



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on an alternative access request to extend the driveway in order to reduce its slope. This will result in accessing the subject parcel (all of lot 53R in the Summit at Ski Lake No. 13 subdivision) from the front lot line of the adjacent parcel (lot 52R of the same subdivision).

Agenda Date: Wednesday, August 29, 2018

Applicant: Thomas & Michele Kenyon

File Number: AAE 2018-08

Property Information

Approximate Address: 6695 E Clairetina Ct., Huntsville, UT, 84317

Project Area: 1.31 Acres

Zoning: Forest Valley Zone (FV-3)

Existing Land Use: Vacant

Proposed Land Use: Vacant/Residential

Parcel ID: 20-151-0004

Township, Range, Section: T6N, R1E, Section 24 NW

Adjacent Land Use

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

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@co.weber.ut.us
801-399-8794

Report Reviewer: RG

Applicable Land Use Codes

- Title 101 General Provisions, Section 7, Definitions
- Title 106, Subdivisions, Chapter 1-8 as applicable
- Title 104 (Zones) Chapter 14 (Forest Valley FV-3 Zone)
- Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 29 Flag lot access strip, private right-of-way, and access easement standards
- Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 31 Access to a lot/parcel using a private right-of-way or access easement

Background

The planning Division recommends approval of an alternative access request to extend the driveway at 6695 E Clairetina Ct., Huntsville. The purpose of this request is to reduce the slope of the driveway. The lot will have access from lot 52-R of the same subdivision. An access easement has been recorded on lot 52-R (entry # 2929970). The proposal meets the criteria for consideration of access by a private right of way, and the lot has adequate width, area, and setbacks, as required in the Uniform Land Use Code of Weber County (LUC). The request for an alternative access has been thoroughly vetted and has received comments and/or approvals from all the applicable review agencies.

Alternative access applications such as this are reviewed and approved administratively by the Weber County Planning Director. It is essential to note that this request is an administrative application and is not a variance or an exception to the standards and criteria outlined in the Uniform Land Use Code of Weber County (LUC). The request conceptually meets the standards as outline in LUC §108-7-29 and meets the criteria for the request as required in LUC §108-7-31.

Alternative access applications should be approved as long as the design standards can be implemented during the development process. The application meets the criteria in LUC §108-7-31(1)(b) which states:

“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.”

Analysis

General Plan: The General Plan for Ogden Valley is intended to preserve private property rights while also preserving the rural characteristics of the area. This proposal conforms to the Ogden Valley General Plan.

Zoning: The subject property is located in the Forest Valley Zone more particularly described as the FV-3 zone. The purpose and intent of the FV-3 zone is identified in the LUC §104-14-1 as:

“The purpose of the Forest Valley Zone, FV-3 is to provide area for residential development in a forest setting at a low density, as well as to protect as much as possible the naturalistic environment of the development.”

The application has been forwarded to the applicable review agencies and based on the limited criteria and conditions that govern alternative access application and after a thorough review of the applicant’s proposal, staff feels that the applicant has provided adequate evidence to show that it is unfeasible or impractical to extend a street to serve such parcel due to topographic, or property boundary conditions. This determination is based on the review and analysis of the information provided by the applicant.

Prior to any further development considerations on this site, the applicant will have to provide a complete application that adheres to all Federal, State and County ordinances.

Review Agencies: To date, the proposed alternative access has been approved by the Weber County Engineer. All review agency requirements must be addressed and completed prior to this alternative access being approved.

Tax Clearance: The 2017 property taxes have been paid in full. The 2018 taxes are will be due in full November 30, 2018.

Public Notice: A notice has been mailed not less than seven calendar days before final approval to all property owners of record within 500 feet of the subject property regarding the proposed small subdivision per noticing requirements outlined in LUC §106-1-6.

Staff Recommendation

Staff recommends final approval of an alternative access request to extend the driveway at 6695 E Clairetina Ct., Huntsville. The purpose of this request is to reduce the slope of the driveway. This recommendation for approval is subject to all review agency requirement.

This recommendation is based on the following findings:

1. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel at this time, based on topographic, and property boundary conditions which limits typical access requirements in a unique way.

Administrative Approval

Administrative final approval of the John Price Subdivision, a one lot subdivision consisting of 2.00 acres, including the concurrent consideration and action of the John Price Subdivision access via an access easement, is hereby granted based upon its compliance with the Weber County Land Use Code. This approval is subject to the requirements of applicable review agencies and the conditions of approval listed in this staff report.

Date of Administrative Approval: 8/29/18


Rick Grover
Weber County Planning Director

Exhibits

- A. Map of Location and Current Parcel Arrangement
- B. Alternative Access Application and Narrative
- C. Recorded Access Easement

Exhibit A-Location map and Current Parcel Arrangement



Exhibit B - Alternative Access Application

Weber County Alternative Access Application			
Application submittals will be accepted by appointment only. (801) 399-8791, 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted /Completed	Application Fee: \$350.00	Receipt Number (Office Use)	File Number (Office Use)
Application Type			
<input type="checkbox"/> Flag lot access strip <input type="checkbox"/> Access by Private Right of Way <input checked="" type="checkbox"/> Access at a location other than across the front lot line			
Property Owner Contact Information			
Name of Property Owner(s) THOMAS & MICHELE KENYON		Mailing Address of Property Owner(s) 1210 N 3150 E LAYTON, UT 84040	
Phone 8015930823	Fax		
Email Address (required) thomas.kenyon@comcast.net		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Authorized Representative Contact Information			
Name of Person Authorized to Represent the Property Owner(s)		Mailing Address of Authorized Person	
Phone	Fax		
Email Address (required)		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Property Information			
Project Name KENYON RESIDENCE ACCESS		Total Acreage 1.31	Current Zoning FV-3
Approximate Address HUNTSVILLE, UT 84317 645 E. CLAIRETINA CT		Land Serial Number(s) PARCEL# 201510004	
Proposed Use DRIVEWAY ACCESS			
Project Narrative Permit # 17F109 Had to redo site plan which resulted in steep sloped driveway. Need alternative access to extend driveway & reduce slope.			

Basis for Issuance of Access to a lot/parcel at a location other than across the front lot line

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access, subject to the following criteria:

Sec. 108-7-32. - Access to a lot/parcel at a location other than across the front lot line.

- (1) The applicant demonstrates that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access across the front lot line.
- (2) It shall be demonstrated that appropriate and legal access exists 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.

Please provide the following information to support your request for Access to a lot/parcel at a location other than across the front lot line:

- Attach proof that appropriate and legal access exists 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.
- The landowner of record or authorized representative agrees 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.

Property Owner Affidavit

I (We), Thomas & Michelle Kenyon, 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. I (We) understand that an approval of an alternative access application does not grant a legal right to access property that I(we) currently do not own.

Thomas Kenyon Property Owner Michelle Kenyon Property Owner

Subscribed and sworn to me this 10 day of July, 2018.

[Signature] 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



W2929970

Recording requested by:

Thomas & Michele Kenyon
1210 N 3150 E
Layton, UT 84040-3017

EH 2929970 PG 1 OF 12
LEANN H KILTS, WEBER COUNTY RECORDER
10-JUL-18 1:38 PM FEE \$32.00 DEP 0
REC FOR: THOMAS & NICHELE KENYON

For recorder's use only

DRIVEWAY EASEMENT AGREEMENT

THIS DRIVEWAY EASEMENT AGREEMENT ("Agreement") is made and entered into by and between Valley Enterprise Investment Company, LLC, a Utah limited liability company ("Grantor") and Thomas & Michele Kenyon (collectively, the "Grantees"). Grantor and Grantees may be individually referred to in this Agreement as a "Party" and collectively referred to as the "Parties."

A. Grantor is the owner of that certain real property located in Weber County, Utah identified as Weber County Parcel No. 20-151-0003 ("Grantor's Parcel"). A legal description of Grantor's Parcel is attached to and made part of this Agreement as Exhibit "A". The Grantor's Parcel is also depicted in that certain diagram that is attached to and made part of this Agreement as Exhibit "D" (the "Driveway Easement Diagram").

B. Grantees are the owners of that certain real property located in Weber County, Utah identified as Weber County Parcel No. 200-151-0004 (the "Grantees' Parcel"). A legal description of Grantees' Parcel is attached to and made part of this Agreement as Exhibit "B". The Grantees' Parcel is also depicted on the Driveway Easement Diagram.

C. The Grantor's Parcel and Grantees' Parcel are located within that certain community known as The Summit at Ski Lake, which is governed by The Summit at Ski Lake Owners Association (the "Association") pursuant to certain governing documents including, without limitation, that certain "Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Summit at Ski Lake No. 9" which was recorded in the Weber County Recorder's Office on February 1, 2012, as Entry No. 2560722 (the "Declaration").

D. Grantees desire to acquire, for the benefit of the Grantees' Parcel, an easement across a portion of Grantor's Parcel for the purpose of constructing a portion of a driveway providing access between the Grantees' Parcel and the street commonly known as Clairetina Drive (the "Street") as shown on that certain plat map labeled "The Summit at Ski Lake No. 13" which was recorded in the Weber County Recorder's Office on December 18, 2015 in Book 78 at Page 57 as Entry No. 2770168 (the "Plat Map").

NOW, THEREFORE, in exchange for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties acknowledge and agree as follows:

A. Grant of Easement

1. Driveway Easement. Grantor hereby grants to Grantees, for the benefit of the Grantees' Parcel, a permanent, irrevocable and exclusive ingress and egress easement on, over and across that portion of Grantor's Parcel that is identified on the Driveway Easement Diagram as the "Driveway Easement Area" and is further described by the metes and bounds description attached to and made part of this Agreement as Exhibit "C." The easement granted by this Agreement shall perpetually be appurtenant to, and shall forever run with, the Grantees' Parcel as the dominant tenement with the Grantor's Parcel functioning as the servient tenement.

2. Parties With Right to Use. The Driveway Easement Area may be used by the Grantees and their family members, licensees, invitees, guests, agents and contractors, as well as any future owners or tenants of the Grantees' Parcel and their respective family members, licensees, invitees, guests, agents, employees and contractors (individually, a "Grantee Party" and, collectively, the "Grantees' Parties").

3. Use by Grantor Prohibited. The Driveway Easement Area shall not be used by the Grantor for any purpose whatsoever unless the Grantor has first obtained the Grantees' prior written permission, which permission may be granted or denied in the Grantees' reasonable discretion. Likewise, the Driveway Easement Area shall not be used, for any purpose whatsoever, by any future owners or tenants of the Grantor's Parcel (or their respective family members, licensees, invitees, guests, agents, employees or contractors) unless such parties have first obtained the Grantees' prior written permission, which permission may be granted or denied in the Grantees' reasonable discretion.

B. Permitted and Prohibited Uses

1. Driveway. The Driveway Easement Area shall be used for the sole purpose of installing and constructing a portion of a paved driveway ("Driveway") providing access between the Street and the Grantees' Parcel (including any residential dwelling or other structure that may be built on the Grantees' Parcel). The Driveway may include certain related improvements such a retaining wall. The remaining portion of the Driveway is to be installed and constructed on the Grantees' Parcel. The entire Driveway may be used for both vehicular and pedestrian traffic.

2. Prohibited Uses. Grantee Parties are prohibited from using the Driveway Easement Area in any manner other than as specifically permitted under this Agreement. Without in any way limiting the previous sentence, Grantees are prohibited from (a) parking or storing any vehicles or trailers of any kind whatsoever on the Driveway Easement Area, or (b) temporarily or permanently constructing, installing or erecting upon the Driveway Easement Area any improvements other than the Driveway and related improvements (*i.e.* retaining wall) that are necessary for proper construction of the Driveway.

3. Fencing Prohibited. Grantees are also prohibited from constructing, installing or erecting any temporary or permanent fencing, or any similar temporary or permanent improvements, around or upon any portion of the Driveway Easement Area.

4. No Expanded Use. Grantees are prohibited from expanding the size or use of the Driveway beyond the boundaries of the Driveway Easement Area. If it is determined that any portion of the Driveway Easement Area, as identified on the Driveway Easement Diagram, extends into the Street, the boundaries of Driveway Easement Area shall be deemed to terminate at the boundaries of the Street as depicted on the Plat Map.

5. No Erosion or Damage to Grantor's Parcel. Grantees are prohibited from utilizing the Driveway Easement Area in any manner that directly or indirectly causes, promotes or exacerbates any erosion of, or any damage to any portion of the Grantor's Parcel. Grantees shall be solely responsible for the cost of remediating, repairing or replacing any such erosion or damage, regardless of whether such remediation, repair or replacement is performed by Grantor or Grantees or any agent thereof. Grantees shall not, however, perform or cause to be performed any such remediation, repair or replacement of the Grantor's Parcel without obtaining Grantor's prior written approval.

C. Driveway Construction and Maintenance

1. Approval of Location, Design and Construction. Grantees acknowledge, understand and agree that the location, design, installation and construction of the Driveway (including the materials used) may be subject to approval by Weber County and/or the Association's Architectural Control Committee as more particularly set forth in the Declaration. Likewise, any relocation, redesign, alteration or modification of the Driveway may also be subject to approval by Weber County and/or the Association's Architectural Control Committee.

2. Materials. The Driveway must be constructed using asphalt, concrete or similar suitable construction material as approved by Weber County and/or the Association's Architectural Control Committee. The same material must be used to construct the entire Driveway (*i.e.*, the materials used to construct that portion of the Driveway located on the Grantor's Parcel must match the materials used to construct the remaining portion of the Driveway located on the Grantees' Parcel).

3. Maintenance, Repair and Replacement. The Grantees and their successors and assigns, shall be solely responsible for paying any and all costs and expenses associated with the design, installation, construction, use, maintenance, repair, relocation, redesign, alteration or modification of the Driveway including, without limitation, any portion of the Driveway, or any related improvements, located on any portion of the Grantor's Parcel. The Driveway shall be maintained and/or repaired as determined by the Grantees and/or the Association's Architectural Control Committee to the extent such authority is granted under the Declaration or any other governing documents of the Association.

4. Plat Map Easements. The Parties acknowledge and agree that the Grantor's Parcel and the Grantees' Parcel are subject to certain easements that are identified and depicted on the Plat Map as "Slope and PUE/Drainage Easement" or "PUE/Drainage Easement" (collectively, the "Plat Map Easements"). As noted in the Plat Map Legend, the acronym "PUE" stands for "Public Utility Easement." Grantees acknowledge, understand and agree that (A) certain portions of the Driveway will cross over such Plat Map Easements, and (B) the design, installation and construction of the Driveway must not interfere with the purposes for which the Plat Map Easements have been established. As such, the Driveway must be designed and constructed to accommodate the purposes for which the Plat Map Easements have been established (*e.g.* drainage pipes to accommodate drainage easements, pipes/conduits to accommodate water, sewage, electrical or other utility easements, etc.). Grantees are solely responsible for determining and obtaining any approvals that may be required by Weber County or any utility companies/districts prior to constructing the Driveway over any Plat Map Easements.

D. Miscellaneous

1. Indemnification. Grantees shall indemnify, defend, save and hold Grantor harmless from any and all liability, damages, costs, expenses, causes of action, claims, losses, settlements, fines, penalties and/or reasonable attorneys' fees (collectively, "**Claims/Damages**") related to any personal injury or property damage that may directly or indirectly result from any use or activity on, around or related to use of the Driveway Easement Area by any Grantee Party. Grantees shall not be liable or responsible for any such Claims/Damages that may be alleged or suffered by any party other than a Grantee Party.

2. Successors and Assigns. Each and every one of the benefits and burdens of this Agreement, including the easement granted herein, shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Grantor and Grantees. Upon either Party's conveyance of his or her or its interest in the Grantor's Parcel or the Grantees' Parcel, such Party shall no longer have any obligations, liabilities or responsibilities whatsoever in connection with this Agreement or the easement granted herein, and all such obligations, liabilities or responsibilities shall be assumed by the individual or entity to whom the Party has conveyed his or her or its interest.

3. No Waiver. The waiver by either Party of the performance of any covenant, condition, or promise hereunder shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition, or promise. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at the later time. The exercise of any remedy shall not exclude the exercise of any other remedy.

4. Governing Law/Venue. This Agreement shall be construed in accordance with and governed by the substantive and procedural laws of the State of Utah. Venue for any and all claims or disputes shall be Weber County, Utah.


5. Attorney Fees. If any controversy, claim or dispute between the Parties arising out of or relating to this Agreement results in arbitration or litigation, the prevailing Party in such proceedings shall be entitled to recover from the other Party reasonable legal expenses, including attorney fees and costs.

6. Effective Upon Recording. This Agreement, and the easement granted herein, shall become effective and enforceable immediately upon the recording of this Agreement in the Weber County Recorder's Office.


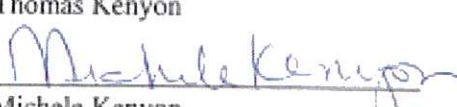
IN WITNESS WHEREOF, the Grantor and Grantees have executed this Agreement as of the date indicated and verified by the notary who shall notarize each Party's signature.

GRANTOR:

Valley Enterprise Investment Company, LLC,
a Utah limited liability company

By: 
Name: Ray Bowden
Title: President

GRANTEES:


Thomas Kenyon

Michele Kenyon

ACKNOWLEDGEMENT

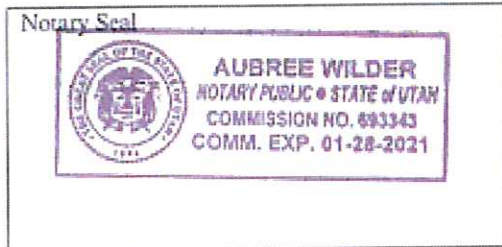
(Grantor's Signature – Valley Enterprise Investment Company, LLC)

STATE OF UTAH)
)ss.
COUNTY OF Weber)

On this 10 day of July, in the year 2018, before me
Aubree Wilder, a notary public, personally appeared
Notary Public Name

Ray Bowden, proved on the basis of satisfactory evidence
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged
(he/she/they) executed the same. Witness my hand and official seal



Aubree Wilder
(Signature of Notary)

My Commission Expires: 01-28-2021

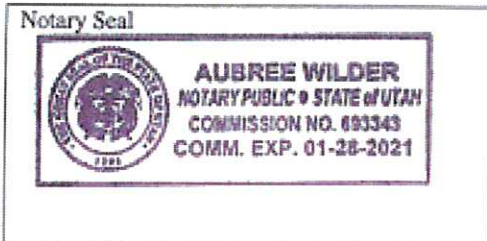
ACKNOWLEDGEMENT
(Grantee Signature - Thomas Kenyon)

STATE OF UTAH)
)ss.
COUNTY OF Weber)

On this 10 day of July, in the year 2018, before me
Aubree Wilder, a notary public, personally appeared
Notary Public Name

Thomas Kenyon, proved on the basis of satisfactory evidence
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged
(he/she/they) executed the same. Witness my hand and official seal



Aubree Wilder
(Signature of Notary)

My Commission Expires: 01/28/2021

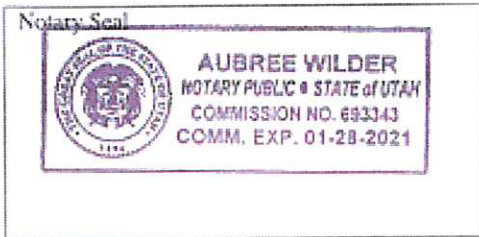
ACKNOWLEDGEMENT
(Grantee Signature – Michele Kenyon)

STATE OF UTAH)
)ss.
COUNTY OF Weber)

On this 10 day of July, in the year 2018, before me
Aubree Wilder, a notary public, personally appeared
Notary Public Name

Michele Kenyon, proved on the basis of satisfactory evidence
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged
(he/she/they) executed the same. Witness my hand and official seal



Aubree Wilder
(Signature of Notary)

My Commission Expires: 01/28/2021

Exhibit "A"
to
Driveway Easement Agreement

Legal Description of Grantor's Parcel

Lot 52-R, The Summit at Ski Lake No. 13, Weber County, Utah
(Weber County Parcel No. 20-151-0003)

Exhibit "B"
to
Driveway Easement Agreement

Legal Description of Grantees' Parcel

Lot 53-R, The Summit at Ski Lake No. 13, Weber County, Utah
(Weber County Parcel No. 20-151-0004)

Exhibit "C"
to
Driveway Easement Agreement

Metes and Bounds Description of Driveway Easement Area

Beginning at the Southwest corner of lot 52-R The Summit at Ski Lake No. 13 a part of the North half of Section 24, T6N, R1E, SLB&M, Weber County, Utah and running thence $N1^{\circ}36'17''W$ 58.96 feet along the West line of said lot 52-R, thence $S28^{\circ}45'29''E$ 69.31, to the North line of Clairetina Court, thence $S88^{\circ}23'43''W$ 20.31 feet along said street to a point of curvature to a 25 foot radius curve to the right, thence westerly along the arc of said curve for a distance of 11.74 feet, central angle= $26^{\circ}54'56''$ chord bearing and distance = $N78^{\circ}08'49''W$ 11.64 feet to the point of beginning containing 965 square feet.

