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| **WC Logo.emf** | **Staff Report to the Weber County Board of Adjustment***Weber County Planning Division* |
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****Synopsis****

****Application Information****

**Application Request:** Consideration and action on an appeal request to the approval of the Edgewater Beach Resort PRUD site plan located at 6350 East Highway 39.

**Agenda Date: Thursday, August 08, 2013**

**Applicant:** Marian Martin, appellant; Michael Malmborg and Douglas Taggart agents

**File Number:** BOA 2013-07

****Property Information****

**Approximate Address:** 6350 East Hwy 39

**Project Area:** 13.08 Acres

**Zoning:** Commercial Valley Resort Recreation Zone (CVR-1)

**Existing Land Use:** Vacant

**Proposed Land Use:** Residential and Commercial

**Parcel ID:** 20-013-0020 and 20-134-0005

**Township, Range, Section:** T6N, R1E, Section 13

****Adjacent Land Use****

**North:** Pineview Reservoir **South:** Residential

**East:** Residential **West:** Agriculture

****Staff Information****

**Report Presenter:** Ben Hatfield

bhatfield@co.weber.ut.us

 801-399-8766

**Report Reviewer:** RS

Applicable Ordinances

* Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
* Weber County Land Use Code Title 104 (Zones) Chapter 11 (CVR-1 Zone)
* Weber County Land Use Code Title 106 (Subdivisions) Chapter 1-5 (Approval Procedure)

Background

The Planning Division via the Weber County Commission has received a request by Marion Martin to appeal the approval of a site plan (CUP 2012-02 and CUP 2013-08) for the Edgewater Beach Resort PRUD (Planned Residential Unit Development) by the Ogden Valley Planning Commission (OVPC) and the Weber County Commission (WCC).

Marian Martin owns property to the west of Egdewater Beach. The two properties have been separated since the late 1800’s by a roadway (6300 East).

The 13.08 acre Edgewater Beach property is located in the CVR-1 zone and received in 2003 approval of a plan to develop the site owned by Dr. Catanzaro. Based on that design the two commissions required the site to not build within 50 feet of 6300 East. In 2009 a default and subsequent foreclosure occurred and Celtic Bank took ownership of the property. Since then Celtic Bank has proceeded to prepare and design for development of the site.

In March of 2012 the OVPC reviewed and recommended approval of a new site plan that was significantly different from the previous one. As the property is in the CVR-1 Zone certain minimum yard regulations (setbacks) are required for development, particularly for this parcel 30 feet in the front, 100 feet in the rear due to Pineview Reservoir, and 20 feet on either side. However, due to the request for this development to be a PRUD flexibility is allowed to setbacks “to encourage new and imaginative concepts in the design of neighborhood and housing projects in urbanizing areas.” Therefore on March 26, 2012 the OVPC (Vote 7-0) found that due to this new design that the location of the buildings may be in the new locations based on it being a superior design than conventional development. The WCC on April 10, 2012 did the same, and approved the new design (CUP 2012-02). Since no appeals were presented at that time the builder or developer has the entitled rights to proceed in developing per the plans that were approved.

In March of 2013 Celtic Bank after working with engineers about access to the development requested to vacate 6300 East and subsequently amend part of the Edgewater Beach site plan by merely eliminating any access proposed onto the roadway and providing turnarounds within the development. With this amendment the style, size, and location of any of the buildings were not being affected. The OVPC and WCC approved the vacation of 6300 East and CUP 2013-08.

Summary of Board of Adjustment Considerations

Title 102 (Administration) Chapter 3 (Board of Adjustment) of the Weber County Land Use Code states that one of the duties and powers of the Board of Adjustment is to act as the appeal authority from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps.

Decision Criteria and Standards:

1. The Board of Adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Weber County Zoning Ordinance and Zoning Maps.
2. The Board of Adjustment may hear only those decisions in which the land use authority has applied the Weber County Zoning Ordinance or Zoning Maps to a particular application, person, or parcel.
3. The appellant has the burden of proof that the land use authority erred.
4. All appeals to the Board of Adjustment shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority.
5. Appeals to the Board of Adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.

**Planning Division Analysis and Findings**

Marian Martin has filed an appeal of the land use authority’s decision, which is attached as Exhibit B. The Planning Division’s analysis and findings have been categorized and are discussed below.

1. **Was the appeal filed in a timely manner?**
2. **Was the notice provided per statute?**
3. **A new review of 2012 decisions**
4. **Timeliness.** The requested appeal regarding decisions made with CUP 2013-08 and CUP 2012-02 was submitted to the WCC on June 12, 2013. Appeals of land use decisions must be filed within 15 days after the date of the written decision. The appellant in this case did file an appeal within 15 days of CUP 2013-08. However, the petitioner is not challenging decisions made regarding CUP 2013-08. Rather, the petitioner is attempting to appeal decisions made over a year ago in connection with CUP 2012-02. Because no appeal of decisions made in CUP 2012-02 was filed within 15 days of those decisions, the BOA should not review those issues. A subsequent appeal regarding a portion of an approved site plan cannot retroactively be appealed.
5. **Notice.** Staff has included additional information regarding this issue as Exhibit A. The appellant argues, essentially, that her appeal of CUP 2012-02 is nevertheless timely because she did not receive proper notice of the CUP 2012-02 hearings. Weber County ordinances do require that notice of a proposed subdivision be mailed to record owners of each parcel within 500 feet, not less than seven calendar days before the planning commissions’ public hearing on the proposed subdivision.

The petitioner asserts that she in fact did receive notice (sent March 20, 2013) of the March 27, 2012 meeting, but that it was postmarked March 23, 2012. She also acknowledges that “This letter was delivered to Ms. Martin in Montana. . .” Whether this provided sufficient time for the petitioner to appear or provide written comment is debatable. But what is certain, is that she did have notice of the 2012 meeting(s) prior to the meeting(s), and she failed to appeal within 15 days of the 2012 written decision(s). Therefore, the petitioner has failed to appeal 2012 land use decisions in a timely manner. Again she did not contact Planning Division Staff until receiving the notice in March of 2013. Being that the Weber County Land Use Code’s process for a PRUD application is required to be reviewed by both the Planning Commission at their regularly scheduled date and subsequently a few weeks later by the Weber County Commission, it is apparent that adequate time was allowed for an appeal to be made.

1. **A new review of 2012 decisions.** The BOA should not review or evaluate the 2012 land use decisions unless it first determines that the appeal of those decisions is timely. If the BOA does determine that the appeal is timely, then the BOA should apply the Decision Criteria and Standards outlined above in the staff report. The Board of Adjustment should not review the design and determine whether additional setbacks are to be enforced, but merely review the record of the site plan applications to determine if applicable ordinances were followed. Again by nature of the design being a PRUD, flexibility is allowed by the Planning Commission and County Commission in determining if the design is superior to conventional development patterns.

Legal representation for Marian Martin has submitted an appeal attached as Exhibit B. A rebuttal has been submitted by representation of Celtic Bank attached as Exhibit C.

Conformance to the General Plan

Approval or denial of the requested appeal will not substantially affect the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

* Compliance with any additional conditions imposed by the Board of Adjustment

Staff Recommendation

Staff recommends denial of this appeal of a site plan (CUP 2012-02 and CUP 2013-08) for the Edgewater Beach Resort PRUD by the Ogden Valley Planning Commission (OVPC) and the Weber County Commission (WCC) The recommendation is based on:

* The appellant’s untimeliness in filing an appeal in 2012 for decisions that were made in 2012.
* The appellant’s admission that notice was received prior to the meeting, allowing more than the 15 days of time in which to make an appeal.
* A superior design as determined by the OVPC and WCC, was presented which met the criteria for development and did not require any additional setback requirements from adjacent property owners.

Exhibits

1. Staff’s response to State Code issues
2. Appellant’s Request
3. Celtic Bank’s Rebuttal

Map

