

Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a variance request from the current standard used to

determine the 35' maximum building height as measured from the average natural grade to the previous standard used to determine the 35' maximum building height as measured

from the average finished grade.

Agenda Date: Thursday, July 16, 2015
Applicant: Steven and Michelle Buck

File Number: BOA 2015-05

Property Information

Approximate Address: 4087 West 2200 South

Project Area: 1.015 acres

Zoning: A-1

Existing Land Use: Vacant Residential Building Lot

Proposed Land Use: Residential Building Lot

Parcel ID: 15-396-0001

Township, Range, Section: T6N, R2W, Section 28

Adjacent Land Use

North: Residential South: Agricultural/Future Residential Development

East: Residential West: Residential

Staff Information

Report Presenter: Ronda Kippen

rkippen@co.weber.ut.us

801-399-8768

Report Reviewer: SW

Applicable Codes

- Title 101, Chapter 1, General Provisions, Section 7, Definitions
- Title 102, Administration, Chapter 3, Board of Adjustment
- Title 104, Chapter 5, Agricultural Zone (A-1)

Background

The applicant has submitted a request for a variance from the current County standards used to calculate the maximum building height for a single family dwelling in the A-1 zone (see Exhibit A). The subject property is located at approximately 4087 West 2200 South, UT and identified on the Weber County records as Lot 1 in the Blue Acres Subdivision (see Exhibit B). The applicant has applied for and received approval of a land use and building permit for a home on Lot 1 of the Blue Acres Subdivision with a condition of approval that a survey will take place at the four-way inspection to ensure that the building height does not exceed an average of 35' from existing grade. During the footing inspection the Weber County Building Inspector stopped work due to the amount of material that had been imported to create a buildable pad and encouraged the applicant to contact the Planning Division to discuss their options.

Blue Acres Subdivision was approved and recorded in 2005 at which time the maximum building height for a single family dwelling was measured from the final finished grade of a building lot. The 2005 Uniform Zoning Ordinance of Unincorporated Weber County §1-6 Definitions read:

BUILDING/ HEIGHT OF: The vertical distance from the average of the highest grade and the lowest grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest point of the ridge of a pitch or hip roof.

GRADE: (Adjacent ground elevation) The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building or structure and a line five (5) feet from the building or structure.

In 2008, Weber County adopted Ordinance 2008-9 modifying the standard for which the building height is determined. The current code standards used in the Uniform Land Use Code of Weber County (LUC) reads (italics added for clarification of the modifications):

Building, height of. The term "height of building" means the vertical distance from the average of the highest *natural* grade and the lowest *natural* grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest point of the ridge of a pitch or hip roof.

Grade, natural/existing (adjacent ground elevation). The term "grade, natural/existing (adjacent ground elevation)" means the lowest point of elevation of the finished surface of the natural ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five feet from the building, between the building or structure and a line five feet from the building or structure.

The existing grade of the lot is approximately six to seven feet lower than the County road known as 2200 South and the future road way under construction for Blue Acres Subdivision Phase 4 located to the east of the applicant's lot. Currently there is an irrigation ditch running along the west side of the lot and a land drain running through Lot 1 of the Blue Acres Subdivision. The land drain running through Lot 1 will be removed as part of the improvements of Blue Acres Subdivision Phase 4 and a storm detention area will be constructed on part of Lot 6 located to the south of the applicant's property (see Exhibit C). The topography of the area slopes downward toward the applicant's lot creating a natural drainage area (see Exhibit D). In order to drain surface runoff from Lot 1 into the future storm detention area, the building pad on Lot 1 will need to allow the surface runoff to be collected into the future storm drain improvements.

The applicant would like to import approximately six to seven feet of material to create an acceptable building pad in order to reduce the risk for surface and underground flooding. However, by doing so, the applicant will be starting six to seven feet higher than the "existing/natural grade" resulting in a building height according to the current standards of approximately 41'. If the applicant is granted the variance from the current standard to calculate building height and is permitted to use the average finished grade to calculate the final building height; the final building height will be 34' 4 5/8" (see Exhibit E).

According the County Engineering Division, the sewer line that the applicant will be connecting to in the County right of way is only six feet below grade. The County Engineering Division supports the applicants desire to raise the building pad in order to eliminate the need to install a sewer pump that has the potential to fail during power outages causing sewage to back up into the home.

Analysis

The request for a variance from the current County standards used to calculate the maximum building height for a single family dwelling in the A-1 zone has been reviewed against the following criteria:

- a. <u>Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code</u>: The building lot was created at a time that the County allowed for additional improvements to the individual building lot to create a more desirable site for a single family dwelling. The building lot is significantly lower in elevation than the adjacent property owners and roadways. The current code identifies the grade as "the finished surface of the natural ground". Based on the word "finished", the applicant proceeded with designing their home based on the necessary improvements of the lot to minimize flooding risks. The literal enforcement of the code could cause an unreasonable hardship by increasing the applicant's risk of underground and surface flooding as well as increasing the risk of the public sewer system backing up into the home. The County Engineering Division has expressed their support of the proposed improvements of the lot to reduce the potential flooding risks.
- b. <u>There are special circumstances attached to the property that do not generally apply to other properties in the same zone:</u> The natural/existing grade of the building lot is at risk for high ground water and surface flooding due to the adjacent properties being significantly higher in elevation creating a natural drainage area on Lot 1 of the Blue Acres Subdivision and the close proximately of the irrigation ditch. There may be other areas in the same zone that are similar to Lot 1; however, during the subdivision process, the Planning and Engineering Division attempts to encourage the developer to improve the lots to minimize such flooding risks.
- c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone: Single family dwellings are considered a permitted use in the A-1 zone. Although there is a potential risk of underground and surface flooding due to the adjacent irrigation ditch and the low elevation of the building lot, the County cannot restrict the property owner from building a dwelling with a basement unless the

property falls within a specific flood plain identified by FEMA. The subject property is not in a flood plain that is known to have a high risk of annual flooding and the variance is essential for the property owners to enjoy their property in a similar fashion as the adjacent property owners.

- d. <u>The variance will not substantially affect the general plan and will not be contrary to the public interest:</u> The adjacent properties have been developed under the previous building height standards; therefore, the variance will not substantially affect the general plan and will not be contrary to the public interest.
- e. <u>The spirit of the land use ordinance is observed and substantial justice done:</u> By granting the requested variance, substantial justice will be done and the land use ordinance will be observed by allowing the property owner to construct a single family dwelling similar in height to the adjacent property owners by utilizing the "finished surface of the natural ground" to calculate the maximum building height of 35' and minimize potential flooding hazards.

Summary of Board of Adjustment Considerations

The LUC §102-3-3 states that the Board of Adjustments shall "hear and decide variances from the requirements of the Land Use Code". The LUC §102-3-4(b) outlines the decision criteria and standards for which variances from the requirements must be reviewed. The Board of Adjustments can grant a variance only if the following five criteria are met:

- a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.
 - 1. In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - 2. In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
- b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
 - 1. In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.
- c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
- d. The variance will not substantially affect the general plan and will not be contrary to the public interest.
- e. The spirit of the land use ordinance is observed and substantial justice done.

Conformance to the General Plan

Single family dwellings are allowed as a permitted use in the A-1 Zone. By granting the variance, safe and desirable development will take place and will not have a negative impact on the goals and policies of the Western Weber General Plan.

Staff Recommendation

Staff recommends approval of the variance request from the current standard used to determine the 35' maximum building height as measured from the average natural grade to the previous standard used to determine the 35' maximum building height as measured from the average finished grade. This recommendation for approval is subject to all review agency requirements and based on the following conditions:

- 1. The maximum building height shall not exceed 35' from the average finished grade or 41' from the average natural existing grade.
- 2. Requirements of the Weber County Engineering Division.
- 3. Requirements of the Weber County Building Division.

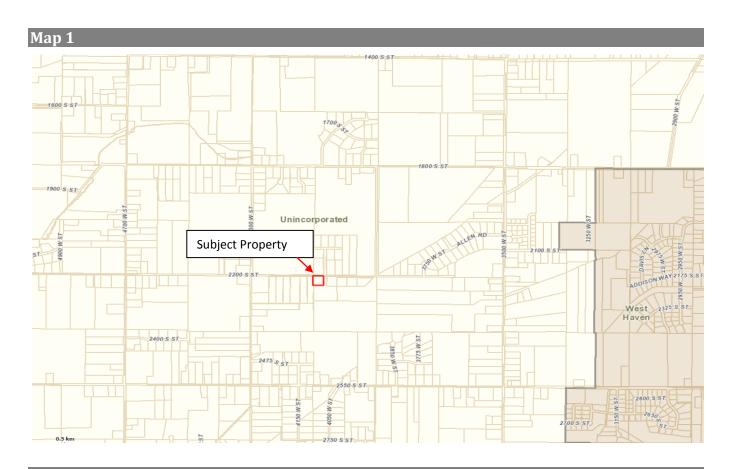
This recommendation is based on the following findings:

 The building lot was created prior to the adoption of Ordinance 2008-9 modifying the building height to be measured from existing grade instead of final grade.

- 2. The current definition of "Grade, natural/existing" refers to the "... <u>finished</u> surface of the natural ground" causing confusion as to whether or not the applicant could improve the building lot by importing material to raise the building pad to reduce flooding risks.
- 3. The natural/existing grade of the building lot is at risk for high ground water and surface flooding due to the adjacent properties being higher in elevation creating a natural drainage area on Lot 1 of the Blue Acres Subdivision.
- 4. The County Engineering Division supports raising the existing/natural grade of Lot 1 of the Blue Acres Subdivision to reduce the need to install a sewer pump for the single family dwelling.
- 5. The proposed single family dwelling will be similar in height with the adjacent property owners.
- 6. The applicant has received approval of a land use and building permit for the proposed single family dwelling.
- 7. The proposed variance will not be detrimental to the public health, safety, or welfare.
- 8. The proposed variance will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.

Exhibits

- A. Application, narrative, and site photos
- B. 2005 Subdivision plat
- C. Blue Acres Phase 4 Subdivision improvements and storm water plan
- D. Contour/topography maps
- E. Proposed single family dwelling architectural renderings/elevations





Weber County Board of Adjustment Application				
Application submittals wil	be accepted by appointment only. (80	01) 399-8791. 2380 Washington Blvd. S	uite 240, Ogden, UT 84401	
Date Submitted / Completed 06/10/2015	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)	
Property Owner Contact Info	rmation			
Name of Property Owner(s) Steven and Michelle Buck		Mailing Address of Property Owner(s) 1012 West 4200 South Riverdale, Utah 84405		
Phone 801-628-1466 or 801-882-4998	Fax			
Email Address michellejbuck@yahoo.com		Preferred Method of Written Correspondence Email Fax Mail		
Authorized Representative C	ontact Information			
Name of Person Authorized to Represent the Property Owner(s)		Mailing Address of Authorized Person		
Phone	Fax			
		5.6.444.4.699.99	4	
Email Address		Preferred Method of Written Correspond	dence	
Appeal Request		·		
A variance request:				
<u></u>				
Lot areaYard setbo	ackFrontage width _ <u>x</u> O	ther: Height Restriction		
An Interpretation of the Zoning	Ordinance			
☐ An Interpretation of the Zoning	Мар			
A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning				
Ordinance				
Other:				
Property Information				
Approximate Address		Land Serial Number(s)		
4087 West 2200 South Ogden, Utah 844	101	150780068		
Current Zoning				
A ~1				
Existing Measurements		Required Measurements (Office Use)		
Lot Area 44,220 SF or 1.015 Acres	Lot Frontage/Width 211.81	Lot Size (Office Use)	Lot Frontage/Width (Office Use)	
Front Yard Setback 77.5	Rear Yard Setback 39	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)	
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)	
75	35.5		, , , , , , , , , , , , , , , , , , , ,	

Exhibit A-Application

Applicant Narrative
Please explain your request. We the property owners request a variance to be approved, granting us the ability to use the average final grade (as it has been in years past) to determine the height of the house, instead of natural existing grade. As the natural grade of the area, all other lots in our subdivision stope downward toward our lot. Where our lot is up to 9 feet lower in elevation than other lots in the zone, it creates a potential hazard for flooding, as well as difficulty managing and cultivating the property because of drainage issues. Although we are choosing to build a daylight basement, we don't believe in subjecting ourselves to future insurance claims, costly clear-up from flooding, and additional liability to everyone involved by digging our basement lower than what has been recommended by experts. We believe this issue is not self-inflicting because of the planning and and foresight of those involved in the process, as well as the specific wording on Weber County's Website, etc., on how the height limit is calculated, whether it be existing or final grade. For example, architects at Habitations Homes, Paul Keeler, landscape architect with Desert Land Design, and contractors and project managers at Remodel West have all considered the height restrictions prior to agreeing to move forward with the project, knowing that the average final grade would be approximately 25 feet which is well below the 35 feet restriction. We realize this restriction was initiated to protect homeowners' views who build near mountain sides and benches, since average existing grade would help those homeowners. We also realize there are several other homes in the county that were built before the wording was changed from final grade to natural/existing grade and are above the 35 feet limit at natural grade. Our lot is in a rural, relatively flat area, which would not affect views of other homeowners any more than the next house. In fact, the height will be similar to some of our surrounding neighbors because our starti
Variance Request
The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:
1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

Exhibit A-Application

Variance Request (continued)		
2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.		
In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the secial circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.		
Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:		
Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.		

Exhibit A-Application

Variance Request (continued)			
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.			
5. The spirit of the land use ordinance is observed and substantial justice done.			
Property Owner Affidavit			
I (We), <u>STEVEN G MICHELLE BUCK</u> , depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.			
m = 1 .000 . 11			
(Property Owner) (Property Owner)			
Subscribed and sworn to me this			
(Notary)			
Authorized Representative Affidavit			
I (We),, the owner(s) of the real property described in the attached application, do authorized as my			
(our) representative(s),			
(Property Owner) (Property Owner)			
Dated thisday of			
(Notary)			

Exhibit A-Application Narrative

Applicant Narrative

We the property owners request that a variance be approved, granting us the ability to use the average final grade (as it has been in years past) to determine the height of the house, instead of natural existing grade. As the natural grade of the area, all of the lots in the subdivision slope downward toward our lot. Where our lot is up to 9 feet lower in elevation than other lots in the zone, it creates a potential hazard for flooding, as well as difficulty managing and cultivating the property because of drainage issues. Although we are choosing to build a daylight basement, we don't believe in subjecting ourselves to future insurance claims, costly clean-up from flooding, and additional liability to everyone involved by digging our basement lower than what has been recommended by experts.

We believe this is not self-inflicting because of planning foresight of those involved in the process, as well as the lack of specific wording on Weber County's website, etc. on how the height limit is calculated, whether it be existing or natural. This is what it reads in Single Family Residential Zones 10-4 Site Development Standards: Main Building Height Maximum 35 ft. It isn't until you look deep into Weber County's definition of building height you see it reads; Building height is the vertical distance from the average of the highest natural grade and the lowest natural grade to the highest point of the ridge of a pitch or a hip roof.

To make it even more confusing, Weber County's Definition of Natural/Existing Grade: (Adjacent ground elevation) The lowest point of elevation of the **FINSHED SURFACE AREA** of the natural ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a structure line 5 feet from the building or structure.

Architects at Habitation Homes, Paul Keeler, landscape architect with Desert land design, and contractors and project managers with Remodel West have all considered the height restrictions prior to agreeing to move forward with the project, knowing the average final grade would be below the 35 ft height restriction.

We realize the height restriction was put in place to protect homeowners' views who build near or on mountainsides and benches, since average existing grade could help those homeowners. We also realize there are several other homes in the county that were built before the wording was changed from final to natural/existing grade and are above the 35 ft. natural grade. Our lot is in a rural, relatively flat area, which would not affect the views of other homeowners any more than the next house. In fact, the height will be at a similar or lower elevation than some of our surrounding neighbors.

Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

- 1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
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 - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

Our lot is up to 9 feet lower than other lots in the subdivision which creates a hardship unique to us as all surrounding lots drain toward us and create a potential for flooding. Other houses in the area that have basements already have flooding issues as well as sump pumps running 24/7. The surrounding house's natural grades are already 4-9 feet higher than our starting point. The road that will exist when all of the improvements are made is set to be 3 ft higher than the "natural grade" of our lot. Does it make sense to have a lot three feet lower than the road?

Exhibit A-Application Narrative

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone. Please describe the special circumstances attached to the property that do not

Again the special circumstances attached to our property are the same as our unreasonable hardship with the lower elevation of our lot as compared to others in the subdivision.

Our lot is up to 9 feet lower than other lots in the subdivision which creates a hardship unique to us as all surrounding lots drain toward us and create a potential for flooding. Other houses in the area that have basements already have flooding issues as well as sump pumps running 24/7. The surrounding house's natural grades are already 4-9 feet higher than our starting point. The road that will exist when all of the improvements are made is set to be 3 ft higher than the "natural grade" of our lot. Does it make sense to have a lot three feet lower than the road?

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Without granting our variance, many other houses in the area with similar finished height and size currently enjoy walk out basements where we would not be able to because of our lower natural grade starting point and inevitable flooding if we dig into the ground.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Again, multiple houses in the area are similar in height and size and would not affect the general plan and be contrary to public interest.

5. The spirit of the land use ordinance is observed and substantial justice done.

generally apply to the other properties in the same zone:

Our understanding of the spirit of the land use ordinance is to protect the views of neighbors. In our circumstances, that doesn't apply since we are in a rural, flat area and we would not be blocking any views of surrounding neighbors.

Exhibit A- Pictures of Site from Lot 2 Blue Acres Subdivision





-Home located across street from Lot 1 Blue Acres



Exhibit A- Difference in finished grade along new roadway to Phase 4



Exhibit A- Grade of new curb and gutter adjacent to Lot 1 Finished grade line curb and gutter in Blue Acres Phase 4 adjacent to Lot 1 of Blue Acres

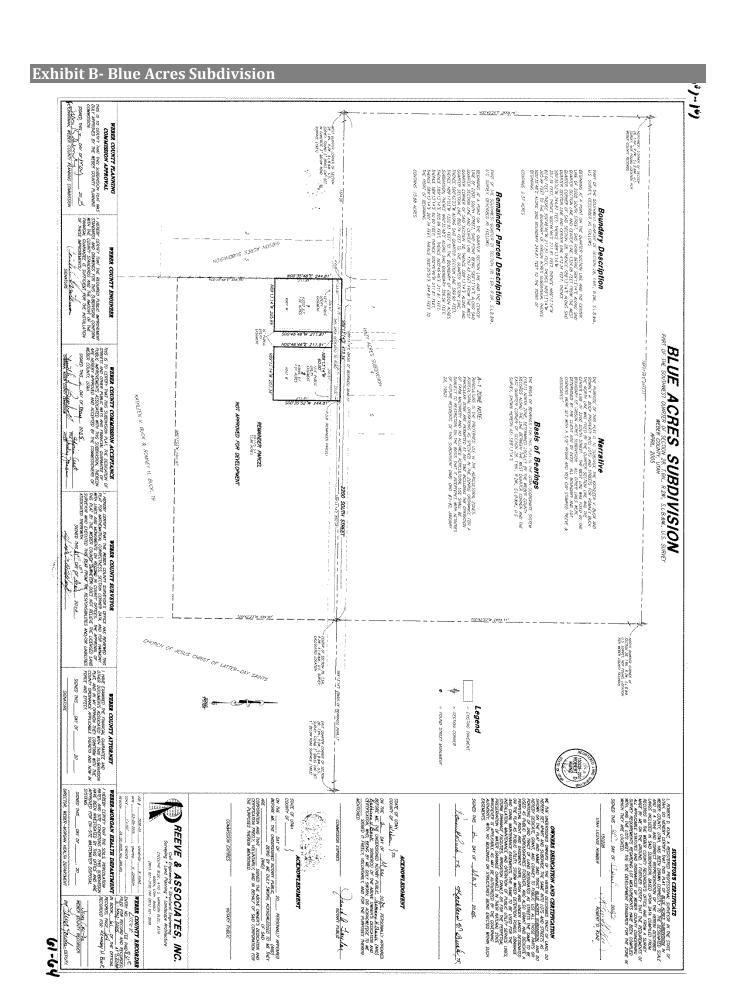


Exhibit C- Blue Acres Subdivision Phase 4 Improvement Drawings

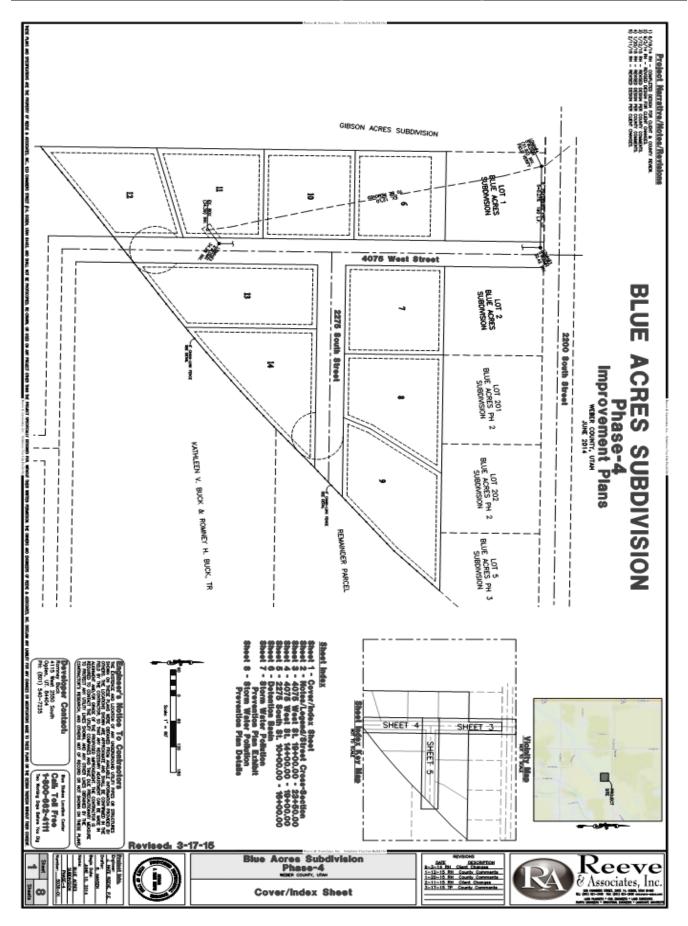
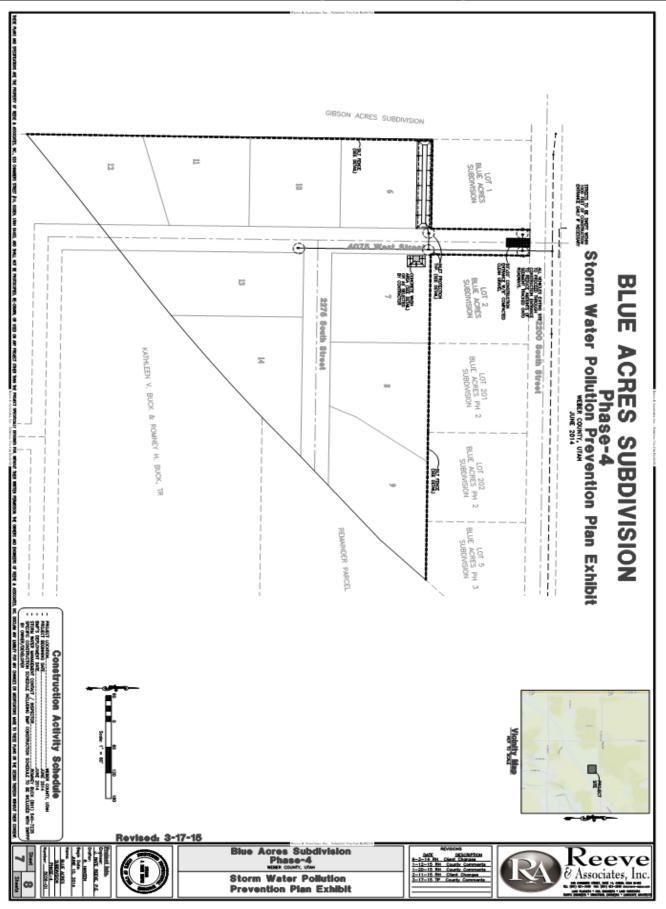


Exhibit C- Blue Acres Subdivision Phase 4 Improvement Drawings



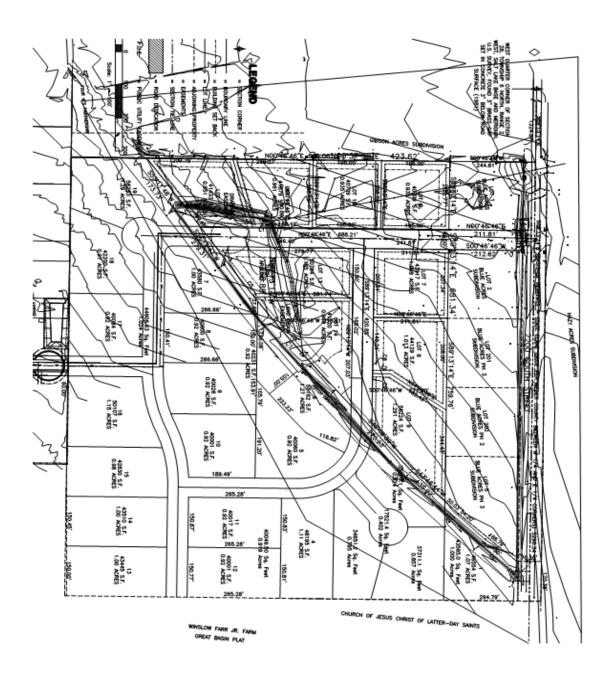
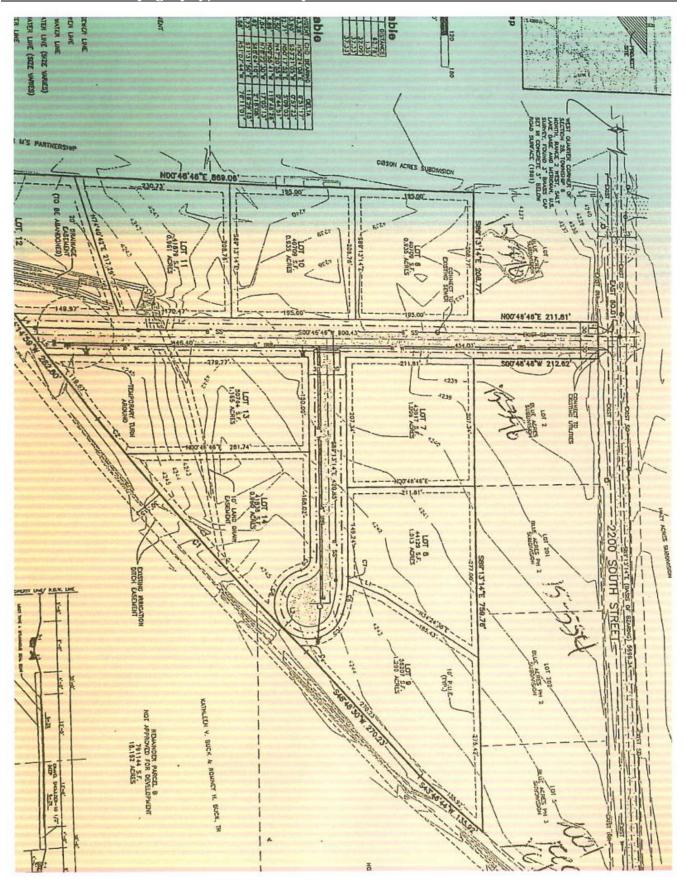


Exhibit D- Area Topography/Contour Map



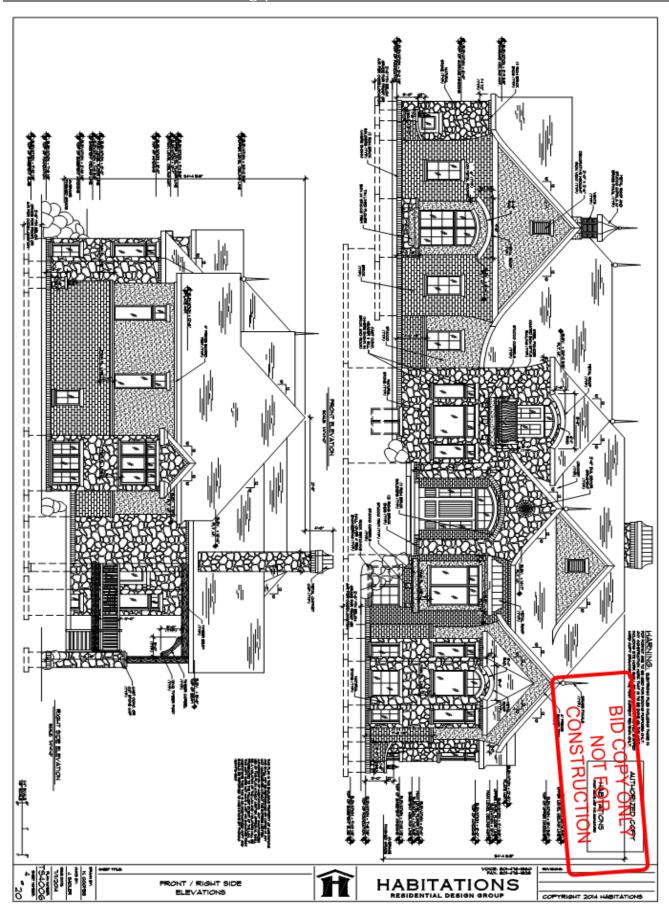


Exhibit E- Architectural Renderings/Elevations

