Minutes of the Ogden Valley Planning Commission Regular meeting June 27, 2017, in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Jami Taylor, Chair; Laura Warburton, John Howell, Greg Graves

**Absent/Excused:** John Lewis, Robert Wood

Staff Present: Rick Grover, Planning Director; Scott Mendoza, Assistant Planning Director; Ronda Kippen, Principal Planner; Chris Crockett, Legal Counsel; Kary Serrano, Secretary

Guest: Jared Anderson, Engineering Division

***Pledge of Allegiance:***

***Roll Call***

Chair Taylor asked if there were any ex parte communication to declare and there were none.

**1. Minutes: Approval of the minutes February 23, 2016; May 24, 2016; June 29, 2016; July 26, 2016, August 23, 2016 and May 23, 2017 meeting** **minutes**

**MOTION:** Chair Taylor moved to approve the meeting minutes as presented.

**2. Presentation: Update Storm Water Master Plan – Jared Anderson**

Jared Anderson, Engineering Division informed the Planning Commission that they currently have a lot of information web based on this master plan that is close to being approved. The quick download on where we’re at; we were awarded dollars in 2013 to do a Storm Water Master Plan that entailed all of unincorporated Weber County. Unfortunately this master plan says what exists and what are the deficiencies that exist. We didn’t have the money or the efficiencies to say if we are going to have this number of subdivisions in all of these locations; versus the deficiencies of what exits. We had a group go out and analyze everything they could on existing infrastructure, and my guess is 70 to 80% was analyzed, meaning that at any given time we go out there and find a pipe or find a catch basin and a lot of it they got but not a lot of it, analyzed it all through it into a model system. They took the upper valley and focused on that, but they had different drainage areas of wherever that water went. That went into certain basins, ditches, culverts, and they would look at the culverts and see if it’s sized correctly or if it’s undersized. I would say that more than 50% needs work, and there are some that needs extreme work. I am currently working on a Storm Water Utility Fee to get that approved; we have not had a mechanism with the exception of bandaid from the general fund. I believe all the other entities in Weber County now have a Storm Water Utility Fee with the exception of unincorporated Weber County. This group got all the existing data, modeled it, analyzed it, about 100-150 pages and it will be out there and available. It’s tied to our impact analysis which we’re currently updating to see if we’re charging the correct impact fees, and making sure that we’re legally doing this correctly. We are really trying to create something that gives us the ability to maintain and operate these systems better. The main question is the major times we have issues when the grounds froze, whether we’ve had snow, snow with rain, or even just rain. By law we’re not required to design as if it’s an entire parking lot; we’re required to design the hard scape, the 100 year storm. Sheet flooding is a big concern; and how do we incorporate this. The problem is if we treat our places where there is infiltration like it’s a parking lot, culverts in front of your homes, then we’re all of sudden super sizing every pipe that exists so that the water is carried through the infrastructure. Even if flows on top of the ground over fields across roads, we look at it and say we need to at least see where this might be able to escape versus flood people. Once it is approved by the County Commission; it will be online in our GIS Geo Gizmo, and having information that should be available to everybody. Every year something happens up at the upper valley; whether it’s a landslide, two or three feet of snow, and it’s just ironic that happens every year of issues that we run into.

Commissioner Howell said you probably learned a lot this year with the snowfall in the upper valley. Mr. Anderson replied on River Run Drive, we had a lot of homes that were flooded, and they also had people that said they had not been flooded in 40-50 years. Back on 4100 North just past the park before it heads up, we had snow that was 6 to 8 feet high, and the water was running about eye level. Right across from Millcreek Water and Sewer we have water drainage that comes down and a neighbor made a really nice brook that runs 99% of the time that runs through their front yard.

Commissioner Warburton asked Mr. Anderson if sheet flow was not a concern with the county. Mr. Anderson replied no, it’s a big concern; if developer comes in and says he wants to put in 20 lots here, he creates a new hardship with the roads and houses. By law we can tell him you have to detain 100 year storm with this hard scape, and address sheet flow of their development, address the hard scape in the roads and homes, so everything else is landscape and that’s a very small percentage of water. Sheet flow in our opinion, should be looking at your subdivision as if the entire thing is a parking lot. When a developer comes in, by state law they are not required to detain the whole side like it’s a parking lot; yet it happens every year. If for example you have your 20 Lot subdivision, what are you going to do about sheet flow, how are you going to get the water to go around the subdivision, and do you have enough area in that diversion. We have that one area that we’ve had residents come in 3 or 4 times, there are 8-10 residents in that area that are very concerned with the water that has gone there for years, that is still going there and still flooding this past February.

Commissioner Warburton asked this study that you are doing will give us what information. Mr. Anderson replied it will give information on the infrastructure that is very undersized. One group did a study where they looked at Uintah for example, but the group that did the Master Plan, they were very conservative in their numbers, another engineering firm that came in and did their study, and these numbers matched up and it looked good. What it helps us do when someone comes in and develops we can say instead of a 24 inch, this Master Plan says we only have to be 36 one day, so we need to put in 36 inch now and we are ready for the future.

Commissioner Graves asked with this study you are also getting some kind of a storm water fee and hopefully it will go hand and hand with the Master Plan, because you can’t do these improvements without capital, and that’s the only way you are going to get capital to make these improvements. Mr. Anderson replied that is correct, and what has happened in the past in the general fund, without that being an emergency, the thought process they say how can we get this functional.

Chair Taylor asked when you are looking at all the pipes, drains, and diversions; are you also looking at swales, detention ponds, so what kind of technique do you use. Mr. Anderson replied all of the above. There was another question by Director Grover that we talked about regional ponds versus non-regional ponds; once we adopt this Master Plan, we are also going to adopt the mechanisms in what we use in there. We are really starting to lean towards if we have to do a detention pond, and it’s a big enough subdivision, we have to size it to a 100 year storm. At the same time its hard scape on just the roads and homes; outside of that then where does the water go when it overflows. They’re also required to do an overflow structure that it’s being released out of this instead of piling it up and going into homes or wherever else.

Commissioner Warburton asked what the 100 year storm means. Mr. Anderson replied he should have said that better; they have now started to change it to 1% chance storm. We’ve heard that we’ve had a storm every year that are 100 year storms; so let’s just call them yearly storms. Technically 1% chance has been happening more frequently from what we’ve seen.

Commissioner Graves said he is assuming that you’ve looked at low impact techniques as part of what you may use for your solutions as well. Mr. Anderson replied yes and in fact that was one of the MS4 Permitting DEQ from the state the body politic that governs all of this.

**2. Petitions, Applications and Public Hearings:**

**2.1. Administrative:**

**a. Old Business**

**1. CUP 2016-06 Consideration and action for a request to amend a previously approved conditional use for the Fairways at Wolf Creek P.R.U.D. The amendment will reduce the density in the multi-phased PRUD from 115 units to 99 units.  This PRUD amendment will run concurrently with the request for preliminary subdivision approval of the Fairways at Wolf Creek PRUD Phase 4 & Phase 5, located within the approved Wolf Creek Resort Master Development. (Fairway’s @ Wolf Creek LLC, Applicant)**

Director Grover stated this is a conditional use permit that in every zone there are certain uses that are permitted conditional and in this situation this is a conditional use. As you review this, keep in mind that you can take public comment if you would like, but you are not required to. Ms. Kippen is going to give us an overview of this project, then the applicant Rick Everson will do his presentation, then Ms. Kippen will explain how it meets or doesn’t meet the ordinance requirements.

Ronda Kippen stated this application is technically four applications into one. We are amending a plan residentially unit development as part of the conditional use permit, we are required to go through a design review. As the Planned Residential Unit Code used to read, it would also act as preliminary subdivision. We are looking at the consideration and action for a request to amend a previously approved conditional use permit for the Fairways at Wolf Creek PRUD. The amendment will reduce the density in the multiphase PRUD. The Wolf Creek Resort went in and each developer they took an overall reduction; and reduced from 122 units to 115 units. Last year we did the Zoning Development Agreement and transferred five density rights from Fairways to Trappers, and then hold 11 additional rights in reserve for the developer to take to a different area in Wolf Creek at a future time. This PRUD Amendment will run concurrently with the preliminary subdivision approval of the Fairways at Wolf Creek PRUD Phases 4 and 5. The overall Fairways is located within the Wolf Creek Resort, and it is outlined in red where Phases 4 and 5 will lie within the Fairways.

Rick Everson, Watts Enterprises, informed that they have been working on the preliminary subdivision application for the next two phases of Fairways Phases 4 and 5. The total amount of lots between those two are 40 additional lots, and that is a significantly reduction for what was original allocated there. They felt that bigger lots would bring in more energy into the neighborhood, and a little more flexibility for different styles of homes. As of recently there has been a lot more interest from out sales team and last year have completed our model homes. This year they completed speck homes within the Fairways, so there is two homes they recently completed. There seems to be some additional energy coming along with 8 additional lots in Phase 3. They would like to start getting into the next few phases ready to go. We made the original application over a year ago; we spent a lot of time and effort with different consultants, Planning, Engineering, in getting the plans to an acceptable and get it approved. We are trying to get to the next step before the application expires and have these lots ready to go. So if there are any questions about future phases.

Ronda Kippen reviewed the staff report and concluded that a note will be recorded on the plat, as well as a separate notice of hazards closure document that will be recorded against the subdivision that will indicate that these reports will be available, and it does not say that this is in a natural hazard area. Staff’s conditions of approval are based on the following findings:

* The proposed conditional use amendment and subdivision conforms to the Ogden Valley General Plan.
* With the recommended conditions, the proposed conditional use amendment and subdivision complies with the applicable County ordinances.
* The building uses, locations, lot area, width, yard, height and coverage regulations proposed are acceptable as shown on the conditional amendment and preliminary subdivision.
* The proposed conditional use amendment and subdivision will not be detrimental to the public health, safety, or welfare.
* The proposed conditional use and subdivision will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.

Commissioner Warburton asked to clarify in the beginning did you make it clear in the beginning that he would be required to complete the Club House and Tennis Court in a certain amount of time. Ms. Kippen replied not in the beginning, there were no conditions of approval that says that they had to be done. I have read over to the last page of the Fairways to make sure there were any indication that the amenity had to be completed prior to moving on to the next phase. The Planning Commission nor the County Commission has ever put a condition of approval of Fairways, on the multiphase of Phase 1, 2, or 3 that the amenities had to be completed by a certain time frame.

Commissioner Graves asked in the staff report does indicate the ability for nightly rentals, is that correct. Ms. Kippen replied that is correct and I have had conversations with the HOA who are concerned about that. That is an element of our PRUD that you can have nightly rentals; according to the current HOA and there is some discussion as to whether Phases 4 and 5 will be part of the overall Fairways HOA, and we do not get involved in that. Our code allows nightly rentals, their CC&R’s require a minimum of three nights, and we will not enforce the three nights. The HOA will need to enforce their own CC&R’s if they are more restrictive than the county standard. We will have a note on the plat to notify the plat that this has been approved for nightly rentals.

Commissioner Graves said on the no access line that is just a line on the drawing saying you can’t access. Ms. Kippen replied correct, say they built their house, they see Fairway Trails, but they wanted to build a shop on the back side of their lot, and it easier for them to access on the back side, this would limit them doing that.

Commissioner Warburton said we were told that you would be willing to work and set up a deadline. Mr. Everson replied he was not sure if Mr. Watts was aware that the county couldn’t enforce him putting in the amenities or not. We have multiple neighborhoods; Midway, Trapper’s Ridge, and the amenities are installed and the neighborhoods look great, and that is one of the reasons he wanted to work for Mr. Watts. It is solely financially driven since 2008, other than the two houses he previously mentioned; our full intention that once they sold that model home, that was going to feed the money for the Club House, and we pulled the permits and ready to get started. There has been a lot of interest and as soon as they sell one of those homes, it is their full intention to finish the Club House. It is fair to have the conditions where we can’t record these two plats until the Club House and Tennis Court is finished.

Commissioner Warburton asked what does it mean to hold occupancy not just for the Club House or for the plat? Ms. Kippen replied it would be Club House because they couldn’t record these phases until they get the Certificate of Occupancy (CFO) on the Club House. No lot can be sold because technically you can’t market a lot until it’s been recorded.

Ronda Kippen clarified that a year ago when we did this zoning development agreement; I got a call from the HOA saying stop, you said you would not process anymore land use permits. They kind of went away until a couple of weeks ago; she spoke with Mr. Watts letting him know there were some interests from the HOA to get this Club House done. I discussed with him about running the CUP and the preliminary subdivision and making a condition of approval that prior to you recording Phases 4 and 5. He said he was totally fine with that, but there was not a date discussed with that. At that time what I had in my mind that I was rely on the time frame that our code requires for preliminary and final.

Commissioner Howell asked they cannot move forward with anything else until they finish the Tennis Court and the Club House, is that correct. Ms. Kippen replied if this commission supports the recommendation and you would recommend to the County Commission, whether your support #1, whether your want to have a date in there, or whether you want to remove it. Where this is a PRUD, it has to go to the County Commission for approval. This is staff’s recommendation and you do not need to support my recommendation.

Rick Everson concluded that we are not looking for sales for future phases to finish the Club House. That is why we are fine to have that condition that those two proposed plats cannot be recorded until the occupancy permits are issued. We have two homes built for sale right now, and then is eight additional lots in Fairways that anyone one of those could trigger our ability to get that Club House built.

Chair Taylor opened for public comment.

Joe Wood, resides at Fairways, voiced he approved the recommendations that staff has made, not only should Phase 4 and 5 not be platted until the amenities are completed in the previous three phases. We are adamant that we would like to see and asking you to enforce the date, but we would like that date to be January 1 and think there is enough time to do it. It seems reasonable and you don’t want to set precedence, but maybe you do if it is so egregious, how can it be that amenities aren’t delivered for 20 years, if it’s not completed after Phases 4 and 5, so we support the recommendations and hoped that you take serious consideration to those and the letter said that they would like to see a date and would like that to be January 1.

Commissioner Warburton said she appreciated his presentation but the reality is we know what the developer’s personal finances and if he was capable of completing those amenities. Mr. Wood replied the density was given to the developer, we all bought that so that money went towards it, it’s confusing to me that there isn’t some sort of surety or bonding along the way so when subdivisions like this are being developed, and the amenities are a big part of what is being sold, so that it doesn’t go to the last lot of the last phase or some period of time after that for the amenities that were never delivered.

Chris Crockett, Legal Counsel said it is also governed by the state statute which supersedes what we are able to do.

Chuck Kelsey, resides at Fairways, said he wanted to follow what Mr. Wood said and urges the commissioners to weight our side of the story on this issue. We as residents and taxpayers don’t want to see him move on and not succeed, but we don’t want to be left in the dust. I just want to follow-up what Mr. Wood said about the staff and county all those years. I have had nothing but the best working with the people in the Road Department, and the county was there within an hour of the flooding that happens over two years ago.

Miranda Menzies, resides at Wolf Creek, said she has conflicting views on this. I totally support my fellow residents, and can see how Mr. Watts may have had a difficult time financially. I do feel when the county approved a set of plans that state on them Club House, that it’s an implied agreement between the residents and the county. You might not agree with that and it ought to be in writing, in a private contract with each individual homeowner. There is no actual mechanism to insist that Mr. Watts actually developed zones 4 and 5, and he is now coming back and wants to get more money out of this investment, and if he is willing to make that commitment, I think its good idea to find a way to support the agreement that is being made to help this move forward.

Chair Taylor closed for public comment.

Chris Crockett said if we’re going to impose a condition as a Planning Commission; there has to be provision in code that allows us to impose that condition. My concerns are alleviated somewhat, given that the developer is in agreement to agree complete the Club House prior to the recording of Phase 4 and 5. Those concerns come back if we’re going to impose a deadline, if that happens we need to go through the provisions of Section 108-4-5 and find how enforcing that will mitigate the degradation of the level of service during the recreational services. If there is no date, I feel comfortable not going in a very detailed analysis of that. There is self enforcement mechanism even though there is no timing mentioned in there if we don’t include a date, it’s that the developer can’t go forward Phases 4 and 5.

Chair Taylor said that makes sense, because they are still giving us significant reason to do a Club House no date is enforced. Director Grover added that is a concern too that staff is holding his feet to the fire to get these things done and this still gives us the mechanism to require it to be done, a possible time frame and not an exact date but it does gives us that element to get these in place, and that in itself could get done fairly quick.

Commissioner Howell said in other words you don’t want a date that we come up with a completion as part of our recommendation. Mr. Crockett replied you can impose a date, but if you do, you need to make findings as to why that date is necessary under the code and why it is imposed as a condition, if the developer is not in agreement with that.

**MOTION:** Commissioner Warburton moved to approve CUP 2016-06 with the removal of the date to the completion of the Club House that we find in staff’s recommendation of #1 and removing the date of May 31, 2018 based on legal’s recommendation, and have everything else as it stands with all of staff’s recommendations, to include other agencies approvals which have already been made. Commissioner Graves seconded.

**DISCUSSION:** Chair Taylor said that she liked the motion, it’s good middle ground, it puts us in a place that very comfortable, we are still setting precedence but I feel that this is a good compromise that we can do legally comfortably. Ms. Kippen clarified we are not only approving the CUP but also approving preliminary subdivision. Commissioner Warburton said do I need to mention something other than CUP 2016-06. Ms. Kippen said you just need to say I moved to approve the request to amend previously approved conditional use for the Fairways at Wolf Creek PRUD. The amendment will reduce the density in the multi-phased PRUD from 115 units to 99 units. This PRUD amendment will run concurrently with the request for preliminary subdivision approval of The Fairways at Wolf Creek PRUD Phase 4 & Phase 5, located with the approved Wolf Creek Resort Master Development. Condition one will read approval prior to recording the final subdivision plat. Commissioner Warburton said so moved. Chair Taylor said I see the importance of what’s listed under the LUC 108-4-5 of the existing spaces and it’s important and we need to be cautious, and this should be entered prior to moving forward happen prior to being recording. Commissioner Graves said I understand the frustration of the residents not getting it sooner, but I quite honestly think you would find it impossible to get it done by the date that you are asking even if we had agreed to that. Considering the current demand on contractors, and I know how incredibly busy people are, and you couldn’t even wind up with enough people to do this, even if you start you just couldn’t do it. I still think that we stay out of HOA conflicts here, and stay with our ordinance, which gives us a pretty good timeframe, and it has to be done so it will done and there is an end in sight. It’s not as close as you would like but there is an end, and the developer has agreed to this, and they have agreed that they were will to accept this condition. Commissioner Warburton said this is a gift for me, because I am not so sure if the developer found egregious and hardship, that if he went to court we wouldn’t be held liable and more concern about that. Every time an HOA that has come before us, we had to say that it’s none of our business, but what that creates is more government in our lives.

**VOTE:** A vote was taken with Commissioners Warburton, Graves, Howell, and Chair Taylor voting aye.

Motion Carried (4-0)

**3. Public Comment for Items not on the Agenda:** None.

**4. Remarks from Planning Commissioners:** Commissioner Graves said he said his piece the last time. It’s been longer than he thought; it’s been 18 years this month. Chair Taylor asked whatever happened with Dark Skies and what was approved. Director Grover replied after I tell you what happened with Dark Skies, and we have a presentation for Mr. Graves. Director Grover said on Dark Skies, it was a split vote but it ultimately got passed with a few modifications to your recommendations. One of those was that staff had recommended that we look at seven years for it to come into compliance, and you as a commission had asked for five years. The County Commission approved it at ten years for it to come into compliance. They also talked about interior lighting, and there are no standards for interior lighting for commercial. Everything else was approved how you recommended, so all in all they held to your recommendations. The General Plan talks about ways to preserve Dark Sky but it doesn’t talk about mandating it. The other part of the public that was there, let’s look at incentivizing people to do it, let’s encourage them to do it, but not mandate them to do that. Ultimately it did get approved, but it was nice to see how much support came from the valley. Commissioner Gibson had some valid points; he was more for creating incentives, and not pushing it on the public as far as mandates, and he wanted to see how that would work first. Ultimately the government process went through the proper channels, it wound up getting approved.

Commissioner Warburton said the other thing the Commissioners had a hard time with was penalty phase. I have a neighbor who is a retired FBI, if somebody had a misdemeanor, if they had an infraction they could never get security clearance. Everybody was shocked at that, so they are going to change that. Chair Taylor said it’s a good thing that was caught. Director Grover said we are going to try and a get that to them as soon as possible. Typically with code enforcement, we send out a courtesy letter, and we give them 30 days come into compliance. In talking with Iris, most of the time they will come into compliance. What I have her doing right now, is do the research on how many actually do. I want to have those percentages and those numbers brought to the County Commission so they can see how that works, and that will be coming to them quickly with recommendations from it.

Director Groves said one thing that Commissioner Gibson did talk about, is when we look at incentives that we actually go up to 50% on fees was definitely saying, I totally support Dark Skies, and I am willing to go out. We have increased the fees already but he was looking at 50% reduction to help encourage people to preserve Dark Sky. Commissioner Warburton said Commissioner Gibson indicated that ultimately that would save money because this will have cost to enforce. Director Grover said as we prepared that ordinance, I did look at the enforcement costs and it would be a substantial hit for us to be able to enforce that. Some of it we are tracking with building permits, but a lot of our enforcement right now unfortunately is reactionary enforcement.

**5. Planning Director Report:** Director Grover presented did a presentation for Commissioner Graves; he thanked him for his remarkable service from 1999 to the present, and that is a long time to serve on a job that if often very thankless and it is all volunteer. He presented Commissioner Graves with the clock and read what was engraved, and thanked him for all that he did.

**6. Remarks from Legal Counsel:** Chris Crockett said when I first started working here I was with the Ogden Valley Planning Commission for a short while, but it is nice to come back.

**7. Adjournment:** The meeting was adjourned at 7:00 p.m.

Respectfully Submitted,

Kary Serrano, Secretary;

Weber County Planning Commission