



## Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** A request for ordinance interpretation from Scott Martini regarding Section 104-5-6(18) to determine whether his desired land use complies with the ordinance.

**Agenda Date:** Thursday, September 8, 2016  
**Staff Report Date:** Wednesday, August 17, 2016  
**Applicant:** Scott Martini  
**File Number:** BOA2016-06

#### Staff Information

**Report Presenter:** Charlie Ewert  
cewert@co.weber.ut.us  
(801) 399-8763  
**Report Reviewer:** RG

### Applicable Ordinances

- §104-5-6 (18) – A-1 Zone, Conditional Uses

### Summary and Background

The applicant is seeking an interpretation of the Weber County Land Use Code Section 104-5-6(18) to determine whether his desired land use complies with this provision.

Early this last spring Scott Martini discussed with the Western Weber Planning Commission his desire to conduct a dump truck storage-yard on the Northwest corner of the family farm at the intersection of 4700 West and 1800 South. The property is zoned A-1. At that time planning staff were struggling to find that the code allows for this request.

In attempt to help Mr. Martini explore the alternatives, and after further evaluation of the A-1 zone, staff has identified a section of the A-1 zone that may allow for this kind of use as a conditional use. It is not a very clear provision, and Mr. Martini would like to save the expense of applying for a conditional use permit and designing a site plan until he knows whether this proposed use would be in compliance with this provision of the ordinance.

A more complete analysis is provided below.

### Board of Adjustment Review and Consideration Requirements

The Board of Adjustment's review of this interpretation is governed by Weber County Land Use Code (LUC) Section 102-3-3, which states:

***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.*

Given that there is no other direction in the Land Use Code on the matter it appears that the Board of Adjustment has broad discretion in their deliberation process.

### Staff Review of the Interpretation

*Request.* Mr. Martini would like a permit to operate a commercial truck storage yard. The proposal includes a building that can be used as a shop for repairs of the trucks (this should be limited to the trucks allowed on the site), and outdoor storage area for the trucks. The concept site plan shows a shop building, clean-off area, 10 paved parking stalls, 10 crushed rotomill parking stalls, and 9 truck parking stalls, drainage facilities, landscaping, and a paved drive approach.

*Analysis.* Land Use Code (LUC) Section §104-5-6 (18) provides for the following:

*The use and storage of farm equipment and other related equipment such as a backhoe, front-end loader or up to a ten-wheel truck, to be used by a farm owner, farm employee and/or a contracted farm operator of a bona-fide farm operation consisting of five acres or more, for off-farm, non-agricultural related, construction work to supplement farm income.*

Because this provision does not offer a clear on-its-face interpretation for the unique specificity of Mr. Martini's case – specifically as it relates to housing a commercial truck storage yard at the site – he is leery of investing significant funds into the complete designs for the site and building before having a sense of security that the ordinance can be interpreted in his favor. However, he has invested in a “conceptual” drawing that is intended to communicate the overall intent of the site layout (attached). He knows that there is more work that is needed before this plan is final, but wants to hear from the Board of Adjustment whether their scrutiny of the ordinance will fall in his favor before submitting more formalized plans.

To scrutinize whether this code provision is applicable to the proposed use, the Board of Adjustment should get a strong sense from the applicant that the following are true:

1. Is the applicant limiting the use to 10-wheel trucks (photos of trucks attached)?
2. Will the 10 wheel trucks be limited to use of a farm owner, farm employees, or contracted farm operators?
3. Is the farm owner, farm employees, or contracted farm operators involved in a bona-fide farm operation consisting of five acres or more?
4. Are the 10-wheel trucks being used for non-agriculture construction work in a manner that supplements farm income?

If the Board of Adjustment can find that each of these are facts in this proposal, then the proposal is allowed by Conditional Use Permit, and the applicant should proceed to completing site plan design in anticipation of formal Planning Commission review. During conditional use permit review the applicant will be required to demonstrate that the detrimental effects of the use in this location can be effectively mitigated.

When it comes to the interpretation and application of the Land Use Code, when conflicts or ambiguity are present the County should err in favor of the land owner.<sup>1</sup>

## **Staff Recommendation**

Considering the ambiguities of the ordinance, and unless that Board of Adjustment can find that the proposal clearly violates the ordinance, staff recommends interpreting the ordinance in favor of the land owner.

The recommendation is offered with the following findings:

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<sup>1</sup> Note from the courts regarding interpretation of Land Use Laws:

“In interpreting the meaning of ... [o]rdinance[s], we are guided by the standard rules of statutory construction.” *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207, 210 (Utah Ct.App.1998) (omission and alterations in original) (quotations and citation omitted).

“ ‘[B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.’ ” *Id.* (quoting *Patterson*, 893 P.2d at 606).<sup>6</sup> To guide our interpretation \*557 on this issue, we first turn to the ordinance's plain language and need not consult legislative history to determine legislative intent unless the ordinance is ambiguous. See *Brown*, 957 P.2d at 210–11.

*Rogers v. W. Valley City*, 2006 UT App 302, ¶ 15, 142 P.3d 554, 556–57

1. Provided that the support wheels are not in use coming to and from the site, the trucks can be considered 10 wheel trucks.
2. The use of the 10 wheel trucks are being limited to the use of a farm owner and employees for off-site non-agriculture construction work.
3. The vehicles are currently being used for farm work, in conjunction with the off-site non-agriculture construction work.
4. If or when the applicant begins receiving farm income he will be involved in a bona-fide farm operation consisting of five acres or more.
5. The applicant claims that he will receive farm income prior to applying for a conditional use permit from the County.

## Exhibits

- A. Application for Interpretation.
- B. Concept site plan and related materials.

# Weber County Board of Adjustment Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed

X 8-17-16

Fees (Office Use)

\$225.00

Receipt Number (Office Use)

70967

File Number (Office Use)

## Property Owner Contact Information

Name of Property Owner(s)

X Scott Martini

Mailing Address of Property Owner(s)

Phone

X 801-430-5031

Fax

Email Address

X Scottmartini@hotmail.com

Preferred Method of Written Correspondence

☐ Email

☐ Fax

☐ Mail

X PHONE

## Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s)

Mailing Address of Authorized Person

Phone

Fax

Email Address

Preferred Method of Written Correspondence

☐ Email

☐ Fax

☐ Mail

## Appeal Request

☐ 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

☐ A variance request:

\_\_\_ Lot area \_\_\_ Yard setback \_\_\_ Frontage width \_\_\_ Other: \_\_\_\_\_

☐ A Special Exception to the Zoning Ordinance:

\_\_\_ Flag Lot \_\_\_ Access by Private Right-of-Way \_\_\_ Access at a location other than across the front lot line

X ☒ An Interpretation of the Zoning Ordinance

☐ An Interpretation of the Zoning Map

☐ Other: \_\_\_\_\_

## Property Information

Approximate Address

X 4700 W. 1800 S.

Land Serial Number(s)

Current Zoning

A-1

### Existing Measurements

### Required Measurements (Office Use)

Lot Area

Lot Frontage/Width

Lot Size (Office Use)

Lot Frontage/Width (Office Use)

Front Yard Setback

Rear Yard Setback

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)

**Applicant Narrative**

Please explain your request.

**Variance Request**

Explain how the variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

**Variance Request (continued...)**

List the special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

Based upon the previously stated special circumstances, clearly describe how the property covered by this application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.

**Variance Request (continued...)**

Explain how the previously listed special circumstances are not considered to be economic or self-imposed hardships.

**Property Owner Affidavit**

I (We), \_\_\_\_\_, 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.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_,

\_\_\_\_\_  
(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), \_\_\_\_\_, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

\_\_\_\_\_  
(Notary)

August 16, 2016

To Whom It May Concern:

I, Scott Martini, am requesting permission to build a maintenance shop on a portion of farm acreage belonging to Martini Farms.

This shop will be used for the maintaining and storage of dump trucks and a backhoe, in addition to tractors and farm implements used by Martini Farms.

These dump trucks are used by Martini Farms for hauling fertilizer, hay, straw, grain, corn silage, dirt and road base for around the corrals, rotomill tailings for dust control on the unpaved roads, and to transport farm equipment.

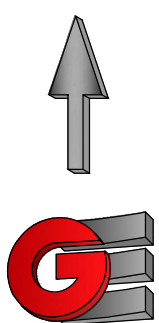
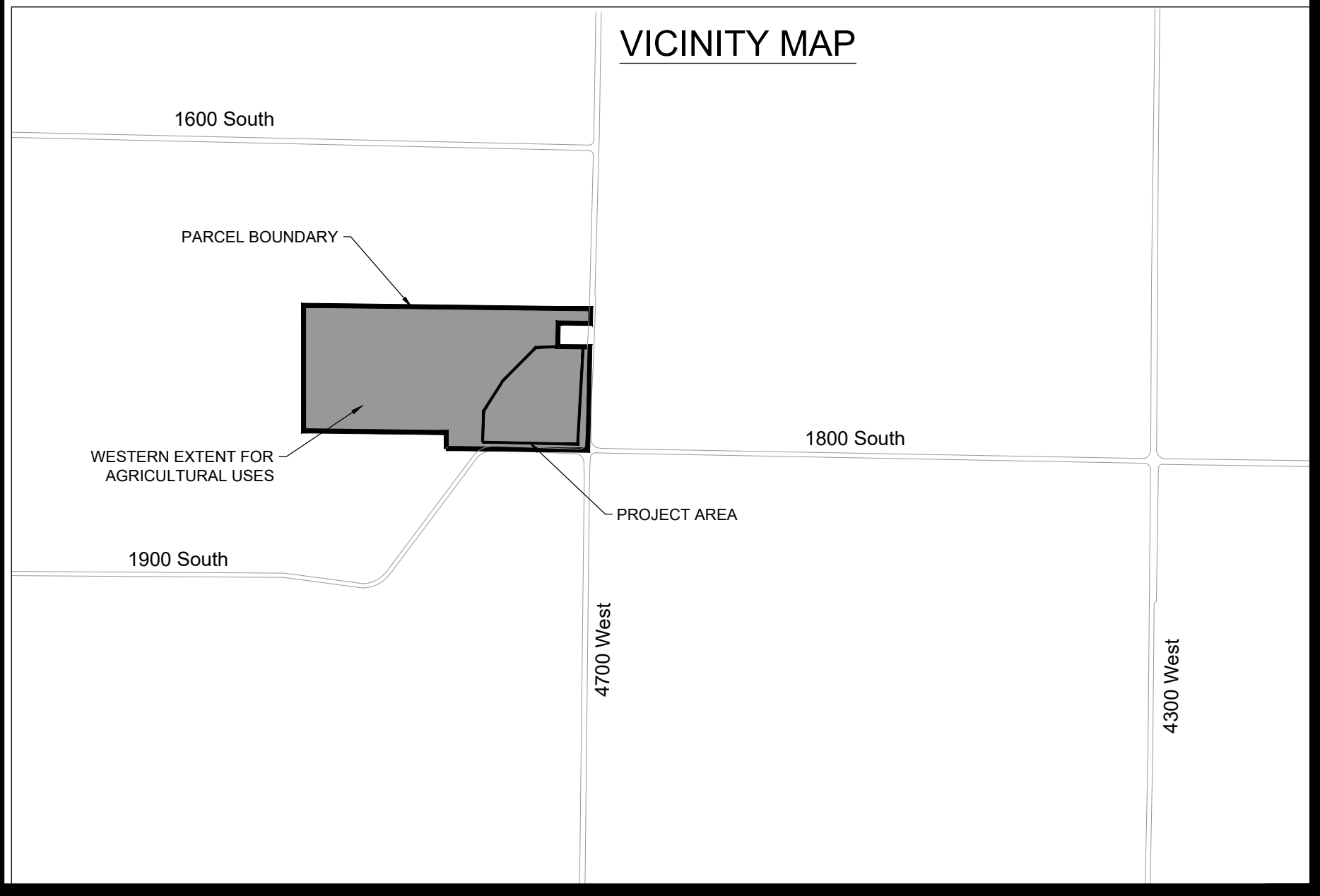
The backhoe is used for the digging and cleaning of our irrigation ditches.

In addition to the above listed uses of the trucks and backhoe, the trucks will be used to supplement the farm income in non-agricultural construction work.

Scott Martini



VICINITY MAP



GENERAL NOTES

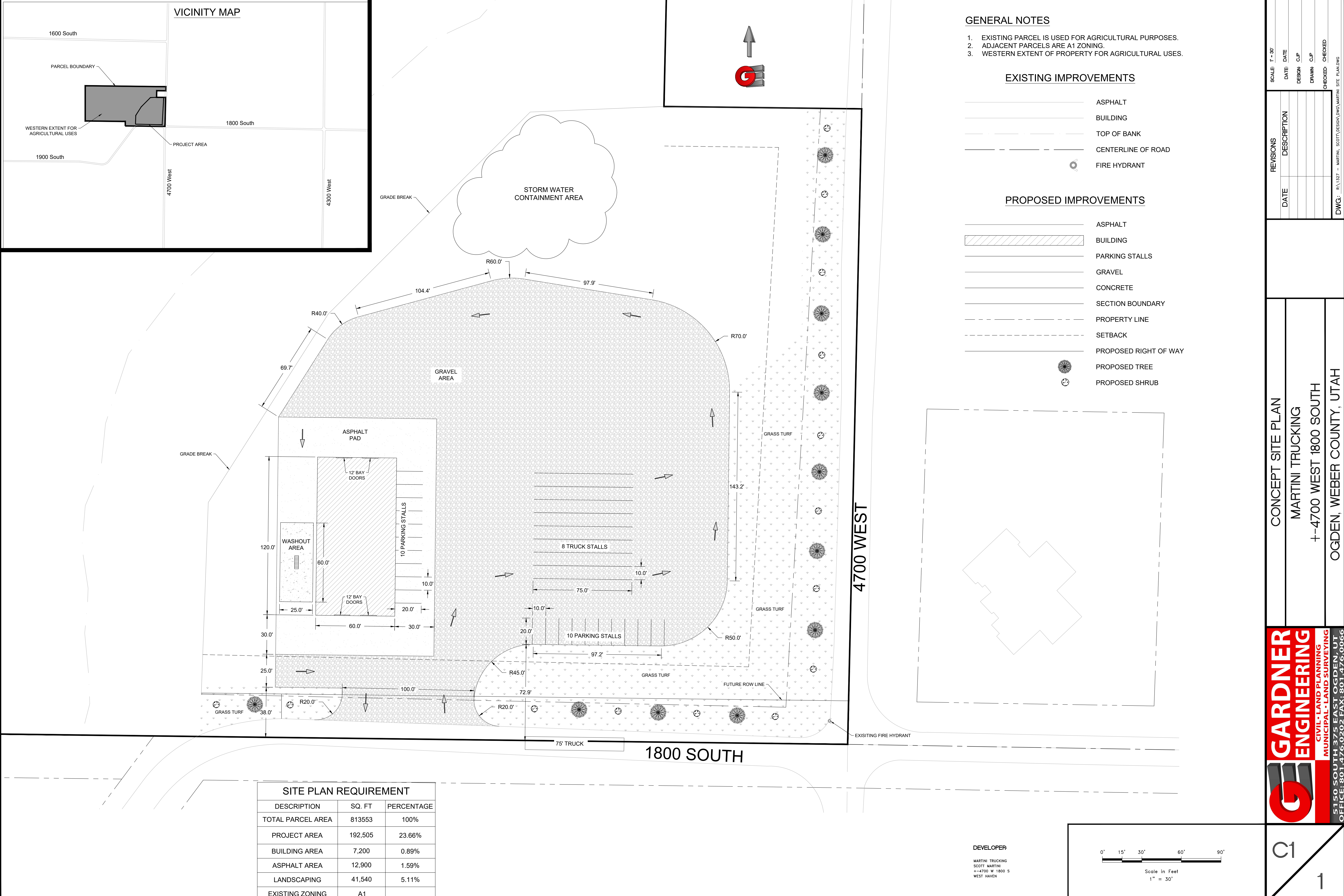
- EXISTING PARCEL IS USED FOR AGRICULTURAL PURPOSES.
- ADJACENT PARCELS ARE A1 ZONING.
- WESTERN EXTENT OF PROPERTY FOR AGRICULTURAL USES.

EXISTING IMPROVEMENTS

- ASPHALT
- BUILDING
- TOP OF BANK
- CENTERLINE OF ROAD
- FIRE HYDRANT

PROPOSED IMPROVEMENTS

- ASPHALT
- BUILDING
- PARKING STALLS
- GRAVEL
- CONCRETE
- SECTION BOUNDARY
- PROPERTY LINE
- SETBACK
- PROPOSED RIGHT OF WAY
- PROPOSED TREE
- PROPOSED SHRUB

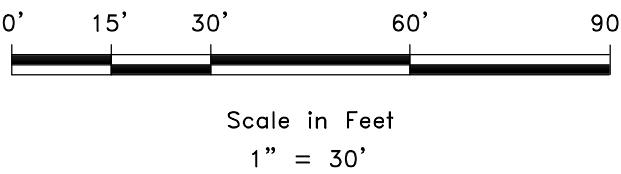


SITE PLAN REQUIREMENT

DESCRIPTION	SQ. FT	PERCENTAGE
TOTAL PARCEL AREA	813553	100%
PROJECT AREA	192,505	23.66%
BUILDING AREA	7,200	0.89%
ASPHALT AREA	12,900	1.59%
LANDSCAPING	41,540	5.11%
EXISTING ZONING	A1	

DEVELOPER:

MARTINI TRUCKING  
SCOTT MARTINI  
+-4700 W 1800 S  
WEST HAVEN



CONCEPT SITE PLAN

MARTINI TRUCKING

+-4700 WEST 1800 SOUTH

OGDEN, WEBER COUNTY, UTAH



**GARDNER  
ENGINEERING**

CIVIL • LAND PLANNING  
MUNICIPAL • LAND SURVEYING

51150 SOUTH 37.5 EAST OGDEN, UT  
OFFICE: 801.476.0202 FAX: 801.476.0066

C1

REVISIONS		SCALE: 1" = 30'
DATE	DESCRIPTION	DATE
		DESIGN CJP
		DRAWN CJP
		CHECKED
		SITE PLANNING

DWG: R:\1327 - MARTINI, SCOTT\DESIGN\DWG\MARTINI SITE PLANNING







USDOT 742250 480,000

























