



March 10, 2015

Weber County Planning

Attn: Sean or Ben

2380 Washington Blvd. Ste 240

Ogden, Utah 84401

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RE: Variance Request Letter (3414 ~ UT-1409006281)

To whom it may concern:

I have been retained as the surveyor to work toward correcting some long standing title concerns which have recently been identified respecting the properties listed herein. This letter is to be included as part of a variance package that is to be submitted by Mr. Ron Hanson. This package should contain the following documents;

1. a print of the Ownership screen for parcels, 21-018-0015, 21-019-0001 thru 21-019-0008 (21-018-0015 Ownership screen.pdf, etc.),
2. a copy of the 1966 Ownership plat (62214-4\_Plat 1966.tif),
3. a copy of the letter of intent of the Eagles and Hanson to hold an existing fence line (the Hanson/Eagles fence) as their true and correct property line (there is an unsigned copy of this document attached hereto because the signed one I do not have a very legible copy, Ogden Aerie No Letter 1.pdf, Eagles.pdf),
4. deeds of some of the properties listed as "E\_" followed by the book and page number of the deed of record (E\_517-437.pdf, E\_534-430.pdf, E\_571-438.pdf, E\_581-206.pdf, E\_581-207.pdf, E\_581-208.pdf), and
5. two maps showing the property lines overlaid on aerial photography identifying the location of the property descriptions as presently deeded and the second showing where the deeds should be to coincide with the occupation of the property (3414\_First American\_Eagles Deeded.pdf, 3414\_First American\_Eagles Occupied.pdf)

Mr. Hanson owns property identified in the county tax records as 21-019-0006 under the name of Hanson Family Revocable Trust dated June 6, 1991 (hereinafter Hanson Property). I have included two drawings that illustrate the conditions of the title and that of the physical occupation of the property. Mr. Hanson and I have meet with Weber County Planning staff, Sean Wilkinson and Ben Hatfield) on February 17, 2015 to discuss the concerns of the circumstances outlined hereafter and from that meeting it was decided that a re-plating of the area as a subdivision and apply for a variance to retain the grandfather status of the parcel zoning may be appropriate.

Because of the title circumstances associated with the Hanson Property it is necessary to include the following properties to resolve the entire area; 21-019-0001, 21-019-0002, 21-019-0003, 21-019-0004, 21-019-0005, 21-019-0006, 21-019-0007, 21-019-0008, and 21-018-0015. Meetings are and have been held with the owners of these other parcels to discuss the title concern and gain their consent to the subdivision process.

During the course of the survey work done by Landmark, it has been found that the deeds of these parcels do not describe the property that they and their predecessors have been occupying for decades and which occupation is evidently the intent of the Grantor, Ella O. Fowles, to sell. It is this circumstance that can be seen from the two plat maps (number 5 above) that have been prepared. The map titled Deed Location at the top of the drawing shows an overlay on 2012 Aerial Photography with the current deed lines. Please note that the Home of the Hanson's is shown to be on parcel number 0007 but the deed description of Mr. Hanson's actually describes the property shown as parcel 0006. In this circumstance the Hanson Property as occupied does not coincide with the deed description of the property. This issue is actually true for all of the properties noted above. **A description error of each parcel places the properties essentially one lot east of where they are and have been occupied since the 1950's.**

The plat map titled Occupied Location shows the location of the properties with the deed descriptions shifted to coincide with the occupation. Please note that by making this adjustment most of the lines of occupation (fences) match the deeded descriptions quite closely with the exception of a fence line that exists between the Hanson property and the Eagles property (this will be discussed herein as **the Hanson/Eagles Fence**). The Occupied Location map better represents the correct location of the deeds and boundaries of the properties.

The intent of this survey is to provide the required deed documents, subdivision plat, and variance requirements to correct the title issue which has existed since the properties have been first deeded. I have researched the documents associated with the title of these properties and found that they *originated* by the following documents and dates (copies of some of these document are included an identified in number 4 above);

1. Parcel No. 21-018-0015 ~ Everett L Vanderpool, deeds to Ogden Aerie No. 2472, Fraternal Order of Eagles, by warranty deed Book 581 page 206 on **1-10-1958** recorded 6-2-1958. This property was formerly owned by Clyde R and Ella O. Fowles.
2. Parcel No. 21-019-0001 ~ Ella O. Fowles deeds to Delwin Hutchins and Elizabeth F Hutchins, by warranty deed Book 534 page 430, on **10-17-1956** recorded 12-29-1956.
3. Parcel No. 21-019-0002 ~ Ella O. Fowles deeds to James F Rice and Estella W Rice, by warranty deed Book 571 page 438, on **10-17-1956** recorded 2-19-1958.
4. Parcel No. 21-019-0003 ~ Ella O. Fowles deeds to Mary Ann Bingham, by warranty deed Book 517 page 437, on **6-25-1956** recorded 6-26-1956.
5. Parcel No. 21-019-0004 ~ Ella O Fowles deeds to Alwyn Kenneth Cross, by warranty deed Book 453 page 63, on **8-12-1954** recorded 8-19-1954.
6. Parcel No. 21-019-0005 ~ Ella O Fowles deeds to Albert G Hunt, by warranty deed Book 444 page 299, on **4-29-1954** recorded 8-17-1954.
7. Parcel No. 21-019-0006 ~ Ella O Fowles deeds to Albert G Hunt, by warranty deed Book 453 page 103, on **8-17-1954** recorded 8-19-1954.
8. Parcel No. 21-019-0007 ~Ella O Fowles deeds to E. H. Slade and wife Noma W Slade, by warranty deed Book 447 page 397, on **6-17-1954** recorded 6-22-1954.
9. Parcel No. 21-019-0008 ~Ella O Fowles deeds to E. H. Slade and wife Noma W Slade, by warranty deed Book 447 page 397, on **6-17-1954** recorded 6-22-1954.

From the document research we know that the parcels listed began to be divided in 1954 ending in 1956. After these parcels had been sold Ella then disposes of the remainder parcel and in 1958 the Eagles purchases the remainder.

In discussing the age of the fences in this area it has been found that they predate any of the current owners memory. The following is a listing of the current owners as evidenced by documents as attached and noted in number 1 above, the first number 1.

1. Parcel No. 21-018-0015 ~ Purchased by Ogden Aerie No 2472 Fraternal Order of Eagles by warranty deed Book 581 page 206 on **1-10-1958** recorded 6-2-1958.
2. Parcel No. 21-019-0001 ~ Purchased by Robert L Hansen by quit claim deed Book 1809 page 1446 on **5-31-1996** recorded 5-31-1996.
3. Parcel No. 21-019-0002 ~ Purchased by John L Robins and wife Dorothy T. Robbins by warranty deed Book 2148 page 2941 on **08-28-1978** recorded 6-26-2001.
4. Parcel No. 21-019-0003 ~ Purchased by J. Frank Nielson and Dorothy H. Nielson by quit claim deed Book 2026 page 1738 on **7-28-1999** recorded 8-2-1999.
5. Parcel No. 21-019-0004 ~ Purchased by Frederick Bjerke and wife Karen Bjerke by warranty deed Entry number 2673028 on **1-21-1914** recorded 1-27-2014.
6. Parcel No. 21-019-0005 ~ Purchased by Frederick Bjerke and wife Karen Bjerke by warranty deed Entry number 2673030 on **1-27-2014** recorded 1-27-2014.
7. Parcel No. 21-019-0006 ~ Purchased by the Hanson Family Revocable Trust by warranty deed Entry number 2676307 on **2-12-2014** recorded 2-25-2014.
8. Parcel No. 21-019-0007 ~ Purchased by Ogden Aerie No 2472, Fraternal Order of Eagles by warranty deed Book 581 page 208 on **5-31-1958** recorded 6-2-1958.
9. Parcel No. 21-019-0008 ~ Purchased by Ogden Aerie No 2472, Fraternal Order of Eagles by warranty deed Book 581 page 208 on **5-31-1958** recorded 6-2-1958.

Mr. Robins (21-019-0002) has been there for 37 years and in a conversation with him he indicated that the fences were there when he purchased the property. Members of the Eagles Board have also indicated that the fences were there when they purchased the property 57 years ago. Many if not all of the fences would have originated at the time of sale with perhaps an exception of the Hanson/Eagles fence line. This particular fence may have been there even before Ella O Fowles began to sell off the lots and was simply considered the property line by the then owners and left in place. I get this impression from some of the Eagles Board members that have stated the fence was there when they purchased.

The Hanson/Eagles fence line in particular will need to have some accommodation made by the variance so that it can remain in place and continue to be recognized as the property line. It is the desire of the Eagle's and the Hanson's that the fence NOT be moved. This fence line has been quietly recognized as the property line and the property on each side has been quietly enjoyed up to this line by both the Eagles (the original owners of parcels 21-019-0007 and 21-019-0008) and, as it has been represented to me, by the Hanson's predecessors in title. There is no desire on the part of either the Eagles or the Hansons to move this fence line which is evidenced by the letter which both have signed and which is part of the attachments to this letter (number 3 above, the first 3).

The Hanson/Eagles fence has been in existence essentially since the property was first occupied. Unfortunately, the physical location of the fence does not coincide with the deeded lines of the respective lots. Looking at the map titled Occupied Location the fence shows the fence in relationship to the lot lines. By holding the fence line as the property line the frontage width of the Hanson's property will become more narrow than the deeded 100 feet and

increase in width at the back line of the property on the river's edge. This configuration, while not being totally equal area exchanged for equal area, will be relatively close to such.

It is my professional opinion that this fence line would meet the requirements of a Boundary by Acquiescence for the following reasons. The Utah Supreme Court in a 1996 case of *Carter v. Hanrath*, 925 P.2d 960 (1996) has stated that "[o]ur case law makes it clear that there are four requirements which must be met before boundary by acquiescence can be established. They are: (1) occupation up to a visible line marked definitely by monuments, fences, or buildings and (2) mutual acquiescence in the line as a boundary, (3) for a long period of time, (4) by adjoining land owners."

To the requirements; (1) occupation up to a visible line marked definitely by monuments, fences, or buildings, this condition is met in that the existing fence has had use and occupation up to it by the Owners and their invited guests. In fact, the Eagles have built trailer/RV pads up to the fence line. The Hanson's and their predecessors have also occupied the land and used up to the fence which is a definite and visible line to all.

(2) mutual acquiescence in the line as a boundary can be demonstrated in the desire of the parties to consummate the occupation as the boundary at the same time that the errors in the property descriptions are being corrected. The owners have also expressed that they and their predecessors have quietly used and enjoyed the property to the fence line believing that it was the property line.

(3) for a long period of time is demonstrated, again, by the length of the time that the fence has been in place. This time period is in possibly in excess of 57 years. The Utah Supreme Court in *Jacobs v. Hafen*, 917 P.2d 1078 (Utah 1996) has clarified this time period stating "[w]e therefore hold that establishment of boundary by acquiescence requires (i) occupation up to a visible line marked by monuments, fences, or buildings, (ii) mutual acquiescence in a line as a boundary, (iii) for a period of at least 20 years, (iv) by adjoining landowners." (Emphasis added.) In this case the required time period of 20 years has been exceeded.

(4) by adjoining land owners is demonstrated by the title record in that the properties are described as having a common boundary line with no gap being owned by a third party. Furthermore, that the property owners have to recognized any third party to have a title between their respective land and have fully occupied such land up to the fence line.

With these circumstances in mind I believe that the fence has been the boundary of the property for decades by acquiescence and would pose no change in the legal status of the property by correcting the descriptions of the properties to reflect such. Therefore, the frontage width as occupied by the fences for the Hanson property, in my opinion, should be varied to allow the fence to remain the property line as it has been for many years of historic use.

With respect to the zoning, it is evident that these parcel were established well before the zoning laws by the date of the original deeds and were in existence in 1966 as evidenced by the attached plat of that date (number 2 above, the first 2). In my opinion, this would indicate that the grandfathered status of the properties respecting their size should also be recognized as legal non-conforming. And is based on historic use and occupation.

The properties are also serviced by an **historic easement**. The easement also has description issues in that the used path of the access road does not entirely follow the deed location of the easement. These parcels were initially granted access by way of an easement in the original deeds and have been accessed by this easement since that time. The land owners maintain the traveled way indicating that this was intended to be, what we call today, a

private road. The easement has not been open to the public and to my knowledge, not used by the public. Therefore, the road would retain its original status and may justify the use of private road to describe the access road. It is the desire of the owners to correct the description of this easement so that it coincides with the traveled and used way in this subdivision process.

The easement description does follow a portion of the used and traveled road way which is a north-south portion of the road which is fenced on both the east and west sides. It is not the intent of this project to change the location of this section of the easement. There is also a portion of the easement at the north end of the road where it connects to Highway 39 that does not follow the deeded location and would involve the consent of another land owner to correct. This section of road is in dispute and will not be included in this project.

It is the apparent intent of the original deeding that the easements south boundary is to coincide with the lots north boundaries. The subdivision plat will be prepared to continue this intent.

Summary:

The requested variance for the reasons stated herein and would be to grant approval for a subdivision plat to be prepared and recorded that will;

1. correct the location of the property descriptions of parcels 21-019-0001 thru 21-019-0008, and
2. identify a remaining parcel which is currently being identified as 21-018-0015 and owned by the Eagles,
3. utilize the existing fence lines as the actual property lines of the lots where appropriate,
4. grant variance to the size and frontage requirements,
5. allow the easement access to these properties to be corrected from a point that is approximately South 557 feet from the north section line of the section thence westerly along the frontage of the lots, and
6. to identify that portion of the easement as a private street on the subdivision plat.

Respectfully,

***Ernest D. Rowley, PLS, CFedS***  
***Principle Owner - Landmark Surveying, Inc.***  
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