



## BOARD OF ADJUSTMENT

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### MEETING AGENDA

**Thursday, October 22, 2020**

**4:30 p.m.**

Join Zoom Meeting

<https://us02web.zoom.us/j/84105687604>

Meeting ID: 841 0568 7604

One tap mobile

+16699006833,,84105687604# US (San Jose)

+12532158782,,84105687604# US (Tacoma)

- *Pledge of Allegiance*
- *Roll Call*

### Regular Agenda Items

1. **Minutes:** Approval of the October 8, 2020 meeting minutes.

2. **BOA 2020-07:** Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback.

Staff Presenter: Felix Lleverino

3. **Adjournment**

*The Board of Adjustments meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1<sup>st</sup> Floor, 2380 Washington Blvd., Ogden, Utah.*

*&*

*Via Zoom Video Conferencing at the link listed above.*

*In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791*

Minutes of the Board of Adjustments meeting of October 8, 2020, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1 Ogden UT at 4:30 om & and via Zoom Video Conferencing.

Members Present:        Laura Warburton-Chair  
                                 Bryce Froerer-Vice Chair  
                                 Rex Mumford  
                                 Jannette Borklund

Staff Present: Charlie Ewert, Assistant Planning Director; Felix Lleverino, Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

1. Minutes: Approval of the September 17, 2020 meeting minutes. Approved as presented.

2. BOA 2020-07: Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback.

Mr. Lleverino states that the applicant is requesting an 8 ft. setback and 10 ft. side yard setback, a 5 ft. setback on the east side and a temporary setback on the rear. He states that staff looked at what was requested. Looking at some of the ridge lines it puts some limitation on how high they can go with their house. He notes that one of the applicants is present. Concerning the height limitations the ridgelines measure from the finished grade around the house the maximum height is 35. He states that staff's recommendation is to allow a variances to just the side yard setbacks to decide the amount of buildable area. Staff felt that it is an appropriate size for a building pad size for the house that would compare in size the surrounding homes. Staff recommends that the applicants request be denied. Staff instead recommends a 10 ft. reduction to both minimum side yard requirements. This would give them a 10 ft. variance on each side the front and rear would remain the same. It would conform to the FV-3 zone side development standards. He add that in the Weber County code it allows for projection into minimum and front year setbacks. If there is a home and they want to build a deck the deck can encroach into the rear setback area 10 ft. If the eaves encroach in the side yard setback they can go as far as 2 ft. to the side setback areas, for the front porch another 5 feet can encroach into the front yard setback area. This would allow them some leeway when designing and orienting the home within the building area. Mr. Lleverino states that the applicant is present and there is some people from the public present. The architect is also present.

Chair Warburton asks if there are any questions for Mr. Lleverino. Jannette Borklund asks how much side yard will be left on both sides. Mr. Lleverino states that if the variance was approved it would be a 10 ft. side yard setbacks on each side.

Bryce Froerer states states that the applicant was asking for the four setbacks. The recommendation is that it be denied, is the applicant interested in the proposed modification as recommended by staff. Mr. Lleverino states that the applicant is present and they can address this.

Chair Warburton asks legal to speak to main issue of the letters about this item being noticed improperly. She asks Mr. Crockett to states the actual code and what the required time is in this circumstance for this type of meeting. Christopher Crockett, Deputy County Attorney, states that he is representing the Board of Adjustments in this meeting. He states that this is a public meeting not a hearing. Under the Utah Open and Public Meetings Act they are only required to provide 24 hours' notice. He states that this has been satisfied and the land use ordinance regarding variances the notice is a courtesy people within 500ft. for parcels that are within

500ft there is no time frame set. The actual mailing notice were sent out on October 1<sup>st</sup>. He states that all legal requirements for sending out notices to advertise for this public meeting have been satisfied. Chair Warburton thanks Mr. Crockett for clarifying this.

Chair Warburton states that she would like to hear from the applicant.

Susan Muse 5505 Old Snowbasin Road Huntsville, states that they asked for four setbacks and the County is offering two. She states that they would appreciate the two. One of the setbacks lines affects Kevin and his building lot and she is willing to forgo that. She state that her only question is if the neighborhood feel comfortable. She states that they would beautifully landscape the road to hide the home. There is already 30 ft. from the road to the beginning of their 30 ft. She asks that her neighbor remember that there is 60 ft. they have to play with and the corner that would overhang. She state that she understands if this is not okay with them, and she appreciate them being present and them wanting to preserve and protect the neighborhood and its beauty and this is what she wants to do.

Chair Warburton thanks Mrs. Muse and notes that it can be very difficult when neighbors decide they don't like what is being asked for. She asks if she would accept the 10 ft. on both sides. Mrs. Muse states that she is fine with that would appreciate it. She states that she would also like the neighbors to be okay with that. She feels that it is fair and she would accept that proposal.

Chair Warburton asks if there are any questions for Mrs. Muse.

Jannette Borklund asks if there is a drawing of how the house would sit on the property. Mrs. Muse states that the architect is present. Chair Warburton asks if these plans were presented to the Planning Department. She asks Mr. Lleverino if the plans presented are the ones he reviewed when he reached his conclusion. Mr. Lleverino states that the plans were not submitted with the application and it is not on Frontier. Mrs. Borklund states that it is helpful to be able to look at the plans to be able to make a decision. She asks if the Board has to be able to identify the five criteria to have been satisfied to be able to grant a variance. She states that there is special circumstances with the shape of the lot but she is not sure if there is a hardship or a property right that would be lost.

Chair Warburton asks Mr. Lleverino to address the questions. She asks Mr. Lleverino to explain how he reached the conclusion without looking at the plans. Mr. Lleverino states that he looked at other building footprints in the area. Mrs. Muse states that she presented the plans and reviewed them with two members of staff in the Planning Office. Mr. Lleverino states that the site plan were not submitted with the application and they are not on Frontier or in the BOA application packet.

Chair Warburton asks if there are any more questions.

Jannette Borklund states that she is not sure how they can make a recommendation without seeing the plans to see what they are asking for.

Mr. Ewert states that he has the same concerns, it might be more appropriate to table the item.

Chair Warburton states that she would like to bring it back to the Board. She will not take public comment at this time.

Rex Mumford states that there have been variance requests of this nature without them necessarily looking at the plans. It is not a matter of the home it is matter of following the guidelines to grant a variance. He states that he feels that they could still move forward without seeing the house plans if the request for the variance is meeting the five requirements.

Mr. Froerer states that he agrees with Mr. Mumford's comment they could go through with this, their duty is to apply the five criteria to the request. His concern is that the technical issues that staff has been having won't allow proper communication and deliberation. The technical issues are not allowing the Board to communicate effectively with each other and the staff. He states that he does not feel this is appropriate. Secondly he notes that he is not sure if the application as it exists if the applicant wants to request what has been recommended they should submit a request for that, and making it such that it would fit what staff wants to allow, he does not feel that this appropriate.

Rex Mumford states that he agrees with Mr. Froerer, it is difficult for the Board with regards to the technical issues. He also agrees that the applicant needs to modify their request except for perhaps what staff is saying they think would fit the guidelines.

Jannette Borklund states the staff report is a bit lax describing how it does or does not meet the five standards. It needs to be better spelled out and why its doesn't meet the standards for the front and back and it does for the sides.

Chair Warburton asks legal and staff why they couldn't just accept the recommendation. She notes that they have accepted planning recommendation in the past. Mr. Crockett states that this is different in that this is an exception to code, this is not something where someone submits a land use application. The statue is clear under 17-27A 702 (2)(a) the appeal authority may grant a variance only if the five requirement are met. He notes that even if it is staffs opinion that it meets the requirements this isn't that can be negotiated. This is something that the Board of Adjustments needs to make a finding of all five of those elements. They can examine and consider what says and if they agree they can adopt it. The Board needs to consider all of the five elements.

Chair Warburton states that she would like to apologize to the people in the audience and the applicant that they made their way down and that the Board was not able to come to a conclusion at this time.

Jannette Borklund states that they need to have a date certain for the next meeting, for the applicant and the people present, so that they know what to expect, because they won't get another notice. Mr. Ewert states that the next date for a regular meeting is October 22<sup>nd</sup> for the Board of Adjustments.

**MOTION:** Bryce Froerer moves to table BOA 2020-07: Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback, for a minimum of two weeks on October 22<sup>nd</sup> to allow the applicant enough time get their information together and to allow staff help the resolve the technology issue they are having to be able to communicate better. Rex Mumford seconds. Motion carries (3-0)

Rex Mumford asks what the possibility of meeting in the Chambers. Mr. Ewert states that they might only be able to have three members present. He states that they are limited in their ability, but this is a discussion they are having internally. He notes that the they are required to have an anchor location for meetings, and have a place where the public can meet.

**MOTION:** Jannette Borklund moves to adjourn.

Adjourned 5:13 PM

Respectfully submitted

Marta Borchert





# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback.

**Agenda Date:** Thursday, October 22, 2020

**Applicant:** Robert McArthur, Representative

**File Number:** BOA 2020-07

### Property Information

**Approximate Address:** 5505 Old Snowbasin Road, Utah

**Project Area:** .65 acres

**Zoning:** Forest Valley (FV-3)

**Existing Land Use:** Residential

**Proposed Land Use:** Residential

**Parcel ID:** 20-035-0047

**Township, Range, Section:** T6N, R1E, Section 23

### Adjacent Land Use

<b>North:</b> Residential	<b>South:</b> Forest
<b>East:</b> Residential	<b>West:</b> Residential

### Staff Information

**Report Presenter:** Felix Lleverino  
 flleverino@co.weber.ut.us  
 801-399-8767

**Report Reviewer:** SB

## Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 5 (Forest Valley 3 Zone)
- Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands) Section 2 (Stream Corridors, Wetlands, and Shorelines)

## Development History

This parcel of land is shown on the 1966 ownership plat and, therefore, the Weber County Planning Division does consider this a nonconforming buildable parcel.

This request to the Board of Adjustment was submitted on September 16, 2020.

On October 8, 2020, this request was presented before the Board of Adjustment, but due to technical difficulties and the lack of information, it was tabled to October 22, 2020. At this meeting, the Board requested to be provided with building plans for the proposed dwelling.

## Background

The applicant is requesting variances to all minimum dwelling setbacks required in the FV-3 Zone (see Exhibit B for the required minimum setbacks for the zone). The applicant feels that a variance is necessary to build their desired home. The applicant cites the shape of the parcel, the square footage of the parcel, and ridgeline location as unique circumstances that should justify a variance to the setbacks.

The planning staff has provided two site plan examples to help visualize zoning setbacks (Exhibit B), and a ten-foot side yard setback reduction (Exhibit C) if the Board were to approve a variation to the applicant request.

## Summary of Board of Adjustment Considerations

LUC §102-3 states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. For a variance to be granted it must be shown that all of the following criteria have been met:

- a. *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.*
  1. *In determining whether or not literal enforcement of the land-use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
  2. *In determining whether or not literal enforcement of the land-use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
  1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relating to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice is done.*

The list below are points taken from the applicant's narrative:

- a. The applicant's narrative states that literal enforcement of the setbacks substantially reduces the buildable area and make it unreasonable to build a predominantly single-story home.
- b. The applicant states that the special circumstances that exist are the size of the lot, the lot configuration, slope on the rear of the property, and that this property is on a ridgeline that restricts the building height to no more than 35 feet measured from any point.
- c. The applicant's narrative argues that granting a variance is essential to the enjoyment of a substantial property right that is possessed by other property in the same zone (see point number 3 in the narrative).
- d. The General Plan indicates that this area should be developed as is planned and zoned. The applicant states that variance to the setbacks will not adversely affect the neighbors (see point number 4).
- e. The applicant's narrative states that because this property is on a ridgeline, their home design and planned location preserves the natural landscape (see point number 5 in the narrative), also see Exhibit F.

Staff analysis:

Under the existing zoning setbacks, the buildable area for this parcel is approximately 10,000 square feet. The applicant's proposed dwelling is approximately 7,000 square feet. The size and shape of the parcel are sufficient to allow a dwelling size of 7,000 square feet, though it may not be the desired layout of the applicant. Upon reviewing the proposal with the variance criteria, it does not appear that a site-specific hardship exists to warrant the requested variance. Staff feels that criteria A is not met with this proposal.

## Exhibits

- A. Application with an applicant-written variance request
- B. Site plan showing FV-3 zone setbacks
- C. Site plan showing a 10' reduction to the side-yard setbacks
- D. 2020 Recorder's plat
- E. Site photos as of September 18, 2020
- F. Surrounding homes footprint size map
- G. Home plans (site plan and floor plan)



Area Map



<b>Weber County Board of Adjustment Application</b>			
Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) <i>John M Coats</i>		Mailing Address of Property Owner(s) <i>1909 South 850 East Beautiful, Utah 84010</i>	
Phone <i>801-231-4244</i>	Fax —		
Email Address <i>jcoats57@gmail.com</i>		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Authorized Representative Contact Information</b>			
Name of Person Authorized to Represent the Property Owner(s) <i>Robert McArthur</i>		Mailing Address of Authorized Person <i>85 East 2200 South Beautiful, Utah 84010</i>	
Phone <i>801</i> <i>292-1512</i>	Fax <i>801</i> <i>292-1512</i>		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Appeal Request</b>			
<input checked="" type="checkbox"/> A variance request: ___ Lot area <input checked="" type="checkbox"/> Yard setback    ___ Frontage width    ___ Other: _____ <i>+10 Foot TAKEN out of 20 foot setback on property.</i> asking: front - 8' west side - overhang and patio 10' rear - 10' east side - <del>10</del> 5'			
<b>Property Information</b>			
Approximate Address <i>5505 Old Snowbasin Road Huntsville UT</i>		Land Serial Number(s) <i>20-035-0047</i>	
Current Zoning <i>FV-3</i>			
<b>Existing Measurements</b>		<b>Required Measurements (Office Use)</b>	
Lot Area <i>approx. .75 acre</i>	Lot Frontage/Width <i>266 Feet</i>	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback <i>30 Feet</i>	Rear Yard Setback <i>30 Feet</i>	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback <i>20 Feet</i>	Side Yard Setback <i>20 Feet</i>	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)



Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

slope, shape, size

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

easement

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

Our property drastically separates itself from other neighboring lots by size, shape and slope. Our lot is approx.  $\frac{3}{4}$  acre and our neighbors have 3-5 acres. We have a <sup>steady</sup> slope that 26' from the front to back of lot. The shape is pie shaped - tapering from 201' in front to 54' in rear.

With the current setbacks, over 50% of our lot is lost to easements.

The combination of the three limitations; size, shape and slope is unusually difficult.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Before our ownership an easement to the neighbors was granted so that they could better place the entrance to their subdivision. This makes little sense to us being that their lots are 5-10x larger than ours. We believe this decision was made due to economic factors; To grade their property would have been costly. In the literature we have read, these property line decisions are not to be made on economic factors.

To create justice, we would like our setbacks to be adjusted such that the land given away is restored.

### Applicant Narrative

Please explain your request.

We are the new owners of 5505 Old Snow Basin Road. We became aware that part of our property was given as an easement to Sundance Ridge subdivision so they could more economically build their entrance / driveway. The lots inside Sundance Ridge vary from 3-5 acres. We are a stand alone property with approx.  $\frac{3}{4}$  acre. Other properties on Old Snow Basin Road of equivalent size have notably small setbacks than ours.

We would like to have our setbacks adjusted to be in proportion to our lot size and take into consideration part of our  $\frac{3}{4}$  acre is an easement. Thank You — !

### Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
- a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

Since setbacks to this lot take up over half of the lot it is unreasonably difficult to build a predominantly single story home (main living areas all on one level). The current setbacks are in accordance to the lot size of neighboring subdivisions (3-5 acre lots) We are not part of a subdivision and our lot is a fraction of theirs, ( $\frac{3}{4}$  acres). We are in our sixties and want to build our living areas on one level.

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

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

We do not believe an adjustment in setback will adversely affect our neighbors because we have only one neighbor who has approx 4.5 acres on which to build. Our other 'neighbors' are a subdivision entrance, a road, <sup>national</sup> forest.

5. The spirit of the land use ordinance is observed and substantial justice done.

Because the lot is on the saddle/ridge line, we feel it will be in everyone's best interest to build a home that is well positioned for the natural landscape.

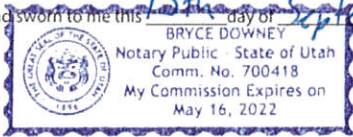
**Property Owner Affidavit**

I (We), John Coats/Susan Muise, 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.

[Signature]  
(Property Owner)

[Signature]  
(Property Owner)

Subscribed and sworn to me this 15th day of September, 2020



[Signature]  
(Notary)

**Authorized Representative Affidavit**

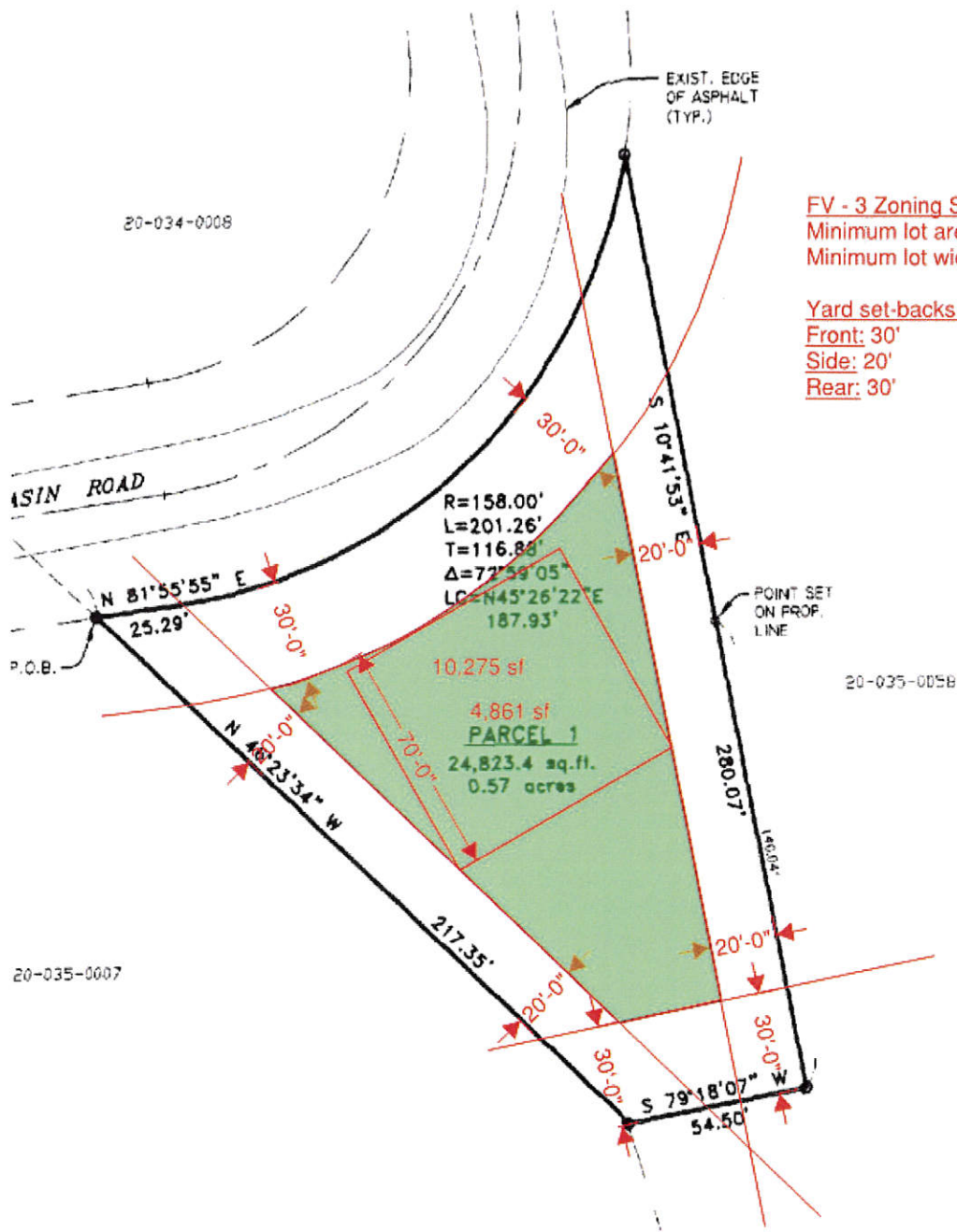
I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), \_\_\_\_\_, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering 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)



FV - 3 Zoning Site development standards:  
 Minimum lot area: 3 acres  
 Minimum lot width: 150'

Yard set-backs:  
 Front: 30'  
 Side: 20'  
 Rear: 30'







S.W. 1/4  
SECTION 23, T.6N., R.1E., S.L.B. & M.

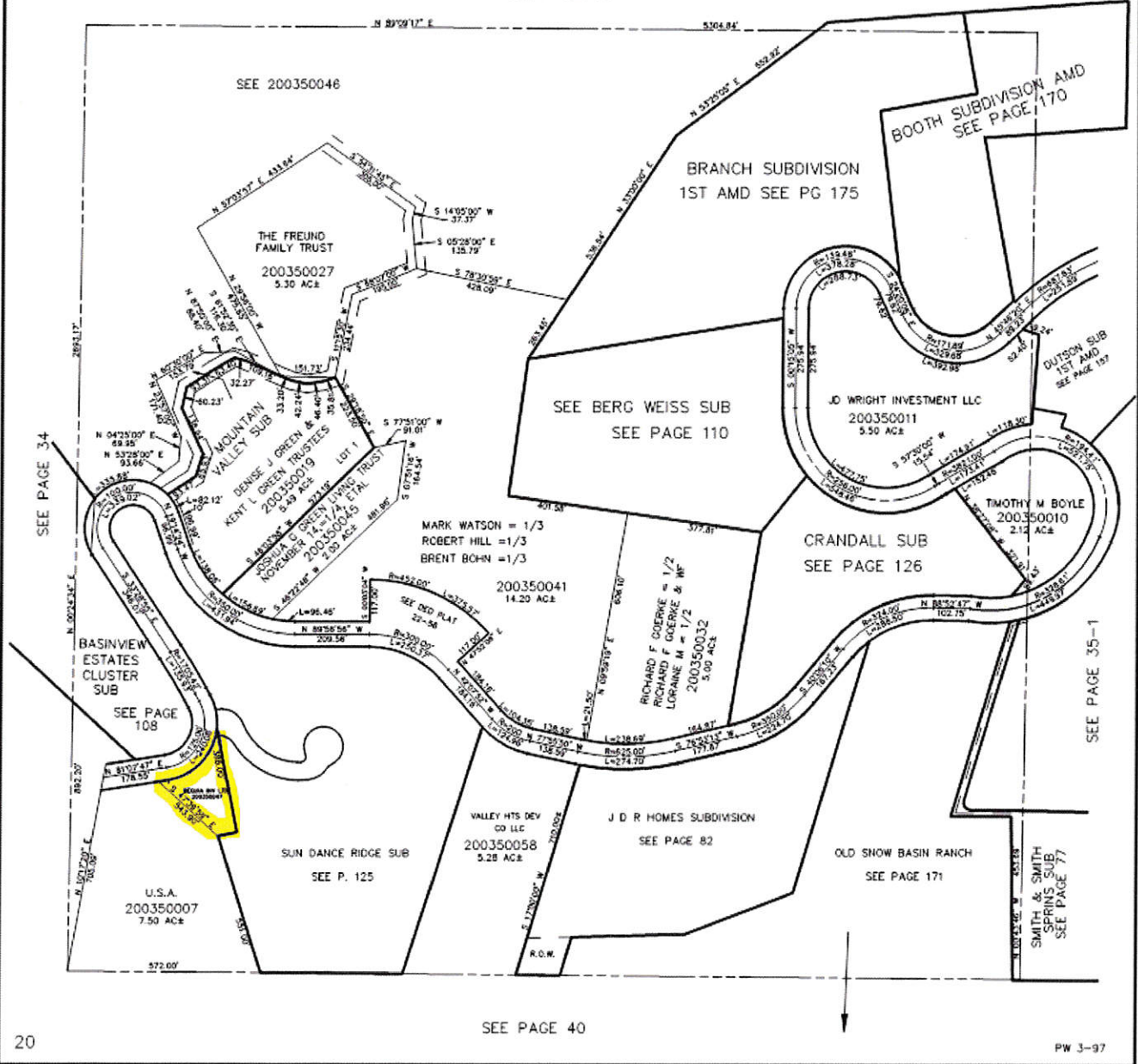
35-2

TAXING UNIT: 520

HUNTSVILLE DISTRICT

SCALE 1" = 200'

SEE PAGE 35

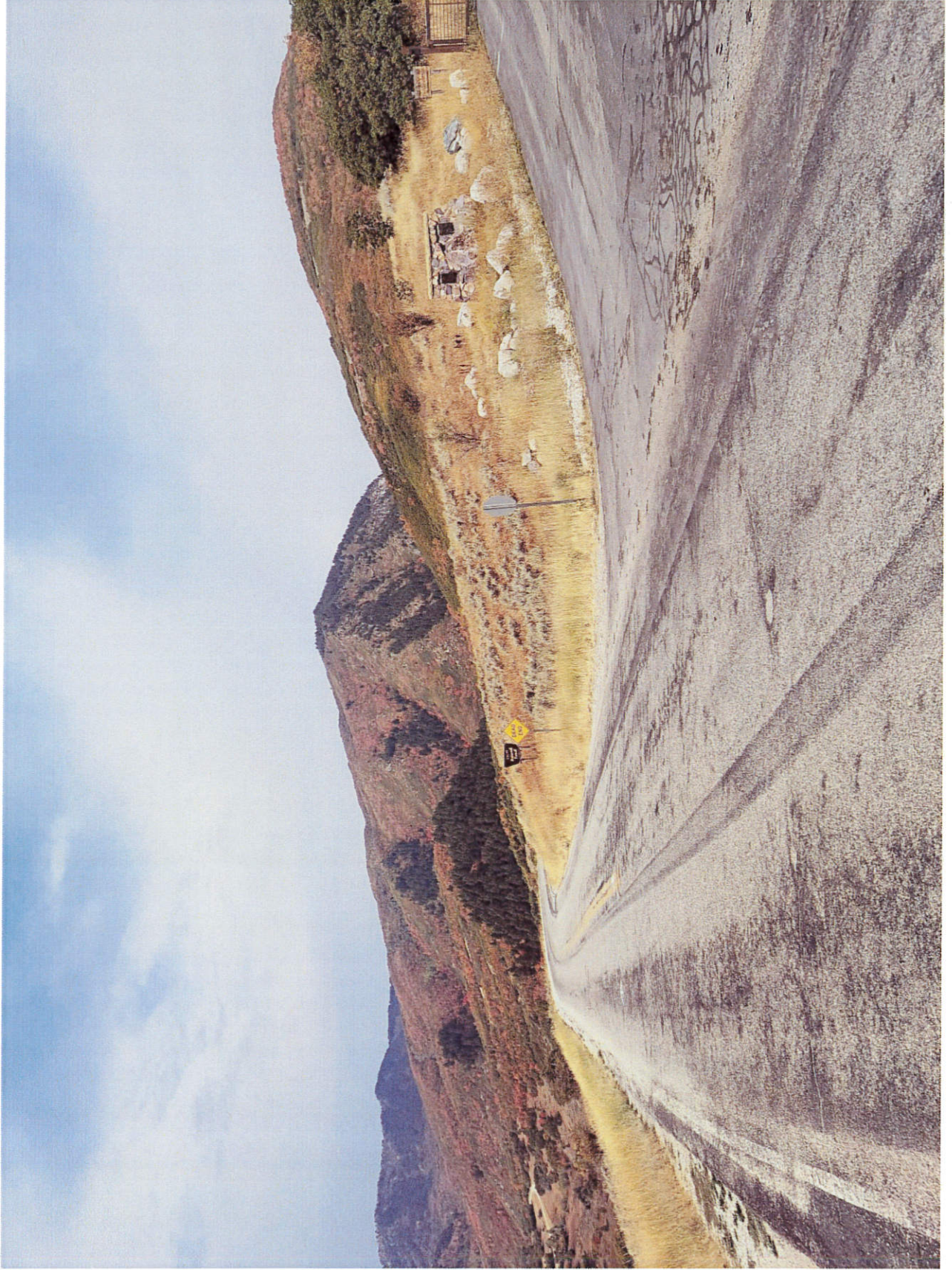


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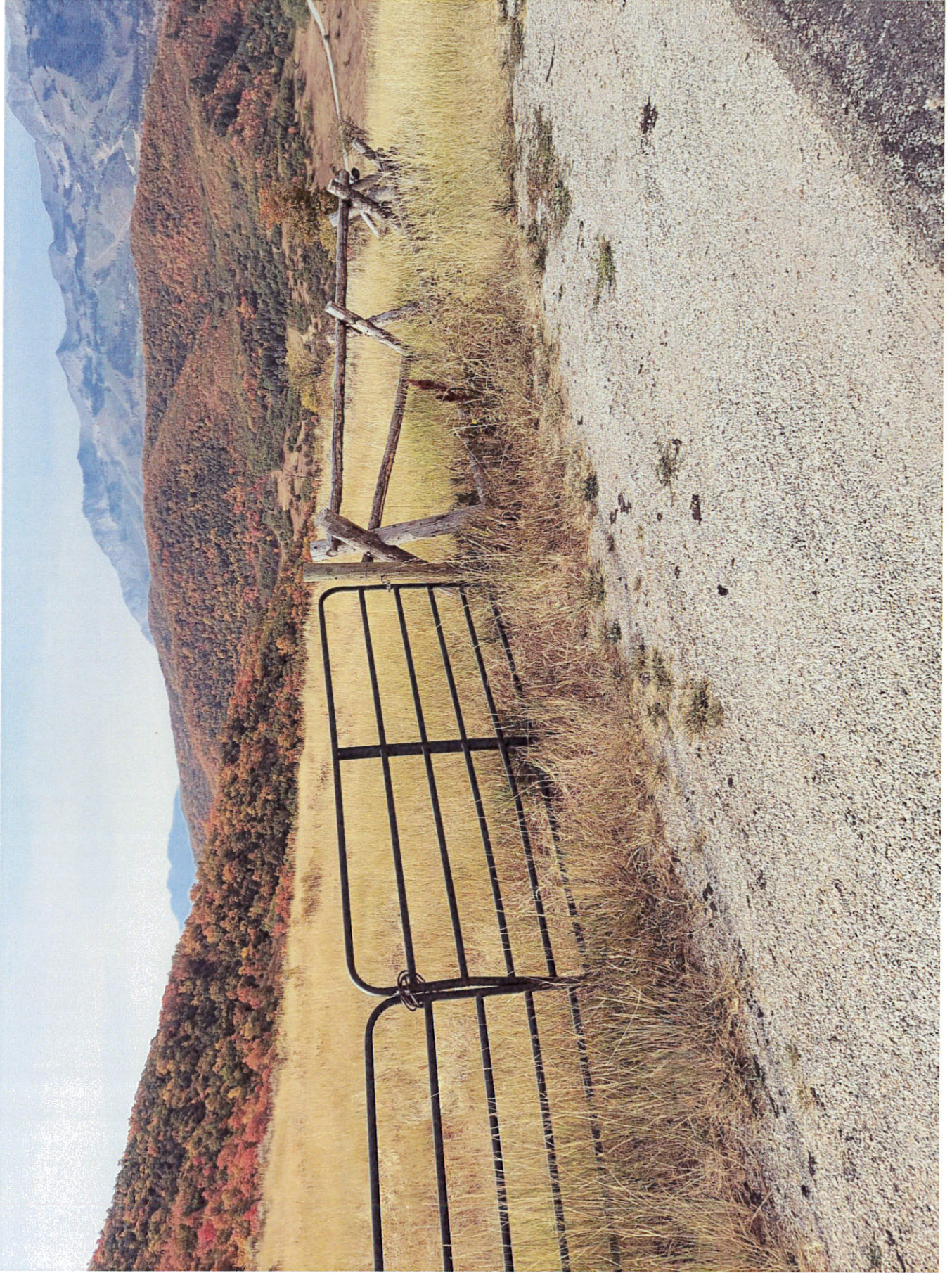
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PW 3-97













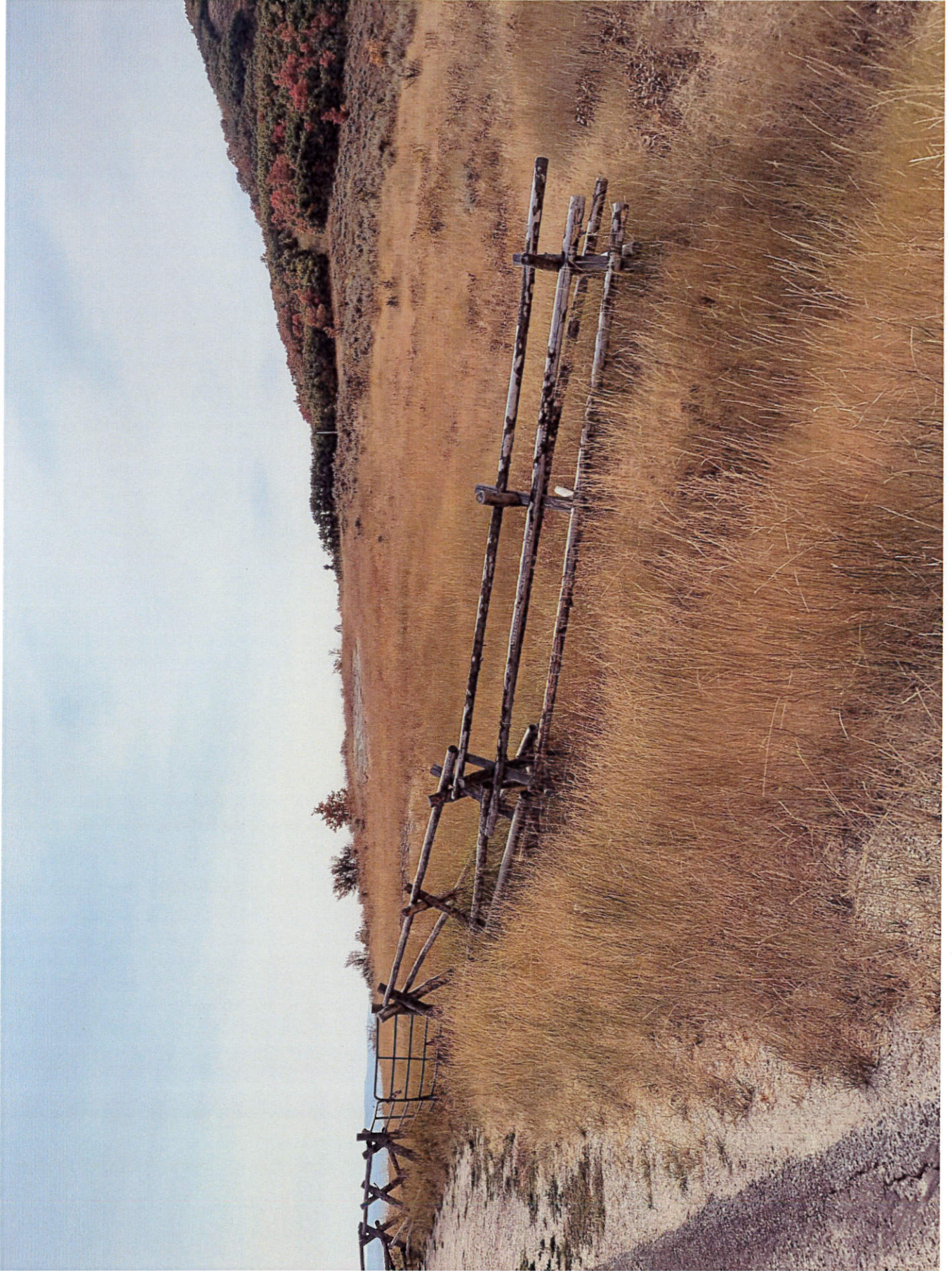




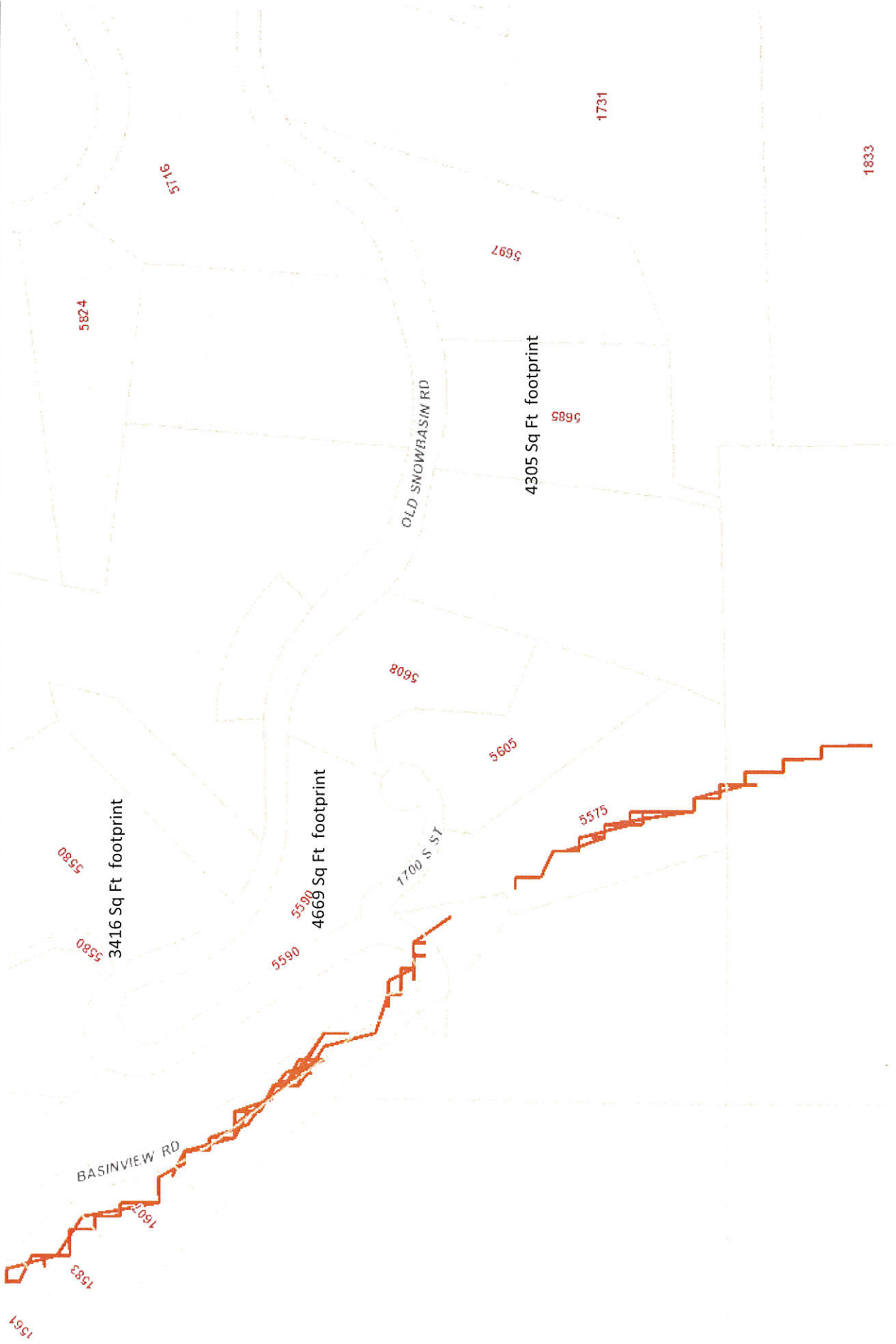


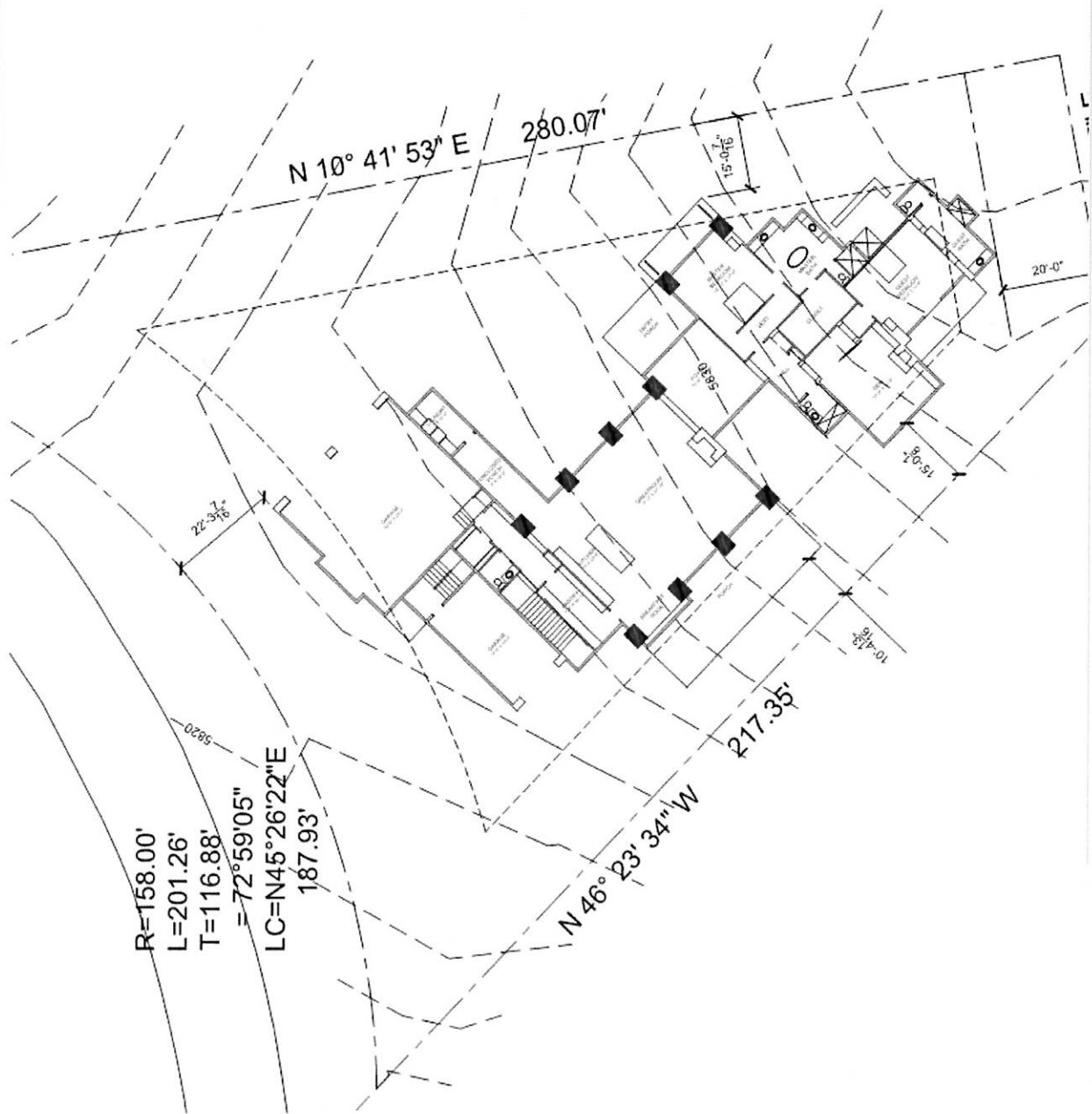












Robert McArthur Studio  
 RGM Inc.  
 Donald L. Welch  
 Robert C. McArthur  
 Project:  
 New  
 Residence  
 for  
 Coats/Muise  
 Weber County,  
 Utah  
 2010 July 16, 2010  
 Revisions:  
 July 16, 2010  
 August 13, 2010  
 August 19, 2010  
 August 27, 2010  
 September 3, 2010  
 September 16, 2010  
 DOTO  
 Project No.  
 Drawn by  
 Checked by  
 L.L.L.  
 PROPOSED  
 FLOOR PLAN  
 SHEET  
**A2.2**

