinary water and secondary water. Basically, if culinary water is available from a culinary water supplier such as Huntsville Town, the County has a list of strict requirements requiring the developer to install a secondary system and to prove its viability so that the homeowners do not use the culinary water for irrigation purposes. (As a side note, I serve on the Huntsville Town Council and the County's failure to enforce those very ordinances in the Monastery Cove subdivision have wreaked havoc on Huntsville's culinary water system because now homeowners are using Huntsville's culinary water for outside irrigation because the County did not require the developer to install the secondary system as required by law). If no culinary water agency is serving the area, the developer may secure culinary water from either installing his own water system (106-4-2(a)(2)) or obtain approved exchange applications from the Utah Division of Water Rights for shallow wells (106-4-2(a)(3)).

The real issue in this instance is what are the developer's obligations regarding secondary water if the developer provides culinary water via shallow wells. Those obligations are explained in Section 106-4-2(m) shown below. Once again, the County differentiates between the responsibilities of the developer in a subdivision supplied with

culinary water by a separate agency and a subdivision supplied with culinary water by shallow well. In the first instance, as explained above, the developer must install the infrastructure for the secondary system and provide the water source. However, if secondary water is supplied by shallow well, paragraph m states, "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." First, Lowe's new subdivision (and old subdivision) is within the service area of a secondary water provider (Co-op Farm Irrigation Company) and is therefore required to "install a secondary water system in accordance with the provider's requirements or standards." However, even if that weren't true, the developer is still required to obtain an approved change application, drill the well and provide the pump test results for review prior to the subdivision being recorded.

These ordinances make perfect sense and provide protection to the purchasers of these lots if you accept my interpretation. On the other hand, if you accept the County's tortured interpretation, the developer does not have to obtain State Engineer approval of the shallow wells, does not have to drill any wells or do any pump testing to see if these wells will actually produce any water. In other words, the County's interpretation leaves the lot purchasers completely vulnerable because the existence of water for culinary and secondary water will not be determined until after the new owner has purchased the lot and then applied to the State Engineer for approval to drill the well. Even after State Engineer approval, the new lot owner will still not know whether they have a buildable lot until the well is drilled and pump tested. All of these obligations are intended to be borne by the developer prior to final subdivision recordation and the sale of the lots. The County's interpretation can't possibly be what the drafter of this ordinance intended. It is a preposterous position that the County interprets this ordinance in such a way that it lays a hidden trap for people who know absolutely nothing about water rights but who are definitely counting on the County to make sure that a lot has water before the subdivision is approved.

I request that the County Board of Adjustments grant a hearing on this matter to carefully review the Ogden Valley Planning Commission's interpretation of this very important ordinance.

Thank you,  
William White