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August 4, 2021

Weber County Survey
Attn: Tammy Aydelotte & Darrel Woodruff

RE: Westwood Homestead – survey reviews

Tammy and Darrel:

The following is a written response to the comments made in your plat review. If you have any questions please let me know.

Thank you.

Respectfully,

Ernest D. Rowley, PLS, CFedS

Principle Owner - Landmark Surveying, Inc.

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4129 Planning-Surveying review comments.docx

RESPONSE TO PLANNING AND SURVEY OFFICE COMMENTS:

Project: Westwood Homestead

From: Ernest Rowley, PLS, CfedS

WEBER COUNTY PLANNING COMMENTS:

posted 07-07-2021

1. Boundaries of remainder parcel must be shown on plat. Per the alternative access approval, noticed on 11/9/2020, the applicant shall agree to file the required alternative access covenant, as outlined in LUC §108-7-31, at the time of recording of this subdivision.

RESPONSE: The alternative access approval is not a survey item. The remainder parcel has been added as an insert.

2. Lot widths and area exceed the minimum requirements for the FV-3 zone.

RESPONSE: Acknowledged.

A portion of the parcel involved in this subdivision is located in a geologic hazard study area. A report may be required, if any portion of the proposed lots are located within the designated hazard area (see attached documents).

RESPONSE: I have digitized the study area on this plat from the files you attached and the area colored in red on that map does not affect this plat.

FEMA flood zone AE runs through this parcel - therefore all parcel boundaries must be shown to further analyze any potential further requirements.

RESPONSE: The entire subdivision plat is in FEMA flood zone X. None on this development is affected by zone AE. Even Zone A, to the best of my estimation, does not encroach on this subdivision which I have digitized on this plat.

3. Wells must be drilled and pump-tested prior to recording of the final plat (per Weber County LUC 106-4-2.1 (d) (2), "**Improvements required for private well.**

RESPONSE: Not a survey item.

WEBER COUNTY SURVEYING COMMENTS from plat redlines.

posted 07-15-2021

1. Distance?

RESPONSE: I can only assume that this is in reference to a distance for the basis of bearing. Such is not required for a basis of bearing line. However, any surveyor can use the grid coordinates provided for the two monuments and obtain that information if they need it.

2. The existing location, widths, and other dimensions of all existing or platted land drains, culverts, watercourses, wetlands, streams corridor setbacks, flood plain within and immediately adjacent (within 30') to the tract of aldn to be subdivided. WCO 106-1-5(a)(6). Per engineering review add an easement fo th irrigation ditch. That way if ownership changgs you will still have th eright to access the irrigation ditch. If irrigation ditch is shown on plat and dedicated easement it needs to dimensioned. Could be done by deed with entry # on plat.

RESPONSE: Previous response related to this ditch in italics. *“Culverts under 7750 East and 1900 North Street have been added. Please note, The irrigation ditch services the remainder parcel that Westwood’s own an farm. The headgate is controlled on the north side of 1900 North Street. Lot 1 is Mr. Westwood’s*

personal lot for his new home and he will be retaining the farm as well. I do not believe that this ditch, which is only a foot deep and 2 feet wide in size, should be shown on this plat, nor should the culvert under 7750 East. This is not a natural water course that drains into any river or stream system. In years of heavy winter storm there is a little water that drains into the irrigation ditch and ends up on the fields that the ditch services. We are requesting that we not show the ditch and waterway on this plat.”

Additional comment:

The ditch is shown with a 2 foot wide easement as directed by the owner. It has also been “dimensioned” as the code requires with the designation of the notation “2’ wide easement to follow the Irrigation tail water ditch centerline.”.

3. Cant read last pat of distance

RESPONSE: adjusted.

4. Symbols not Shown in legend.

RESPONSE: They are shown, see legend “set #5x24” rebar and cap stamped Landmark”

5. A legend shall be included which clearly identifies the lines, symbols, and other markings used to create the survey map, or plat. WCO 45-3-3(d)

RESPONSE: This is a vague notation. If there is something specific that you are seeing the would not be understood by a competent surveyor and should be included in the plat please be more specific. If this is in reference to #4 above, then see that response.

6. All proposed streets shall be numbered under a definite system approved by the county surveyor and conform as far as practicable to the adopted street naming and numbering system of the county. Unless there are street alignment situations where a street name may be better utilized as a primary identifier. WCO 106-1-8(c)(1)e; UCA 17-27a-603(1)(c). House # and street number will be reviewed once lots are configured.

RESPONSE: I would like to know why the addresses for this subdivision have not been reviewed from the very beginning of this project? Also, what does the extension of lot line to include the streets have to do with when the addresses are reviewed? This should have been done a long time ago and if there were changes to the lot configuration that would necessitate a modification then it could be noted at that time but no such changes have been made. Please advise the status of this item ASAP so that approval does not get delayed again.

7. The remaining parcel will show a note: “Remaining Agricultural Parcel, Not Approved for Development.”

WCO 106-1-8(c)(3).

RESPONSE: The note is updated.

8. For subdivisions that are located in unincorporated areas of the county which are zoned for agriculture (A-1, A-2, A-3, and V-3) the following statement shall be required on each page of the final plat: “Agriculture is the preferred use in the agriculture zones. Agricultural operations as specified in the Land Use Code for a particular zone are permitted at any time including the operation of farm machinery and no allowed agricultural use shall be subject of restrictions on the basis that it interferes with activities of future residents of this subdivision.” WCO 106-1-8(c)(5).

RESPONSE: added.

9. 17-21-25 name of persons signing to be typed or printed on instruments presented for recording.
RESPONSE: This cites the county recorder's statute and is not a matter of survey review. That said, the code allows the name to be "typed" or "printed" on the plat. This would be checked at the time of recording and is not required to be "typed" hereon.
10. Easement
RESPONSE: changed.
11. Are these areas part of lot 1 if so acreage is wrong
RESPONSE: the area is not part of the lot nor was it intended to be. The instructions we received was for the lots to extend to the center of the street. See response 11 below.
12. The location, widths, and other dimensions of proposed lots with proper labeling of spaces to be dedicated to public or designated as private. WCO 106-1-5(a)(7) Lot's need to include all of the private drive easement so there is no remaining parcel within boundary.
RESPONSE: This has been modified. However, this type of requirement is confusing as to the reason. I would like to have some type of response from the county as to why the north and east half of the street can not remain as shown. The fact that the lots are now including all of the street would prevent the division of further lots to the northeast of the street if the owner/developer chooses to do so in the future without the involvement of all of the lot owners and a possible plat amendment to cut the lots back to the center of the street. The area that you are calling a "remainder" is actually granted as street and not a remainder in any manner. If the street is called a remainder then all subdivisions created where the lot lines do not include the street should also be considered to be remainders but they are not.
13. Where temporary turnaround is located outside of boundary the easemen it will have to be done by deed.
RESPONSE: To eliminate this issue on this plat I have eliminated the north part of the Hammerhead and modified the south one so that an emergency vehicle can pull into the turnaround and use the street to back out.
However, this is the same situation that was raised in another project regarding PUE's. My response is the same and included hereafter. Also, **I would like a response from the county attorney stating their position for my files.**
"Actually that is not true. Easements or other encumbrances can be created outside the plat boundary. It is simply a matter of the owner granting such. In this situation the subdivider also owns the remainder that this easement is being created upon and PUE's are referenced specifically in the dedication language. So that the connection is more clear I have modified the note.
Weber County Surveyor Response: Yes, you are correct however, that would be by a separate document. As this subdivision doesn't encompass the area of the wanted PUE. Our attorneys have advised us that the plat can only create public utility easements within the area that is being described within the legal description on the plat.
MY RESPONSE on 4-30-2021: It is interesting that the attorney's office would have such an opinion which is contradictory to legal precedence and the purpose of a subdivision plat, deeds, and conveyance documents. So let me offer the following for your consideration, in the mean time, I have been informed that the engineering department, who originally made the request to have this easement

placed on the plat, is no longer requiring it and I have removed it. Should this be found to not be the case adjustments will be made but as noted with item 9 below should not be counted as another review by your office.

POINTS OF DISCUSSION:

I would submit that a subdivision plat is no different than a Warranty or Quit Claim Deed in that in the deed form there is a description of land being conveyed, created, or otherwise discussed. The description of the real estate being dealt with is just as specific as the description on a subdivision plat by bounding a specific area of real estate. However, in the deed circumstance easements, encumbrances, reservations or other restrictions are also enumerated and in many situations such are outside of the “boundary” description of the deed.

Where the attorney’s office has made such a statement related to the subdivision plat their advice must, in my opinion, be equally and equitably applied to all real estate transactions and such advice must be given to the recorder’s office to ignore a deed which attempts to create an easement that is not contained within “bounds” of the description of a deed.

However, to do so would negate the use of “subject to” language in the myriad of situations where title rights are conveyed or dealt with in deeds that are not encompassed by the parcel description of the deed.

The subdivision plat is no less a conveyance document, it is simply in a different form than the typical Warranty deed or Quit Claim deed but none the less just as valid as a document of conveyance of title rights of the owner that is signing the plat.

Next, please consider the following related to plats from Chapter 44 3B Am Jur Legal Forms 2d § 44:41 Form drafting guide.

“Subdivided land in urban areas is often described merely by reference to a surveyor’s plat or map that describes the parcels in an area together with streets and public areas. Lots thus defined are numbered, and the deed to a particular numbered lot that incorporates by reference a map or plat containing a legal description of the boundaries of such numbered lot is sufficient description of the property.¹¹

“Although such plats are usually recorded, an unrecorded plat is sufficient to describe property so long as it is clearly incorporated in the deed, and a copy of the plat can be found.¹²”

Footnote: “11. *Text references*: Boundary description incorporated in deed by reference to plat. 12 Am. Jur. 2d, Boundaries § 8.” Footnote: “12. *Text references*: Incorporation of map by reference in conveyance. 23 Am Jur 2d, Deeds §§ 2010 et seq.”

So in instances of a deed that makes reference to a plat (or other document), whether of record or not, the conditions of the referenced document become part of the deed making such reference as if it had been fully enumerated within the confines of the deed.

So let’s consider a circumstance in which a deed references an *unrecorded* plat and that plat contains lots, easements (within and outside of the lots), streets (within and outside of the lots) and other items but *no boundary description* and at the time of the conveyance all of the land shown is owned by the grantor of the deed making reference to this plat.

Let’s also say that the deed states that the lots, easements, and streets shown on the plat are being conveyed, dedicated or granted. Would it be reasonable to think that only the lots are created? - no, the deed references the easements and streets thereby making them part of the grant by reference.

Let's change the situation a little. The same deed making the same reference and containing the same notation regarding lots, easements, and streets but this time the plat *has a description* and the description only encompasses the lots. The streets and other easements are outside of the described lots. Is it reasonable that the streets and easements are not created or granted, that the new lot owner has no access to the lot being deeded? - no, the deed makes specific reference to such and the land upon which the streets and easements are shown is owned by the grantor. The inclusion of a description is not limiting the grant being made by the owner, it is simply a part of the document as in the case of a Warranty Deed or Quit Claim deed.

In both cases the grant deed specifically referenced the items outside of the Lots and Description. The grant of the easements and streets is valid and, in my opinion, would be upheld. If, however, in the instant case, the Owners Dedication did not make specific reference to the easement which is outside of the described boundary then I would argue that the conveyance was not made because of the lack of being incorporated in the language that the grantor is executing but this was not the case with [redacted plat name] in which I had granting language for the easement. There is an additional issue of a valid grantee to make the conveyance valid but that is not a matter for discussion herein.

The situation of a plat of subdivision, such as the one being discussed, is no different than the deed in the above realistic hypotheticals. The modern subdivision plat is not limited by the boundary description, it is a part of the overall document, especially when the Owners Dedication makes specific reference to items outside the description but shown on the plat and the land upon which the specific item(s) is shown to be on is owned by the signer of the plat (the grantor).

In this situation, the easement referenced is on land owned by the grantor, the signer of the plat and would be viewed as no less a conveyance than if it was within the boundary description.

The language in the Owners Dedication is more than just a "dedication" wherein lots are "created" to be later referenced in a deed. The subdivision plat and Owners Dedication creates and conveys (if properly crafted, labeled, and noted along with a valid grantee) easements, parcels, common area, limited common area, parks, or other such things related to the title of the land.

14. The existing location, widths, and other dimensions of all existing or platted buildings and structures within and immediately adjacent (within 30') to the tract of land to be subdivided. WCO 106-1-5(a)(6)

RESPONSE: To my knowledge, there are no buildings or structures that are within 30 feet of this plat boundary.