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**EXHIBIT 1**

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WEBER COUNTY PLANNING DIVISION

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KN & LN LLC,  
Applicant.

DECISION ON ADMINISTRATIVE  
APPLICATION FOR FINAL  
APPROVAL OF SHANNON  
NIELSON SUBDIVISION

LVS 061716

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Applicant KN & LN LLC (“Applicant”) submitted an application for a one lot subdivision. The Planning Division held an administrative meeting to consider final approval of the proposed subdivision on September 14, 2016. Based on evidence submitted during the meeting by neighboring landowners, the matter was taken under advisement. Having now considered that evidence, along with the staff report, the Planning Director finds as follows:

FINDINGS OF FACT

1. The proposed Shannon Nielson Subdivision is a one lot subdivision in western Weber County at 4391 West 400 South. Staff Report, Exhibit A.
2. The proposed subdivision is located within the A-1 zone. The minimum lot area requirement in this zone is 40,000 square feet. Lots must also have a minimum width of 150 feet. LUC § 104-5-7.
3. Applicant states the total area of the proposed lot in the subdivision will be 43,560 square feet and that it will satisfy the width requirement. Staff Report, Exhibit A.
4. Notice of the administrative meeting to consider final approval of the proposed subdivision was sent to neighboring landowners living within 500 feet pursuant to LUC § 106-1-6.

5. Lowell and Carole West (“Wests”) are adjacent landowners living at 4309 West 400 South. The Wests object to final approval on the grounds that 60 feet of frontage of the proposed lot in the subdivision actually belongs to them and was acquired by a legal doctrine known as boundary by acquiescence.<sup>1</sup>
6. The Wests contend there has been a fence separating the properties for over 40 years and that it was erected to signify an agreed upon property line. Applicants, on the other hand, maintain that the fence was put up in order to allow the Wests to simply use the land to pasture animals.

## DISCUSSION

Applicant has submitted a request for final approval of a one lot subdivision in the A-1 zone. In support of that request, Applicant has made various factual representations for the Planning Division to consider. These representations include information relating to ownership, lot area size, and width. The survey submitted by the Applicant indicates that the lot will have an area of 43,560 square feet and meet the minimum width requirement. Applicant is also the record title holder as listed in the Weber County Recorder’s Office. Based on this information alone, Applicant meets the requirements of the land use code and is entitled to approval of the proposed subdivision.

Evidence has been presented, however, which indicates that the Applicant may not actually have legal title to 60 feet of frontage. As shown on the survey submitted by the Applicant, a fence exists on the parcel. Staff Report, Exhibit A. According to the Wests, this fence was erected over 40 years ago as a mutually agreed upon boundary between two property

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<sup>1</sup> Boundary by acquiescence is “a negotiated boundary by which adjacent landowners resolve uncertainties over the extent of their land.” BLACK LAW DICTIONARY (10<sup>th</sup> ed. 20114). In Utah, boundary by acquiescence is established by: “1) occupation up to a visible line marked by monuments, fences, or buildings; 2) mutual acquiescence in the line as a boundary; 3) for a period of at least 20 years; 4) by adjoining landowners.” *Jacobs v. Hafen*, 917 P.2d 1078, 1081 (1996).

owners. As such, the Wests contend that legal title vested in them years ago. “[T]he doctrine of boundary by acquiescence grants title by operation of law when its elements are met. The doctrine simultaneously extinguishes the previous owners’ legal title and leaves them with only ‘bare record title.’” *Q-2 L.L.C. v Hughes*, 2016 UT 8, ¶ 14. “[J]udicial adjudication of a boundary dispute does not itself confer title. Rather, it merely determines the prior point at which title vested.” *Id.* Title remains vested until it passes by “grant, descent, adverse possession, or some other operation of law.” *Id.* at ¶ 18.

It is neither necessary, nor is it appropriate, for the Planning Division to interject itself into this private land dispute. Foremost, the Planning Division does not have legal authority to adjudicate property rights. It is simply tasked with answering questions as to whether or not a proposed land use is permitted based on information provided by an applicant. In this case, the Applicant has made factual representations to the Planning Division that it is the legal owner of the parcel, including the disputed 60 feet of frontage. This assertion is supported by the survey showing boundary lines and that the Applicant is the record title owner of the parcel. Based on these factual representations, the Applicant has satisfied the requirements of the land use code and is entitled to approval of the proposed subdivision.

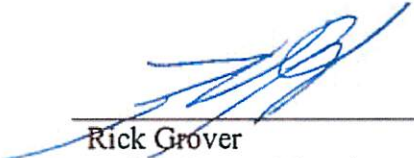
Approval, however, is not limitless. Applicant should be aware going forward that the Planning Division makes no finding as to actual legal ownership of the disputed land. Approval of the subdivision does not confer legal authority to develop property Applicant does not actually own. Indeed, the Wests may have acquired legal title to the disputed portion of land under the legal doctrine of boundary by acquiescence. If so, title would have vested by operation of law at the moment the legal elements were met. Again, the Planning Division is not the appropriate entity to resolve such a dispute. In addition to not having the legal authority to adjudicate

property rights, the Planning Division does not have the time and resources to investigate the historical use of this property over the past 40 years and identify the intent of the individual parties that actually erected the fence. Applicant and the Wests, however, are in a position to do just that. They can resolve the dispute themselves, or, if necessary, request the help of the courts to quiet title.

#### CONCLUSION

Based on the factual representations by the Applicant, the Shannon Nielson Subdivision (LVS 061716) is given final approval. Approval is conditioned upon Applicant actually owning the entire parcel as represented to the Planning Division. If it is subsequently determined that ownership of the 60 feet of frontage actually belongs to the Wests, approval is void. Approval is also subject to Applicant meeting the requirements of all applicable review agencies and the conditions of approval listed in the staff report.

DATED this 20<sup>th</sup> of October 2016.



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Rick Grover  
Weber County Planning  
Director

Any person adversely affected by this final decision may file an appeal with the Weber County Board of Adjustment within 15 days. LUC § 102-1-7.