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

****Application Information****

**Application Request:** Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, to grant an approval of an Access Exception (AE#2013-03) for two building lots in a proposed subdivision, (6050 South and 2900 East in the Uintah Highlands area) owned by Matthew and Laura Rasmussen. The allegation is that the Planning Division erred in its decision to approve the access exception.

**Agenda Date: Thursday, August 25, 2016**

**Applicant:** Carol C. Browning, represented by Richard Reeve.

**File Number:** BOA #2016-03

****Property Information****

**Approximate Address:** 6050 South and 2900 East in the Uintah Highlands area.

**Project Area:** 2.59 Acres

**Zoning:** Residential Estates-20 Zone (RE-20)

**Existing Land Use:** Residential Lot (Existing Lot 1R, Calais Subdivision)

**Proposed Land Use:** Further divide residential use.

**Parcel ID:** 07-574-0001

**Township, Range, Section:** T5N, R1W, SW1/4 of Section 24

****Adjacent Land Use****

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

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

****Staff Information****

**Report Presenter:** Scott Mendoza

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 801-399-8769

**Report Reviewer:** RG

Applicable Ordinances

* Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
* Weber County Land Use Code Title 104 (Zones) Chapter 3 (Residential Estates Zones RE-15 and RE-20)
* Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations)
* Weber County Land Use Code Title 106 (Subdivisions)

Background

**Request and General Project Information**

The applicant (Ms. Browning) is requesting an appeal of a land use decision made by the Weber County Planning Division on April 22, 2016. The decision in question is an approval of an Access Exception application (AE# 2013-03 submitted by Matthew Rasmussen) where, in lieu of constructing a full public-standard street, a 20 foot private access easement would serve as the primary access for two future residential lots. See Exhibit A for the Planning Division staff report packet that provides Mr. Rasmussen’s Access Exception information and findings that form the basis for the approval granted on April 22, 2016. See Exhibit B for the Notice of Decision that summarizes the Planning Division’s findings for the approval. See Exhibit C for Ms. Browning’s appeal to the Weber County Board of Adjustment.

The outcome, if Mr. Rasmussen’s Access Exception is approved, would be the division of an existing lot (Lot 1R, Calais Subdivision) into three lots. The existing lot is located at approximately 6050 South and 2900 East in the Uintah Highlands area. It consists of 4.2 acres and sits within the Residential Estates-20 (RE-20) Zone. The RE-20 Zone requires a minimum lot size of 20,000 square feet and a lot width of 100 feet (fronting on a publically dedication street) when not approved for an Access Exception. An Access Exception is required when a landowner (developer) feels that it is more feasible or practical to access building lots from something that resembles a private driveway rather than a two-lane (public) county street. To be considered for an approval of an Access Exception, a landowner must demonstrate that it is unfeasible **or** impractical to extend a street to serve proposed lots. Property characteristics that **may** support an approval of an Access Exception may include, but not be limited to, things like unusual soils, excessive topography, or odd boundary conditions. Applicable language within Section 108-7-31 (Access to a lot/parcel using a private right-of-way or access easement) is marked in bold text and reads as follows:

***Sec. 108-7-31. - Access to a lot/parcel using a private right-of-way or access easement.***

***Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is subject to the applicant demonstrating compliance with the following criteria and conditions:***

***(1) Criteria.***

*a. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use; or*

*b. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use and is the subject parcel of an approved agri-tourism operation; or*

***c. Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.***

***(2) Conditions.***

*a. It shall be demonstrated that the agricultural parcel or other lot/parcel has appropriate and legal access due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right; and*

***b. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.***

**Role of Board of Adjustment**

The Board of Adjustment’s role, in this appeal, is described in §102-3-3 (Duties and powers of the board) and §102-3-4 (Decision criteria and standards) of the Weber County Land Use Code and is provided below with bold text marking applicable language:

***Sec. 102-3-3. - Duties and powers of the board.***

***The board of adjustment shall have the following duties and powers:***

***(1) To act as the appeal authority from decisions applying and interpreting this Land Use Code and Zoning Maps.***

*(2) To hear and decide variances from the requirements of the Land Use Code.*

***Sec. 102-3-4. - Decision criteria and standards.***

***(a) Appeals from decisions applying and interpreting the Land Use Code and Zoning Maps.***

***(1) The board of adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Land Use Code and Zoning Maps.***

***(2) The board of adjustment may hear only those decisions in which the land use authority has applied the Land Use Code or Zoning Maps to a particular application, person, or parcel.***

***(3) The appellant has the burden of proof that the land use authority erred.***

***(4) All appeals to the board of adjustment shall be filed with the planning division not more than 15 calendar days after the date of the written decision of the land use authority.***

***(5) Appeals to the board of adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.***

(b) Variances from the requirements of the Land Use Code.

**Procedural History**

Due to the extended history, associated with Mr. Rasmussen’s Access Exception application, the following project history is provided:

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| 5-23-2013 | Matthew Rasmussen submits an Access Exception application (AE#2013-03) to the Weber County Planning Division. |
| 6-14-2013 | Matthew Rasmussen submits a subdivision application to the Weber County Planning Division. |
| 8-9-2013 | 1st administrative public meeting held for Access Exception application (AE#2013-03). Planning Director approval granted. |
| 12-27-2013 | 1st administrative (Planning Director approval) public meeting held for proposed Pas de Calais Subdivision. Planning Director defers (what is typically a planning director approval) subdivision application to Western Weber Planning Commission for consideration due to concerns voiced during administrative public meeting. |
| 1-14-2014 | Western Weber Planning Commission public meeting held for Pas de Calais Subdivision. Planning Commission final approval granted conditioned upon: 1) meeting the requirements of all applicable review agencies; 2) gain approval of an ordinance vacating the original Lot 1R of the Calais Subdivision; and 3) gaining Weber County Commission approval for an access easement related to Access Exception AE#2013-03. |
| 4-1-2014 | Weber County Commission hears request and approves the conveyance of an access easement to Mr. Rasmussen. |
| 4-16-2014 | Ms. Browning (appellant and neighboring property owner) submits 1st appeal of Mr. Rasmussen’s Access Exception (AE#2013-03) approval, Planning Commission (final) approval of the Pas de Calais Subdivision, and the County Commission’s decision to convey an access easement. This appeal was made to the Weber County Board of Adjustment (BOA). |
| 5-22-2014 | BOA meeting to hear Ms. Browning’s appeal. The BOA denied the appeal base on the following findings: (1) The BOA no longer possessed jurisdiction over land use decisions involving access exceptions. The BOA did have jurisdiction over access exceptions up until 2012; and (2) Ms. Browning’s appeal was not filed within the 15-day window set forth in the Weber County Land Use Code; and (3) The BOA does not have the ability to review the County Commission’s decision to covey Mr. Rasmussen’s access easement, because the conveyance itself was not a land use decision that could be reviewed by the BOA. |
| 6-24-2014 | Ms. Browning files an appeal of the BOA decision to the Second Judicial District Court. |
| 7-27-2015 | District Court concludes that the County Commission’s decision to convey an access easement is not a land use decision that is appealable to the Court; therefore, the conveyance stands. Also, the Court determines that a material issue exists in regard to Ms. Browning receiving appropriate notice. The Court does not offer its opinion on the (noticing) issue because the issue was “not yet appropriately before the Court.” |
| 1-27-2016 | District Court concludes that Ms. Browning did not receive appropriate notice of the land use decision made on 8-9-2013 (Planning Director approval of Access Exception application AE#2013-03) and orders that the decision is vacated and remands the matter back to the Weber County Planning Division to be reconsidered with public input being limited to Ms. Browning only. The Court does not comment on the substance of the original decision/approval and did not state that the decision/approval was arbitrary or capricious.  |
| 3-31-2016 | Consistent with the District Court Order (dated 1-27-2016) the Planning Division holds 2nd administrative public meeting for Access Exception application (AE#2013-03), allowing Ms. Browning the opportunity to comment. Minutes from this meeting are not available due to audio recording failure.  |
| 4-22-2016 | Planning Director approval granted a 2nd time. |
| 5-6-2016 | Ms. Browning files appeal of land use decision (2nd approval of Mr. Rasmussen’s Access Exception AE2013-03) made on 4-22-2016.  |
| 8-25-2016 | BOA meeting scheduled to hear Ms. Browning’s appeal as described above. |

Summary of Board of Adjustment Considerations

* Do the items described in Ms. Browning’s appeal warrant overturning the Weber County Planning Division (4-22-2016) decision to approve Mr. Rasmussen’s Access Exception (AE#2013-03).
* Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred in appropriately identifying circumstances (including but not be limited to unusual soil, topographic, or property boundary conditions) that exist which support the Planning Division’s (4-22-2016) decision to approve Mr. Rasmussen’s request for an Access Exception?
* Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred by determining that financial adversity is not the motive behind Mr. Rasmussen’s request for an Access Exception?
* Based on the information provided (the substantial evidence), can the BOA find that the Planning Division erred by determining that it is unfeasible or impractical to extend a public street to serve Mr. Rasmussen’s proposed lots?

Staff Recommendation

Based on information presented in this staff report (including exhibits), compliance with the District Court Order (dated 1-27-2016), and compliance with the Weber County Land Use Code, the Planning Division Staff recommends that the administrative decision, to approve Mr. Rasmussen’s request for an Access Exception, be upheld.

Exhibits

1. Ms. Browning’s appeal to the Weber County Board of Adjustment. This Exhibit includes Ms. Browning’s BOA application form, Ms. Browning’s appeal to the BOA, a copy of Mr. Rasmussen’s Notice of Decision for the Access Exception approval, a copy of Mr. Rasmusssen’s Access Exception application, and Ms Browning’s comments and objections provided during the Planning Division administrative meeting held on 3-31-2016.
2. Planning Division staff report packet that provides Mr. Rasmussen’s Access Exception information and findings that form the basis for the approval granted on April 22, 2016.
3. Notice of Decision that summarizes the Planning Division’s findings for the approval.

Vicinity Map

