

August 9, 2021

Weber County Board of Adjustment

RE: Scott Bracken

Dear Weber County Board of Adjustment:

This office represents Scott Bracken with regard to the appeal to this Board of that certain written decision dated July 27, 2021, wherein Rick Grover, Director of the Weber County Planning Division made a decision not to grant Scott Bracken's building permit application for a single-family dwelling located on Lot 7 of the Hidden Oaks at Wolf Creek Subdivision. According to the July 27, 2021 written decision, the Planning Director made a determination based upon a stream corridor map which is held by the Weber County Planning Department. That map identifies the stream near the Bracken property as a year-round stream.

The foregoing determination by the Weber County Planning Director is in error and the stream corridor map is incorrect. The channel where irrigation water flows west of the Bracken property is primarily used as an irrigation ditch and is not a stream. The Weber County land use ordinances have defined stream as "an area where surface waters flow sufficiently to produce a defined channel or bed. ... This definition is not meant to include stormwater run-off devices or entirely artificial watercourse unless they are used to store or convey pass-through stream flows naturally occurring prior to construction of such devices." While the stream definition mentions that a channel may not contain water year-round, the ordinance at Weber County Ordinance 104-28-2(b)(1)b states "structures, accessory structures, roads, or parking areas shall not be developed or located within 75 feet on both sides of year-round streams, as determined from the highwater mark of the stream."

The channel located on the west boundary of the Bracken lot is not a "stream" as defined by the Weber County Ordinances. Dee Staples, Director of the Wolf Creek Irrigation Company has notified Mr. Bracken that the channel adjacent to the Bracken lot is used for diverting irrigation water. That irrigation channel is a facility which carries water from the diversion of the Wolf Creek stream to the Wolf Creek collection reservoir. It is based upon a diversion of water from the stream but is not itself a stream. That channel was originally dug for the purpose of delivering water to irrigation users downstream. Wolf Creek Irrigation Company is allowed to take water from the actual stream from March 1 until October 31 of each year. Wolf Creek Irrigation Company does not have the right to use that water through the channel next to the Bracken property from November 1 through February 28. Thus, this diversion channel which passes near the Bracken lot to the collection reservoir is not a stream, but an artificial watercourse used for irrigation purposes.



The term 'year-round' is not defined under the Weber County Ordinances. Therefore, because it is not defined in the Weber County Ordinances, this term should be applied based upon its reasonably and customarily understood meaning. Webster's Dictionary defines "year-round" as "happening or continuing throughout the year." There is never any water in the subject channel during the times the canal company is not diverting it. Thus, this channel next to the Bracken property cannot possibly be considered a "year-round" stream, but is more accurately defined as an artificial watercourse.

This body, the Weber County Board of Adjustment, should make the determination that the channel near the Bracken property is not a stream but an irrigation canal and does not fit the definition of a stream nor a year-round stream under the Weber County Ordinances.

As other grounds for this conclusion, the Weber County Board of Adjustment previously granted to neighboring property owners in the same subdivision a variance allowing them to construct their homes within the 75-foot distance of the main ordinance. Therefore, the Weber County Board of Adjustment should overturn the decision of the Planning Commission director.

We respectfully request that the Board of Adjustment determine that the stream ordinance is not applicable to the Bracken lot, Lot 7 of the Hidden Oaks at Wolf Creek Subdivision.

Sincerely,

SMITH KNOWLES, P.C.

*/s/ M. Darin Hammond*_____

M. Darin Hammond

Attorney at Law

MDH:ss
Enclosure