
WEBER COUNTY BOARD OF ADJUSTMENT

KRISTIN ZAUGG

Appellant,

vs.

WEBER COUNTY

Appellee,

KEVIN SCHILDHAUER

Applicant.

MEMORANDUM DECISION
AND ORDER

BOA 2020-06

Kristin Zaugg appeals the approval of a subdivision and an alternative access. A hearing to consider the appeal was held before the Board of Adjustment (“BOA”) on September 17, 2020. Having reviewed the record, considered the arguments presented, and all applicable statutes and ordinances, the BOA now orders as follows:

BRIEF STATEMENT OF FACTS:

1. Ms. Zaugg filed an appeal challenging two land use decisions: 1) approval of the two lot Schildhauer Subdivision; and 2) approval of an alternative access associated with that subdivision.
2. A public meeting was held for the two land use applications on November 21, 2018. Both were approved at the meeting and notices of decision were subsequently mailed on November 28, 2018.
3. Ms. Zaugg alleges she never received notice of the public meeting and was not able to attend to express her concerns with the two land use applications. She claims she did

not know about the approvals until construction began at one of the subdivision lots on May 6, 2019.

4. Ms. Zaugg attempted to file an appeal with the Weber County Planning Division (“Planning Division”) on May 20, 2019, but did not include the \$500 application fee as required by Weber County’s fee ordinance. As such, the Planning Division did not accept the application. Ms. Zaugg’s attorney delivered a copy of the appeal to the Planning Division the next day, but still did not pay the required fee. The fee was ultimately paid on June 25, 2019.

ANALYSIS/DISCUSSION

The BOA must first determine whether it has jurisdiction to hear this appeal. An adversely affected party may, within the time period provided by ordinance, appeal a land use decision to the BOA by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in administering or interpreting a land use ordinance. Utah Code Ann. § 17-27a-703(1). Weber County requires appeals to be filed within 15 calendar days after the date of the written decision of the land use authority. Weber County Code § 102-3-4. However, if an affected party does not receive actual notice of a land use decision, the time to file an appeal is tolled until constructive notice is received. *Fox vs. Park City*, 2008 UT 85, 200 P.3d 182.

The BOA does not have jurisdiction to hear this appeal because it is untimely. The notices of decision approving the subdivision and alternative access were issued on November 20, 2018. Ms. Zaugg claims that she never received actual notice of the approvals. As a result, she claims the time to file an appeal was tolled until she received constructive notice on May 6, 2019. Even assuming Ms. Zaugg is indeed an affected party and is entitled to notice, she did not

file a complete appeal application until June 25, 2019. In order for an appeal application to be complete, it must “clearly explain the appeal, interpretation, or variance being requested, and must be accompanied by the required fee and applicable supporting information.” Weber County Code § 102-3-5 (emphasis added). Although Ms. Zaugg attempted to file an appeal application on May 20, 2019, she did not accompany it with the required fee. The application was therefore not complete. The BOA has no authority to disregard this requirement. Ms. Zaugg’s claim that the Planning Division did not accept her application for reasons other than the fee not being paid is unpersuasive, especially given that her attorney submitted the appeal the next day and still did not pay the required fee for over a month. As a result, the BOA has no jurisdiction to consider an appeal of the two land use decisions.

Even had Ms. Zaugg timely filed an appeal, it appears the BOA does not have jurisdiction to hear it for another reason. The BOA is the authority to hear appeals of land use decisions. A land use decision is defined under the County Land Use, Development, and Management Act (“CLUDMA”) as “an administrative decision of a land use authority or appeal authority regarding: (a) a land use permit; (b) a land use application; or (c) the enforcement of a land use regulation, land use permit, or development agreement.” Utah Code Ann. § 17-27a-103(34). Ms. Zaugg couches her appeal as one challenging the approval of the subdivision and the alternative access.¹ Upon looking at the other portions of Ms. Zaugg’s appeal application in conjunction with her arguments before the BOA, however, it is apparent that she is actually challenging the notice of the public meeting where the subdivision and alternative access were

¹ It is unclear what Ms. Zaugg is actually challenging with regard to the actual land use decisions. She lists a number of statutory references wherein she claims the land use authority erred. However, she provides no explanation as to how these statutes apply (some of which refer to empty reserved sections, a different zone, and statutes entirely outside of CLUDMA). This blanket approach does not even begin to satisfy her burden of proof.

considered and approved. The BOA only has authority to hear appeals of land use decisions. Notice of a public meeting is not a land use decision and cannot be appealed to the BOA. Notice challenges of this type are to be filed directly with the district court. *See* Utah Code Ann. 17-27a-209.

CONCLUSION

Based on the foregoing, the BOA lacks jurisdiction because (1) Ms. Zaugg did not timely appeal the land use decisions; and (2) the BOA does not have jurisdiction to consider whether notice of a public meeting was proper. The appeal is denied.

DATED this 25th of September, 2020.

Rex Mumford

Rex Mumford, Chair (electronically signed with permission)

Jannette Borklund

Jannette Borklund, Board Member (electronically signed with permission)

Neal Barker

Neal Barker, Board Member (electronically signed with permission)