



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Public hearing to discuss, take comment, and potentially take action on a county-initiated proposal to amend the subdivision ordinance to allow private streets and private lanes in certain circumstances.

Agenda Date: Tuesday, April 27, 2021

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Applicable Ordinances

§ 106-2-2(a) – Street Dedication
§ 106-2-7 – Subdivision Dedication

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 a number of applicants proposing private streets in subdivisions. One specifically, is on hold until and unless a private street ordinance is adopted.

The County Commission has put a lot of effort and thought into streets over the last year or two. An emerging theme in their considerations is that the natural evolution of streets. From wagon trails a century+ ago to pavement today, it is clear that street improvements are not being made as new development is occurring. This is leaving many streets throughout the unincorporated areas substandard and disconnected. As the population grows along one of these streets there becomes a tipping point in which the county is compelled to use eminent domain to ensure adequacy of street widths and connections.

Yet still, despite advancements in transportation methods, it seems that the beginning stages in the evolution of a street is not much different than it was a century ago for local landowners desiring to create a lot or two. These individuals find that if they have to build a full standard street to access their lot, the cost to do so may easily overwhelm any economic benefit of the subdivision.

Yet at the same time, due to an economy of scale, a developer dividing a large amount of lots at one time can realize an economy of scale in which street building does not negate the return on investment. In addition, the economy of scale enables the County to negotiate with the developer where streets should be placed, where stub streets can go, and other street configuration concerns – both current and future, because planning efficient infrastructure within the larger-scale of the development is in the developer's best interest. Yet when working with a landowner doing a subdivision with small number of lots, the limited acreage involved often times proves too challenging to ensure streets are created across parcels in multiple different ownerships in a manner that enables a quality configuration of current and future streets.

And last, public streets are expensive to maintain, yet they provide an overwhelming public good. The property tax revenue generated along residential streets with primary single-family homes does not pay for the maintenance costs of the streets. Second homes don't do much better either, but can break into a positive tax revenue when built closer together densities (less street to maintain between them). Balancing the expense of public streets with the public benefit is challenging when a more robust interconnected street network has not yet been created. The cost to operate and maintain dead-ends, stub-streets, and cul-de-sacs that don't provide any good to the general public currently may be unnecessarily wasteful. Yet, if we do not require new public street segments to extend toward

other public street segments as new development occurs, the public street network will never become interconnected. In a rural community this may not seem like a problem today, but the population is and will continue to grow, and development rights are plentiful in both the Ogden Valley and Western Weber. This means that there is an almost certain future in which both communities will cease to be rural. Planning for public street interconnectivity now, as development is proposed will provide for a future in which more aggressive and more expensive means of street connectivity retrofitting, like use of eminent domain or the tearing down of homes, is necessary.

The attached proposal offers one potential solution that is intended to resolve this multi-faceted problem. It attempts to balance the allowance for the creation of private streets in rural areas in the short-term with the probable demand for those streets to be open to public use in the long-term. It offers landowners another tool in the planning toolbox to create the development of their general choosing, whilst also preserving opportunities for future public street connectivity by the conversion of private to public when population increases demand it.

Given the above context, the attached ordinance proposal is self-explanatory. There is a provision for not just a private street, but also a private lane. We discussed the private lane idea about a year ago.

Noticing Compliance

A public hearing for this item before the Planning Commission has been posted for public notice 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 if the Planning Commission supports the allowance of private streets as a method of preserving future opportunities for public streets, that the Planning Commission recommend a positive recommendation to the County Commission for file ZTA2021-02, a proposal to allow private streets and shared private lanes in lieu of public streets in certain circumstances.

Exhibits

- A. Proposed Ordinance

SECTION 1: AMENDMENT “Sec 106-2-2 Street And Alley Widths, Cul-De-Sacs, Easements” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-2-2 Street ~~And Alley Widths, Cul-De-Sacs, Easements~~, Private Lane, and Alley Standards

SECTION 2: AMENDMENT “Sec 106-2-2(a) Street Dedication” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-2-2(a) ~~Street Dedication~~ Streets Generally

The standard method of ensuring ease of access, efficient mobility, reduced response time for first responders, effective emergency management, strong neighborhood relationships through interconnectivity, and a more equitable means of access to community opportunities, is by requiring public streets and public street connectivity at the time new development is proposed. As such, the default requirement for accessibility is for the applicant to create and dedicate each street to the County as a public right-of-way and thoroughfare. However, to benefit applicants in certain circumstances while also reserving future public opportunities, creation of a private street may be allowed as long as it creates no hardship for other landowners in the area to access and develop their land, and as long as a public street is not needed in that location in the foreseen future.

- (a) **Standard street cross-sections.** All proposed streets, whether public or private, shall conform to the county street cross-section standards, unless explicitly specified otherwise.
- (b) **Public streets.** Each street in a subdivision shall be dedicated to the county as a public street, except when a private street is allowed or required as provided in this section.
- (c) **Private streets.** A private street or shared private lane is allowed in a subdivision, as long as the recorded subdivision plat dedicates an easement to the County that reserves the possibility of converting the street or lane to a public street, at the governing body's sole option, at some point in the future. The plat shall contain the dedication language for a private street and private lane conversion easement, as provided in Section 106-7-1. Development of or along a private street or private lane shall comply with the following:
 - (1) **Conversion easement standards.** The conversion easement shall extend the length of the private street or shared private lane. The conversion easement

shall also stub to adjacent developable land or another street regardless of whether the private street or lane does. The conversion easement shall comply with the width requirements for a public street right-of-way, and be configured at a grade that will not create an unreasonable burden for future street building given typical grading and construction methods.

- (2) ***Building setback standards.*** The minimum building setbacks shall be measured from the conversion easement.
- (3) ***Permanent dead-end standards.*** A proposed non-temporary terminal (dead-end or cul-de-sac) street shall be a private street or shared private lane and is not required to provide a future public conversion easement if it is located adjacent to land whereon development or further development is very unlikely, or to which public access offers very little public benefit, as determined by the Land Use Authority. Otherwise, if a public street will provide an immediate public-access benefit, a public street is required, and if no immediate benefit is provided, a private street or lane with the conversion easement required herein may be created. If adjacent land is generally open to recreational access by the public, the applicant may choose to dedicate and install a 12-foot public easement and single-track trail in lieu of the future public right-of-way easement. The trail and trail easement shall be designed at an average grade no greater than 20 percent.
- (4) ***Geologic hazards.*** A street that traverses a geologic hazards study area shall be a private street or shared private lane, unless the hazards study, as required by Chapter 108-22, provides compelling evidence that demonstrates the hazard risk to a public street is low. The County Engineer or the Land Use Authority can require this street to be public regardless, as long as its benefit to the public outweighs the long term operations and maintenance expense caused by the hazard.
- (5) ***Construction standards.*** Unless otherwise required by the local Fire Authority or County Engineer:
 - a. ***Private street.*** A private street shall be constructed as provided in Subsection (a) of this section.
 - b. ***Private lane.*** A shared private lane shall be constructed to have a minimum right-of-way width of 24 feet with a minimum improved surface width of 20 feet and be constructed and configured to safely facilitate the turning radii and weight of the Fire Authority's largest fire apparatus. The lane shall be constructed of all-weather material, have a grade no greater than 10 percent, a clearance no less than 14.5 feet, and if a terminal lane longer than 200 feet, a fire truck turn-around at the end.
- (6) ***Ownership requirements.*** The private street or shared private lane shall be either a parcel held in common ownership by an HOA that governs all lots that gain access from it, or be an easement recorded in favor of the owners of all lots that gain access from it.
- (7) ***Number of lots allowed.*** A terminal private street or shared private lane shall have no more than 15 residences gaining access from it.

(8) **Shared private lane standards.** A shared private lane is allowed when the applicant voluntarily creates each lot to be greater than twice the minimum required lot area and lot width. The re- subdivision of any lot along a shared private lane in a manner that does not comply with this requires that the shared private lane be reconstructed by each lot owner, pursuant to the covenant specified herein, to public street standards. A shared private lane is only allowed in a residential subdivision.

(9) **Plat notes.** On the final plat:

- a. The conversion easement shall be labeled as “easement for possible future street, see note [enter note number here].” The note shall read as follows: “An easement is dedicated hereon to the governing body, which shall not be used by any other person or entity except for the governing body, if ever, for installation, operation, and maintenance of a future public street, if the governing body determines the street is necessary.”
- b. The shared private lane, if applicable, shall be labeled as “shared private lane, see note [enter note number here].” The note shall read as follows: “Pursuant to Section 106-2- 2.1(c) of the Weber County Code, the shared private lane shown on this plat is in lieu of a public or private street, and is in exchange for a 50 percent reduction in lots accessing the shared private lane. Any future additional lots gaining access from the shared private lane shall comply with this reduction or rebuild the shared private lane to public street standards.”

(10) **Recording requirements.** At the time of final plat recording, the applicant shall record the following:

- a. If not owned by an HOA, a private street or shared private lane easement recorded in favor of the owners of all lots that gain access from the lane, to be in effect in perpetuity or until all affect owners and the county agree otherwise.
- b. A deed-covenant to run with the land that provides that:
 1. The owners of all lots that gain access from the private street or shared private lane are equally responsible for operations and maintenance.
 2. An easement has been dedicated on the subdivision plat to the governing body, which shall not be used by any other person or entity except for the governing body, if ever, for installation, operation, and maintenance of a future public street, if the governing body determines the street is necessary.
 3. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a public street if, at any time in the future, the county deems it necessary to have the landowner replace the private street or shared private lane with a public street.

4. If for a shared private lane, that the lot area and width requirements of each lot gaining access from the shared private lane shall be double that required by the zone; or if in a cluster subdivision, the base density, as defined in Section 101-2, shall be 50% what the zone would otherwise allow.

~~Streets in year round subdivisions shall be dedicated to the county as public streets except that private streets improved to county public street standards may be permitted in a condominium development. Mountain land subdivisions in high mountain areas of the county for seasonal recreation and summer homes shall have private streets built to county private street standards for such subdivisions except that the county may require public dedication for major or loop road access purposes.~~

SECTION 3: AMENDMENT “Sec 106-7-1 Subdivision Dedication” of the Weber County County Code is hereby *amended* as follows:

AMENDMENT

Sec 106-7-1 Subdivision Dedication

Each subdivision plat shall provide dedication language that clearly explains what the dedication is, to what public entity it is being dedicated, and for what purpose the dedication is intended. The actual dedication language may vary for each plat based on the circumstances of the subject property, but the following offers the minimum language required. The terms in brackets indicate a verbiage choice that shall reflect the actual circumstances of the subject property.

“We the undersigned owners of the herein described tract of land, do hereby set apart and subdivide the same into lots and [public streets, private streets or private rights-of-way] as shown hereon and name said tract [name of subdivision].”

Dedication to the county. “We hereby dedicate, grant and convey to Weber County, Utah, all those parts or portions of said tract of land designated as”

For public streets. “[public streets, the same to be used as public thoroughfares].”

For public trails. “[public trails, the same to be used by the public for nonmotorized transportation and recreation].”

For county parks. “[parks, the same to be used as public open space].”

“and do further dedicate, grant, and convey to Weber County, Utah, a perpetual right and easement over, upon, and under the lands designated herein as”

For public utility easements. “[public utility easements, the same to be used for the installation, maintenance, and operation of public utility service lines, storm drainage facilities, irrigation canals, or any other utility or street-related facility as authorized by the County].”

For public drainage easement. “[drainage easement, the same to be used for the perpetual preservation of water channels in their natural state].”

For perpetual open space easement. “[a perpetual open space right and easement on and over the common areas and open space areas to guarantee to Weber County that the common areas and open space areas remain open and undeveloped except for approved recreational, parking, and open space purposes].”

For private street or private lane conversion easement. “[an easement reserved unto the governing body, which shall not be used by any other person or entity except for the governing body, if ever, for installation, operation, and maintenance of a future public street, if the governing body determines the street is necessary].”

Dedication to a local district. “We hereby dedicate, grant, and convey to the [(name) park] [(name) sewer] [(name) water] District all those parts or portions of said tract of land designated as”

For district public trails. “[public trails, the same to be used by the public for nonmotorized transportation and recreation].”

For district park. “[parks, the same to be used as public open space].”

For sewer district. “[a sewer district parcel, the same to be used for public sanitary sewer facilities and buildings].”

For water district. “[water district parcel, the same to be used for public water facilities and buildings].”

Private reservations. “Further, we reserve unto the subdivision [lot] [unit] owners association, whose membership consists of the owners, their grantees, successors, or assigns of said tract of land, all those parts or portions of said tract of land designated as.”

Private streets, rights of way, or common area. “[private streets] [private rights-of-way] to provide access to the individual lots and to be maintained by the [lot] [unit] owners association] [common areas to be used for recreational and open space purposes] for the benefit of each [lot] [unit] owners association member in common with all others in the subdivision.]”

Private land drain easement. “[reserve unto all owners of lots upon which private land drains are constructed or which are otherwise dependent upon such land drains, an easement over such land drains for the purpose of perpetual maintenance and operation.]”

~~We the undersigned owners of the herein-described tract of land, do hereby set apart and subdivide the same into lots and streets (private streets, private rights-of-way) as shown hereon and name said tract, and do hereby dedicate, grant and convey to Weber County, Utah, or its designee, all those parts or portions of said tract of land designated as parks the same to be used as public open space:(name of subdivision)[include as applicable]Public streets and parks. Dedicate to public use all those parts or portions of said tract of land designated as streets, the same to be used as public thoroughfares.Private streets, access, rights-of-way. Dedicate and reserve unto themselves, their heirs, their grantees and assigns, a right-of-way to be used in common with all others within said subdivision (and those adjoining subdivisions that may be subdivided by the undersigned owners, their successors, or assigns) on, over and across all those portions or parts of said tract of land designated on said plat as private streets (private rights-of-way) as access to the individual lots, to be maintained by a lot (unit) owners' association whose membership consists of said owners, their grantees, successors, or assigns.Common open space. Grant and convey to the subdivision lot (unit) owners association, all those parts or portions of said tract of land designated as common areas to be used for recreational and open space purposes for the benefit of each lot (unit) owners association member in common with all others in the subdivision and grant and dedicate to the county a perpetual open space right and easement on and over the common areas to guarantee to Weber County that the common areas remain open and undeveloped except for approved recreational, parking and open space purposes.Public utility, drainage and canal maintenance easements. Grant and dedicate a perpetual right and easement over, upon and under the lands designated hereof as public utility, stormwater detention ponds drainage easements and canal maintenance easement, the same to be used for the installation maintenance and operation of public utility service line, storm drainage facilities, irrigation canals or for the perpetual preservation of water channels in their natural state whichever is applicable as may be authorized by the governing authority, with no buildings or structures being erected within such easements.Private land drain easements. Grant and dedicate unto all owners of lots upon which private land drains are constructed or which are otherwise dependent upon such land drains, an easement over such land drains for the purpose of perpetual maintenance and operation.~~

(Ord. of 1956)