STAFF REPORT

To: Snyderville Basin Planning Commission
From: Sean Lewis, County Planner
Date of Meeting: January 14, 2020
Type of Item: Conditional Use Permit – Public Hearing, Possible Action
Process: Administrative Review

Recommendation:

Staff recommends that the Commission consider the issues outlined in this report regarding the application and, following a public hearing, vote to approve a Conditional Use Permit for the proposed nursery, wholesale, based upon the Findings of Fact and Conclusions of Law outlined in this report.

Project Description:

Project Name: Layton Tree Farm
Applicant(s): Larry Layton
Property Owner(s): Larry Layton
Location: 9387 N Cottonwood Trail
Zone District: Hillside Stewardship (HS)
Parcel Number and Size: SL-C-148-AM, 9.08 acres;
Type of Process: Administrative
Final Land Use Authority: Snyderville Basin Planning Commission

Proposal:

The applicant proposes to utilize Lot 148 of the Silver Creek Estates Unit C subdivision as a tree farm to grow trees for a landscaping business. The applicant proposes to grow trees that will be harvested and delivered to other locations by a crew of 1-2 employees. Landscaping clients will not normally be invited to the site. Nursery, Wholesale is listed as a Conditional Use in the Hillside Stewardship Zone of the Snyderville Basin Planning District.
Vicinity Maps:
**Background:**

The Silver Creek Estates Unit C subdivision was recorded in Summit County on September 18, 1963. On June 5, 2013 Lots 147 and 148 were amended to adjust the common boundary between the two lots.

The applicant has owned the property since June 2013. The applicant operates a landscaping business that operates mostly along the Wasatch Front.

Previously, the land use in this location in relation to the growing of trees had been determined to be strictly an agriculture operation. The Snyderville Basin Development Code defines Agriculture as: “The tilling of soil, raising of crops, foraging, grazing, and animals/fish for commercial agricultural purposes, and not including logging, animal hospitals, recreational activity not normally associated with a farm/ranch, or similar uses.” In the Snyderville Basin Development Code, Agriculture is an allowed use in all zoning districts.

Recently, Summit County received reports of operation of a commercial tree farm in the area. As part of the Code Enforcement Investigation, the Community Development Director determined that this operation more closely fits the definition of Wholesale Nursery. Nursery, Wholesale is defined as: “A place in which plants are raised for experimental purposes, for transplanting, or for sale to wholesalers. Includes tree farms and commercial greenhouses. Does not include direct retail sales to individuals.” The Development Code lists Nursery, Wholesale as a Conditional Use in all zoning districts.

The applicant has reported to Staff that the operation is consists of the applicant and a one employee 4 days per week. The applicant lists traffic impacts as two 18-wheel semitrucks to the site in the spring and a pickup truck with a 20’ trailer several times per week during the summer months. Customers are not invited to the site, although some may randomly come to choose specific trees.

**Analysis and Findings:**

The Planning Commission may approve, approve with conditions, or deny a Conditional Use Permit based upon written findings of fact according to each of the following standards as set forth in section 10-3-5 of the Snyderville Basin Development Code. It is the responsibility of the applicant to provide written and graphic evidence demonstrating compliance:

**Standard 1:** The use is in accordance with the general plan; **COMPLIES**

*Analysis:*
Parcel SL-C-148-AM is located within the Silver Creek Neighborhood. The General Plan does not speak to this type of use in this specific neighborhood. The Neighborhood plan states that there are concerns within this neighborhood regarding
“ingress and egress, water availability, and wastewater capacity”. Some neighbors in the area have raised issues regarding road impacts that will be discussed in more detail below. Other relevant policies and objectives are listed below:

Policy 2.21: Encourage locally based and neighborhood commercial businesses.

OBJECTIVE J: Improve or eliminate the negative impacts of legal non-conforming uses.

Policy 2.45: Support the elimination or improvement of non-conforming uses in order to bring properties into conformance and to eliminate land use conflicts.

Policy 2.46: Support the conversion of non-conforming uses to legal uses or to other uses that have reduced impacts.

Policy 5.1: Recognize agricultural operations as a significant and important use of the land and protect the rights of those uses.

Standard 2: The use conforms to all applicable provisions of [the Snyderville Basin Development Code, including, but not limited to, any applicable provisions of [section 10-3-5 and chapter 4 of [the Snyderville Basin Development Code], the general plan, and state and federal regulations; COMPLIES AS CONDITIONED

Analysis: The use of the property as a nursery is also considered agricultural in nature which is promoted in Summit County. The use of the land as a tree farm does not accelerate erosion or cause other environmental concerns.

Road Concerns:
Summit County Special Service District #3 (SCSA) which, pursuant to an agreement with Summit County, maintains the road network and water service in the Silver Creek area. SCSA Staff have indicated that there are concerns regarding heavy trucks using the SCSA road network and the amount of water used by the farm.

All roads in the Silver Creek area are “Class B” County roads as defined by the State of Utah. The roads in this area are public roads and are not closed to any vehicle. SCSA has expressed concern that the heavy vehicles used by the applicant for the operation lead to accelerated deterioration of the road network. Additionally, there is concern about the design of the intersection of Cottonwood Trail and Westwood Road, as at times, the larger 18-wheel semitrucks are not able to safely navigate the sharp turn which at times has led to blocking the road and damage to a culvert near the intersection. SCSA has requested that the Planning Commission consider a condition of approval limiting the Gross Vehicular Weight of trucks used by the farm. SCSA does attempt to restrict the weight of trucks on their road network; however, no specific weight limit exists on the
roads, and there is little enforcement of the restriction. To assist with the discussion, Staff has provided a common truck size guide as Exhibit B of this report. Summit County Public Works and Engineering have been consulted and do not recommend regulating the size and/or weight of trucks.

**Water Concerns:**
SCSA has also expressed concern regarding the water used by the applicant for the growing of trees. The applicant pays for 1.0 acre foot of water from SCSA for use on the property. The applicant also has water rights that are not managed by SCSA. The applicant claims that he uses less than 1.0 acre foot of water to water the approximately 2.35 acres of trees on his property. SCSA has provided comments to Staff that significantly more water is necessary to appropriately water the trees.

As there is ambiguity as to how much water is necessary for the operation, Staff recommends a Condition of Approval that the applicant receive necessary water rights from the State of Utah as well as any appropriate approvals from SCSA. Additionally, Staff recommends that the applicant install a water meter on all water sources on the property to ensure that the operation does not exceed the available water allocated by the applicant’s recognized water rights.

**Standard 3:** The use is not detrimental to public health, safety and welfare; **COMPLIES**

**Analysis:** The use of the property to grow trees does not negatively impact the public health, safety or welfare.

**Standard 4:** The use is appropriately located with respect to public facilities; **COMPLIES**

**Analysis:** The use is located in a primarily residential area that has access from public roadways. There is adequate power, water, and wastewater facilities serving the site.

**Standard 5:** The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses; **COMPLIES AS CONDITIONED**

**Analysis:** The applicant has been operating a tree farm in this location for many years. While this fact alone would indicate that the use is compatible with the surrounding neighborhood character and has not adversely affected surrounding uses, a few surrounding neighbors have contacted staff to comment that the existing use contributes to excessive noise and dust impacts as the large trucks travel along the dirt road. The proposed Conditions of approval discussed above should help to mitigate the concerns raised by neighbors regarding noise and dust impacts.
Standard 6: Special Standards For Conditional Uses: In addition to the standards established in [section 10-3-5] and in chapter 4 of [the Snyderville Basin Development Code] for particular uses, all conditional uses within a zoning district shall conform to the following standards and criteria: (Ord. 818, 2-26-2014) (Staff Analysis in Italics following each item)

1. The commission may require the applicant or the owner of the property subject to an application for development approval for a conditional use permit to establish an escrow account, post a bond or provide other financial security, in such form and sum as the commission shall determine, with sufficient surety running to the county to offset any extraordinary costs or expenses associated with the following: a) construction of any highways, roads, water or sewer mains, drainage facilities, or other public infrastructure; b) landscaping; c) compliance with the requirements of this section, any applicable special requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit; and d) any expense requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit, including the provision of facilities or structures, maintenance or construction work, or the execution or fulfillment of conditions of a continuing nature. No new infrastructure, landscaping, or other special conditions of approval are proposed that would necessitate the establishment of an escrow account or bond.

2. The proposed development shall not cause a reduction in the adopted level of service for any public facility. The proposed use should not result in the reduction of the adopted level of service of any public facility. SCSA is responsible for the maintenance and upkeep of the road network in the area.

3. Lighting shall not be directed or reflected upon adjoining land and shall meet all other related requirements of section 10-4-21 of this title with respect to exterior lighting. No lighting is proposed.

4. The natural topography, soils, critical areas, watercourses and vegetation shall be preserved and used, where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities. No changes to the existing site conditions are proposed.

5. All roads shall provide free movement for safe and efficient use within the development. Local roads shall provide access to the site in a manner that discourages unsafe and congested conditions, and which provides convenient accessibility to parking areas, arterial and collector roads that shall be free of backing movement from adjoining parking areas and free from congestion and public safety problems. No new roads or parking areas are proposed.

6. Vehicular and pedestrian passageways shall be separated from public rights of way. Where appropriate, a system of walkways and bicycle paths connecting buildings, open spaces, recreation areas, public facilities, and parking areas shall be provided and appropriately lighted for night use. No new vehicular or pedestrian passageways are proposed.

7. Buildings and other structures shall provide a human scale consistent with adjacent development and appropriate to residential uses in the RR, HS, MR, CC, SC, and NC zoning districts, and consistent with adjacent conforming development in the zoning
districts. The massing, scale and architectural design shall be consistent with the design guidelines established in section 10-4-19 of [the Snyderville Basin Development Code]. (Ord. 708, 12-10-2008) No new structures are proposed.

8. The volume rate of post development runoff shall not exceed predevelopment runoff. Runoff calculations shall be submitted with the application for site plan approval and shall be based upon: a) the 25-year, twenty four (24) hour design storm event; b) a fully developed contributing drainage area; c) the specific location of the proposed development; d) the proposed land use and use density or intensity; and e) the specific location and amount of impervious surfaces, in square feet. As this is an existing operation with no changes proposed volume rate of runoff will be unchanged.

9. The site shall be landscaped in accordance with the requirements of section 10-4-20 of this title. (Ord. 708, 12-10-2008; amd. Ord. 818, 2-26-2014); No changes to existing landscaping proposed. COMPLIES

Recommendation:

Staff recommends that the Commission consider the issues outlined in this report regarding the application and, following a public hearing, vote to approve a Conditional Use Permit for the proposed tree ranch based upon the following Findings of Fact, Conclusions of Law, and Conditions of Approval:

Findings of Fact:

1. Larry Layton is the listed fee title owner of Parcel SL-C-148-AM.
2. Parcel SL-C-148-AM is 9.08 acres in size.
3. The proposed tree farm is located at 9387 N Cottonwood Trail.
4. Parcel SL-C-148-AM is located in the Hillside Stewardship zoning district.
5. Parcel SL-C-148 is a legal Lot of Record.
6. The applicant proposes to use the property as a tree farm for his landscaping business.
7. Nursery, Wholesale is listed as a Conditional Use in the Hillside Stewardship zoning district in the Snyderville Basin Development Code.
8. No new structures are proposed as a result of this application.
9. Parcel SL-C-148-AM is located within the Silver Creek Neighborhood.
10. Policy 5.1 of Chapter 5 of the Snyderville Basin General Plan states “Recognize agricultural operations as a significant and important use of the land and protect the rights of those uses.”
11. Summit County Special Service District #3 maintains the road network and water utility in the Silver Creek Neighborhood.
12. The road network in the Silver Creek area are “Class B” roads as defined by the State of Utah.
13. The roads in this area are public roads and are not closed to any vehicle.
14. The applicant pays for 1.0 acre foot of water from SCSA for use on the property. The applicant also has water rights that are not managed by SCSA.
15. The proposed nursery is located in a primarily residential area that has access from public roadways. There is adequate power, water, and wastewater facilities serving the site.

16. No new infrastructure, landscaping, or other special conditions of approval are proposed that would necessitate the establishment of an escrow account or bond.

17. No changes to the existing site conditions are proposed.

18. No new roads or parking areas are proposed.

19. No new vehicular or pedestrian passageways are proposed.

Conclusions of Law:

1. As conditioned, the proposed tree farm is an appropriate use in this location.

2. As Conditioned, the proposed tree farm is in compliance with the standards found in the Snyderville Basin Development Code.

3. The continuing operation of a tree farm at this location does not violate any laws.

4. As conditioned, the proposed tree farm will cause no negative impacts to the health, safety, or welfare, of the general public.

Conditions of Approval:

1. To protect the structural integrity of the existing road network, and to limit impacts related to noise and dust to the surrounding neighborhood, all trucks used to import and export trees from the site shall be limited to a loaded Gross Vehicular Weight of less than 26,000 lbs.

2. Applicant may be entitled to use up to 1.0 acre-feet of water from Summit County Service Area #3 pursuant to Water Right No. E2451, which the Utah Division of Water Rights approved for year-round domestic, stockwatering, and miscellaneous uses. The applicant shall apply for any necessary permits and/or water service applications with the Utah Division of Water Rights and the Service Area and shall comply with all applicable laws and regulations governing water use on applicant’s property, including but not limited to (A) installing a water meter on all water sources on the property to ensure that the operation does not exceed applicant’s Service Area allocation and any other available water allocated by the applicant’s recognized water rights; and (B) install a “Beacon” to monitor water usage under the Service Area allocation. Applicant will ensure that he has sufficient water rights approved by the Utah Division of Water Rights to supply any water needs or demands that exceed his 1.0 acre-foot allocation from the Service Area. Should the necessary approvals not be obtained by the applicant within 180 days, this Conditional Use Permit shall be reviewed by the Snyderville Basin Planning Commission for reconsideration of the approval.
Public Notice, Meetings and Comments:

This item was noticed as a public hearing and possible action regarding a Conditional Use Permit in the December 28, 2019 issue of The Park Record. Postcard Courtesy notices were also mailed to property owners within 1,000 feet of the proposed alignment.

At the time of this report, Staff has received several emails providing comments regarding the proposal. These emails are attached as Exhibits below.

Attachments:

Exhibit A – Proposed Plans
Exhibit B – Truck Size Guide
Exhibit C – Email Comments from Mary Jo Burgess
Exhibit D – Email Comments from Jeff Whiting
Employees: me 4 Days a week  
  1 Helper 1 Day a week

2) Parking 1 Car 2 Days a week

3) Trucks 2 (8-wheeler in Spring

4) My pickup truck and trailer 2 times a week
   Hauling tree out, average, 20 ft trailer

5) Water, well usage, not even close to my 1 foot Acre

6) Hours odd

7) No snow/ removal, No access in winter
F.Y.I.

Mr. Layton has been conducting a business at this location for many years.

Mr Layton states in his application that the traffic that will be caused by his business in the future will be two-8 wheeler deliveries per year and 2 weekly trips of pickup truck with 20 foot trailer per growing season.

This is laughable! Over the years this business has been in operation, the daily growing season traffic caused by it includes: multiple trips of a very large dump truck, pick up trucks with flat bed trailers hauling trees, and pick up trucks with trailers hauling front loaders. The past daily use far exceeds Mr. Layton’s projection for future weekly use.

Mr Layton has planted some trees on this property but this is in no way the property’s primary use. Mr Layton is in the landscaping business and his property on Cottonwood Trail is primarily used as a stock yard for trees used in that business.

The water use on this property has a questionable history. The Silver Creek Service Area board should be able to clarify this for you.

Cottonwood Trail is a narrow, steep (grades of 14%) dirt road that isn’t suitable for the kind of traffic Mr Layton’s business generates. There are impacts to not only Cottonwood Trail but all the roads in Silver Creek that are south of the Layton Tree Farm and west of Silver Creek Road.

Cottonwood Trail is used by the local residents, hikers, bikers, people riding horses and people driving cars to gain access to the trails in Lewis Park. There are, or should be, safety concerns about road encounters between these users and the Layton tree farm traffic.

Mary Jo Burgess
9126 Cottonwood Trail
As a neighbor of Larry Layton, I must take issue with traffic caused by use of the property. Two eight wheeler deliveries is actually two 18 wheel tractor trailers in the spring. Where Larry is highly inaccurate is saying two weekly trips of a pickup truck with a 20 foot trailer. First of all Larry has a ten wheel dump truck that pulls the 20 foot trailer and he comes in and out with it at least two times a day. At times as much as five trips per day. Please consider that his trailer hauls very heavy loads such as back hoes and skidsters on a narrow and steep dirt road. Also, two employees drive their cars in and his trucks out every day. Clients as well travel to the property. When the dump and trailer come by it is not only noisy but there is a large dust cloud following them. My house is close to the road and I have to keep my windows closed on a hot summer day to keep the dust out. We tire of hearing the dump and trailer rattle up and down the road whilst we try to enjoy our gardening. Also be aware that Larry works seven days a week and late in the evening.

Where does the commercialization stop. I have had some discussions with Larry about his employees speeding and the number of trips he makes in a day. I feel that this business effects all our quiet enjoyment and the dust is a health hazard. This is a neighborhood and his business contributes 20 trips a day or more. Larry is a hard working man but we all share the noise and dust of his endeavors. Any outside activity is influenced by Layton Tree Farm's trips up and down the road, often every hour. I ask that you consider the residents all thru the neighborhood and not allow this high traffic business in our once quiet country neighborhood. The business downhill (Tally Ho Farm), and another business across from me, and Layton Tree Farms have changed our ambiance. I have lived here almost 30 years and I am in a good position to say how much the commercial traffic has changed our rural neighborhood. This application must be denied as it is unacceptable traffic for a neighborhood. Please consider if you would like a business of this proportion with all these negative effects in your neighborhood. We hear machinery and deliveries every day from these businesses. Our road is narrow and steep and several times a year the intersection of Westwood and Cottonwood is blocked for several hours by large trucks that can't make the hill or the turn. We have no way out as the emergency road on the Weiser property has 3 locked gates, isn't plowed and has a private property sign. Enough is enough!

Jeff Whiting
8946 Cottonwood Trail