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

****Synopsis****

****Application Information****

**Application Request:** Consideration and action on an appeal of an administrative decision, by the Weber County Planning Division, to issue a Land Use Permit for parcel #22-010-0001, (located at 3788 E 4100 N, Liberty) owned by Richard Ralph & Rulon Kent Jones. The allegation is that the Planning Division erred in its decision to issue this Land Use Permit.

**Agenda Date: Thursday, August 25, 2011**

**Applicant:** Bret Barry

**File Number:** BOA 2011-04

****Property Information****

**Approximate Address:** 3788 East 4100 North, Liberty

**Project Area:** 6.15 Acres

**Zoning:** Agricultural Valley-3 Zone (AV-3)

**Existing Land Use:** Residential and Agriculture

**Proposed Land Use:** Expand Agricultural Use

**Parcel ID:** 22-010-0001

**Township, Range, Section:** T7N, R1E, Section 20

****Adjacent Land Use****

**North:** Residential **South:** Residential

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

****Staff Information****

**Report Presenter:** Scott Mendoza

smendoza@co.weber.ut.us

801-399-8769

**Report Reviewer:** RS

Applicable Ordinances

* Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)
* Weber County Zoning Ordinance Chapter 1 (General Provisions/Definitions)
* Weber County Zoning Ordinance Chapter 5B (Agricultural Valley – 3)
* Weber County Zoning Ordinance Chapter 23 (Supplementary and Qualifying Regulations)

Background

**Description and Appellant Request**

On June 27, 2011 the Weber County Planning Division reviewed a Land Use Permit Application and subsequently issued a permit for, what has been interpreted by the Planning Staff to be, an agricultural use on a parcel located at 3788 E 4100 N in Liberty, Utah. See Map #1, on page 6 of 7, for approximate location. The Planning Division’s decision to issue this Land Use Permit was based on information presented, and its compliance with the development standards found in the Zoning Ordinance, e.g., use type, structure setbacks, and structure height; however, it is being appealed to the Board of Adjustment for several stated reasons ranging from the Planning Staff’s misapplication of the Zoning Ordinance to incomplete and inaccurate information being provided by the Land Use Permit applicant.

Chapter 29 (Board of Adjustment) of the Weber County Zoning Ordinance states that one of the duties and powers of the Board is *“To hear and decide appeals where, it is alleged by the appellant that, there is error in any order, requirement, decision, or refusal made in the enforcement of this Ordinance.”* The appellant, Mr. Bret Barry in this case, is requesting that the Board of Adjustment consider his appeal and cause the rescission of the Land Use Permit in question. See Exhibit A for appellant’s letter to the Board of Adjustment. See Exhibit B for the Land Use Permit.

**Parcel Information and Proposed Use**

The agricultural parcel (Tax ID# 22-010-0001) for which the Land Use Permit was issued, is owned by Richard Ralph and Rulon Kent Jones. It consists of approximately 6.15 acres and lies within the Agricultural Valley – 3 (AV-3) Zone which lists “agriculture” as a permitted use.

During the third week of June (2011) an authorized representative, of the landowners, submitted a Land Use Permit Application, a site plan, and a written narrative that describes the subject property and the proposed land use. See Exhibits C, D, and E respectively.

As described in the narrative, attached as Exhibit E, the Jones’ have proposed to expand their current agricultural activities by utilizing an existing (1200 sq.ft.) agricultural building for meat cutting/preparation. It has been represented that the building will only be used for cutting/preparing meat (elk) that is a product of this farm operation and not for slaughtering, butchering, or custom cutting other animals that have been raised and/or harvested from other sources, e.g., other livestock operations or a hunter’s wild game. It has also been represented that there would be a limited number of animals (approximately 100) cut and prepared during the fall months only.

**Land Use Permit Issuance**

In issuing the Land Use Permit, the Planning Division relied on information provided by the Jones, the Weber County Zoning Ordinance, and Utah State Code. The specific zoning ordinances that apply to the Jones’ application are Chapter 1 (General Provisions/Definitions); Chapter 5B (Agricultural Valley – 3), due to the fact that the Jones’ property lies within the Agricultural Valley – 3 Zone; and Chapter 23 (Supplementary and Qualifying Regulations), due to the structure’s size.

Chapter 5B states that *“agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone*.” It lists “agriculture” as a permitted use and Chapter 1 defines “agriculture” and an “agricultural parcel” in the following ways:

***AGRICULTURE:*** *Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.*

***AGRICULTURAL PARCEL:*** *A single parcel of land, at least 5.0 acres in area if vacant, or 5.25 acres with a residential dwelling unit. This definition needs to be fulfilled in order to qualify for the agricultural building exemption.*

The parcel owned by the Jones’ meets the definition of an “agricultural parcel” and it is the Planning Division’s interpretation that the proposed use is “agriculture” (“primarily farming” and a “related purpose”); therefore, it is permitted.

The following describes the rationale behind the Planning Staff’s decision to issue the Land Use Permit:

1. A complete Land Use Permit Application Packet, certified to be true and correct, was submitted.
2. The Jones property site plan, submitted as a part of their packet, represented that the subject building is in compliance with the development standards found in the Zoning Ordinance, e.g., use type, structure setbacks, and structure height.
3. After consideration was given to the Weber County Zoning Ordinance, the proposed use was interpreted to be “agriculture” which is a permitted use in the AV-3 Zone.

Due to the County’s definition of “agriculture” being quite broad, i.e., agriculture is “primarily farming and related purposes”, the Planning Staff referred to Utah State Code for more specific information. The following is the Utah State Code definition of “agriculture”:

***"Agriculture"*** *means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.*

1. The Planning Staff considered the proposed “meat cutting” activity to be a part of the “preparation” as included in the above Utah State Code definition of “agriculture”. Due to the inclusion of the word “preparation”, the Planning Staff referred to Utah State Code for more specific information. The following is the Utah State Code definition of “prepared” and “process”:

***"Prepared"*** *means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.*

***"Process"*** *means to cut****,*** *grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.*

Even though the Utah State Code includes “slaughter” in its definition of “prepared”, the Planning Staff determined that the proposed use was not a “slaughterhouse” due to the lack of activities customarily involved with “slaughtering”. The proposed use (meat cutting building) will not include customary activities such as stunning or causing the animals to become unconscious/insensible, exsanguination (the killing of the animal) skinning, removal of internal organs, or rendering waste materials. See Exhibit H for examples of the slaughtering process. The following is the Utah State Code definition of “slaughter”:

***"Slaughter"*** *means:*

*(a) the killing of an animal in a humane manner including skinning or dressing; or*

*(b) the process of performing any of the specified acts in preparing an animal for human consumption.*

1. Livestock (animals) is undoubtedly a product of agriculture; therefore, the Planning Staff, prior to issuing the Land Use Permit, was able to verify that “domesticated elk” are specifically listed and considered to be “livestock” according to the State of Utah. The following is the Utah State Code definition of “livestock” and “domesticated elk” as referenced:

***"Livestock"*** *means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.*

***"Domesticated elk"*** *means elk of the genus and species cervus elaphus, held in captivity and domestically raised for commercial purposes.*

**Appeal**

On July 13th, 2011, Mr. Bret Barry, the owner of a home and property neighboring the proposed use, submitted an application to the Board of Adjustment requesting the above described appeal. See Exhibit A for Mr. Barry’s letter to the Board of Adjustment.

Below is a summarized list of issues/concerns that Mr. Barry is bringing to the attention of the Board of Adjustment, followed by a Planning Staff response:

1. **The proposed use is non-compliant with Section 5B-3(5) of the Zoning Ordinance because its distance to dwellings on adjacent properties is not at least two hundred (200) feet and the site includes permanent fences, corrals, chutes, structures, and other buildings associated with a feeding operation.**

*5B-3. Permitted Uses Requiring Five (5) Ares Minimum Lot Area*

*1. Dairy farm and milk processing and sale provided at least fifty (50) percent of milk processed and sold is produced on the premises*

*2. Farms devoted to the hatching, raising (including fattening as an incident to raising) of chickens, turkeys, or other fowl, rabbits, fish, frogs or beaver*

*3. Fruit and vegetable storage and packing plant for produce grown on premises.*

*4. The keeping and raising of not more than ten (10) hogs more than sixteen (16) weeks old, provided that no person shall feed any such hog any market refuse, house refuse, garbage or offal other than that produced on the premises*

***5. The raising and grazing of horses, cattle, sheep or goats as part of a farming operation, including the supplementary or full feeding of such animals provided that such raising and grazing when conducted by a farmer in conjunction with any livestock feed yard, livestock sales or slaughter house shall:***

***A. not exceed a density of twenty-five (25) head per acre of used and;***

***B. be carried on during the period of September 15 through April 15 only;***

***C. be not closer than two hundred (200) feet to any dwelling, public or semi-public building on an adjoining parcel of land; and,***

***D. not include the erection of any permanent fences, corrals, chutes, structures or other buildings normally associated with a feeding operation***

PLANNING STAFF RESPONSE:

Section 5B-3(5) specifically and unambiguously states “the raising and grazing of horses, cattle, sheep or goats”, and then assigns additional requirements to operations that raise and graze “horses, cattle, sheep, or goats.” This list does not serve as a list of examples due to the fact that words like “such as”, “for example”, or “not limited to” are not used. Due to this the Planning Staff concluded that the list was created decidedly and intentionally; therefore, the standards listed in A through D above only apply to farm operations that involve those specifically listed animals.

Neither the existing and/or proposed use involves the raising and grazing of “horses, cattle, sheep or goats”; therefore, Section 5B-3(5) does not apply and should not be considered by the Board of Adjustment.

In the event it were interpreted that Section 5B-3(5) did apply, the requirements listed in A through D above would only apply to the “raising and grazing” area/operation and not to accessory buildings or those uses completely contained within them. This becomes evident after reading the requirements listed in A through D. For example, requirement A refers to the number of animals allowed on a per acre basis. One can see how this requirement (and others) applies to the “raising and grazing” and could not apply to an accessory building.

1. **Nothing within the Land Use Permit Packet provided guidelines, plans, or definition of environmental impact, waste handling or disposal, waste water (septic), harmony with surrounding neighbors and harmony with the purpose of the residential area.**

PLANNING STAFF RESPONSE:

The Weber County Zoning Ordinance does not require guidelines, plans, or definitions of environmental impact, waste handling or disposal, waste water (septic), or applicant descriptions of how a proposed use is in harmony with surrounding neighbors or in harmony with the purpose of a residential area. Documentation or proof of culinary and waste water (septic) approval is required prior to the issuance of a Weber County Building Permit. The required documentation has been provided by the Weber/Morgan Health Department and has been received by the Weber County Building Inspections Office.

1. **The proposed use is contrary to the public interest and will result in unnecessary hardship to both adjoining properties and other residents in the area.**

PLANNING STAFF RESPONSE:

Mr. Barry would like the Board of Adjustment to find that the proposed use is “contrary to the public interest”; therefore, rescind or overturn the issuance of the Land Use Permit. He, in his letter to the Board of Adjustment, has quoted the following language from Chapter 29 (Board of Adjustment) of the Weber County Zoning Ordinance:

*To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be preserved and substantial justice done.*

This language resides in Section 29-3 (Duties and Powers of the Board) and explains one of approximately thirteen other duties of the Board of Adjustment; none of which authorize the Board of Adjustment to rescind Land Use Permits based on whether or not a proposed use is thought to be contrary to public interest. The above language simply authorizes the Board of Adjustment to hear and grant variances when certain criteria are met. Mr. Barry’s appeal is not a variance request; therefore, this language does not apply to the appeal and should not be considered by the Board of Adjustment.

1. **There is evidence of a lack of stewardship, care for animals and care for facilities on the property for which the Land Use Permit was issued.**

PLANNING STAFF RESPONSE:

The general condition of property or the lack of stewardship may, in some cases, be addressed through the County’s Zoning Enforcement; however, a lack of stewardship, in this case, does not apply to the appeal and should not be considered by the Board of Adjustment.

1. **The proposed use is not agriculture but is in fact commercial.**

PLANNING STAFF RESPONSE:

The Planning Division Staff relied on information provided by the Jones, the Weber County Zoning Ordinance, and Utah State Code. After considering these sources, the proposed use was determined to be “agriculture”. Refer to the “Land Use Permit Issuance” section above.

1. **The proposed use is not within the essence of the agriculture ordinance’s (Chapter 5B or AV-3 Zone) sub-sections listed below nor in compliance (specifically) with the 5B-2-3:**

*5B-2-3. Animals or fowl kept for family food production as an accessory use*

*5B-2-8. Fruit or vegetable stand for produce grown on the premises only*

*5B-2-10. Greenhouse and nursery limited to sale of materials produced on premises and with no retail shop operation*

*5B-2-14. Private park, playground or recreation area, but not including privately owned commercial amusement business*

PLANNING STAFF RESPONSE:

The proposed use has been interpreted to be “agriculture” which is listed as a permitted and entirely separate use allowed in the AV-3 Zone. Sub-section 5B-2-3 (*Animals or fowl for family food production as an accessory use*) is intended to allow animals to be kept on the same property as a single family dwelling which is the main use.

The above listed sub-sections do not regulate agricultural activities; therefore, they do not apply to the appeal and should not be considered by the Board of Adjustment.

1. **The operation does not comply with Weber County Ordinance 5B-5-4 and 5B-5-5.**

PLANNING STAFF RESPONSE:

Sub-sections 5B-5-4 and 5B-5-5 regulate main building height and accessory building height respectively. The buildings located, on the parcel for which the Land Use Permit has been issued, meet the building height requirements for the Agricultural Valley – 3 Zone; therefore, these sub-sections do not apply to the appeal and should not be considered by the Board of Adjustment.

1. **The proposed use is subject to Chapter 22C (Conditional Uses) of the Weber County Zoning Ordinance.**

PLANNING STAFF RESPONSE:

The proposed use is not listed as a Conditional Use; therefore, the proposed use is not subject to the Conditional Use Permit review process. This allegation does not apply to the appeal and should not be considered by the Board of Adjustment.

1. **The proposed use is subject to Chapter 36 (Design Review) of the Weber County Zoning Ordinance.**

PLANNING STAFF RESPONSE:

Chapter 36 provides standards for traffic safety, advertising, landscaping, site layout, and utilities only when associated with the development of multi-family dwellings, recreation resort uses, public and quasi-public uses, business, commercial, and manufacturing sites. The proposed use has been interpreted to be an agricultural use; therefore, Chapter 36 does not apply and should not be considered by the Board of Adjustment.

1. **The proposed use is subject to Chapter 41 (Drinking Water Source Protection) of the Weber County Zoning Ordinance.**

PLANNING STAFF RESPONSE:

Chapter 41 provides standards for certain types of activities (including agriculture) when located within Drinking Water Protection Zones. The parcel and proposed use, for which the Land Use Permit has been issued, is not located within a Drinking Water Protection Zone; therefore, Chapter 41 does not apply to the proposed use and should not be considered by the Board of Adjustment. See Map #2, on page 7 of 7, for Drinking Water Protection Zones and subject parcel location.

1. **The Jones’ are in violation of Chapter 30 (Land Use Permit, Building Permit and Certificate of Occupancy) of the Weber County Zoning Ordinance. Construction activities commenced prior to the issuance of a Building Permit.**

PLANNING STAFF RESPONSE:

The Jones’ did begin construction prior to the issuance a Building Permit; however, all required information was received and a Building Permit was issued on (or about) July 26th, 2011.

Summary of Board of Adjustment Considerations

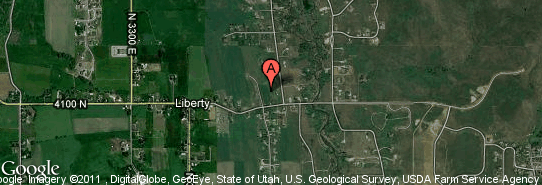
* Is the proposed use agriculture?
* Does Section 5B-3(5) of Chapter 5B (Agricultural Valley-3 Zone) apply to the proposed use?
* Do Mr. Barry’s other listed concerns (2 through 11) apply to the appeal?

Staff Recommendation

The Planning Division Staff recommends that the administrative decision, to issue the subject Land Use Permit, be upheld based on the information presented in this staff report.

Exhibits

1. Appellant’s letter to the Board of Adjustment.
2. Land Use Permit.
3. Weber County Land Use Permit Application.
4. Proposed Site Plan.
5. Jones Narrative Describing Proposed Use.
6. Planning Division Staff Review Notes of Proposed Site Plan.
7. Weber County and Utah State Code Definitions.
8. Examples of Typical Slaughterhouse Procedures.

Map #1 – Jones Property (Parcel 22-010-0001)

Map #2 - Drinking Water Protection Zones and Subject Parcel Location

