



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 Lot 8 of Middle Fork Ranches with access by a right-of-way through Lot 7, and an appeal of the Planning Division's application of the Weber County Zoning Ordinance in issuing this Land Use Permit
Agenda Date:	Tuesday, November 09, 2010
Applicant:	Christine Brown
File Number:	BOA 2010-07

Property Information

Approximate Address:	1477 North 7425 East
Project Area:	5.18 Acres
Zoning:	Forest Valley 3 Zone (FV-3)
Existing Land Use:	Residential Subdivision
Proposed Land Use:	Residential Subdivision
Parcel ID:	210480007
Township, Range, Section:	T6N, R2E, Section 6

Adjacent Land Use

North:	Residential	South:	Residential
East:	Residential	West:	Residential

Staff Information

Report Presenter:	Sean Wilkinson swilkinson@co.weber.ut.us 801-399-8765
Report Reviewer:	SW

Applicable Ordinances

- Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)

Background

Middle Fork Ranches was approved and recorded in 1974. The recorded subdivision plat shows a 15 foot wide right-of-way (ROW) for Lot 8 across the north boundary of Lot 7, which is specifically identified on the plat as "15' R.O.W. for Lot 8." Lot 8 of Middle Fork Ranches is a legal subdivision lot that meets the lot area and width standards of the FV-3 Zone in which it is located. On March 11, 2010 the Weber County Planning Division issued a Land Use Permit for a single family dwelling on Lot 8 of Middle Fork Ranches. The Land Use Permit stated that "access for this Lot 8 is through a ROW on Lot 7." In issuing the Land Use Permit, the Planning Division relied on the approved and recorded subdivision plat, which clearly shows the ROW and the approving signatures of the County review agencies at that time, including the County Commission that acted as the Land Use Authority. It was the Planning Division's interpretation that because the approved and recorded subdivision plat showed the ROW in question and was approved by the land-use-authority, the ROW was approved as a legal access for Lot 8 in 1974.

Chapter 29 (Board of Adjustment) Section 3.1 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 owner of Lot 7, Christine Brown, has raised the following issues in her application to the Board of Adjustment.

1. The planning division erred in issuing the land use permit.

In issuing Land Use Permits the Planning Division acts as a Land Use Authority and issues written decisions. These decisions may be appealed to the proper appeal authority, but the appeal must take place within the proper time frame. Utah Code Ann. §17-27a-704 states, "The county shall enact an ordinance establishing a reasonable time of not less than 10 days to

appeal to an appeal authority a written decision issued by a land use authority.” Section 29-3 of the Weber County Zoning Ordinance establishes an appeal time of 15 days from the date of the decision being appealed.

The decision being appealed was made when the Land Use Permit was issued on March 11, 2010, approximately eight months before the Board of Adjustment application was submitted. In addition, Ms. Brown has met with the Planning Division several times about the right-of-way beginning on August 9, 2010. She received a Board of Adjustment application on September 22, 2010 and a copy of the Land Use Permit on September 24, 2010. Still, the Board of Adjustment application was not officially submitted until November 9, 2010. Based on this information, it is clear that the application was not submitted within 15 days from the date of the written decision. Even if the 15 days began when Ms. Brown became aware of the Land Use Permit on September 24th, the application was still submitted approximately one month past the appeal deadline. Therefore, the Weber County Board of Adjustment does not have jurisdiction to act on this appeal.

2. The letter issued by Rob Scott, Planning Director, stating that the Land Use Permit was issued appropriately is in error.

The letter issued by Mr. Scott is not an order, requirement, decision or refusal “made in the enforcement of” the zoning ordinance. The letter is simply an explanation of why the planning department felt the decision to issue the Land Use Permit was not in error. Therefore, the Board of Adjustment does not have authority to take any action in connection with the issuance of that letter.

3. The ROW violated the Weber County Subdivision Ordinance and was never legally created.

Decisions concerning the creation of the ROW were made in 1974, over thirty years ago. As discussed under paragraph 1 above, the Board of Adjustment does not have authority to act on appeals of decisions unless the appeal is brought within the appropriate appeal period.

4. The Planning Division has refused to enforce various sections of the Weber County Zoning and Subdivision Ordinances.

An alleged failure to enforce an ordinance is not an “order, requirement, decision or refusal made in the enforcement of” the zoning ordinance. Nor is it a “decision applying the land use ordinances” as set forth in Utah Code Ann. §17-27a-701, et seq. The Utah Court of Appeals has held that the Board of Adjustment does not have authority to compel the government to enforce ordinances. Therefore, the Board of Adjustment does not have jurisdiction to resolve these allegations.

Although the Board of Adjustment does not have jurisdiction to act on this appeal, staff has provided the addendum attached as Exhibit B to show that the Land Use Permit was issued appropriately and that applicable County Ordinances were not violated.

Summary of Board of Adjustment Considerations

- Was the Board of Adjustment application submitted after the 15 day appeal period had expired?
- Is there a basis for the Board of Adjustment to determine that they have jurisdiction to act on this appeal?
- If the Board of Adjustment determines that they do have jurisdiction to act on this appeal, was the Land Use Permit issued correctly? Were the subsequent interpretation and action on the Zoning Ordinance correctly applied?

Staff Recommendation

Staff recommends that the Board of Adjustment make a determination that the Board does not have jurisdiction to act on this appeal. If the Board of Adjustment determines that they do have jurisdiction to act on this appeal, staff recommends that the administrative decision be upheld based on the information presented in this staff report and addendum.

Exhibits

- A. Board of Adjustment application and attachments
- B. Addendum

Map 1 - Middle Fork Ranches Subdivision Plat



