



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on an appeal of a decision made by the Weber County Commission on April 1, 2014, to grant an easement across public property for the Pas De Calais Subdivision

**Agenda Date:** Thursday, May 22, 2014

**Applicant (Appellant):** Carol C. Browning

**File Number:** BOA 2014-06

### Property Information

**Approximate Address:** 6050 South 2900 East (Approximate)

**Project Area:** 2.58 Acres

**Zoning:** Residential Estates Zone (RE-20)

**Existing Land Use:** Residential

**Proposed Land Use:** Residential

**Parcel ID:** 07-574-0001 (Subdivision Lots) 07-254-0010 (ROW Location)

**Township, Range, Section:** T5N, R1W, Section 24

### Adjacent Land Use

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

### Staff Information

**Report Presenter:** Sean Wilkinson  
swilkinson@co.weber.ut.us  
801-399-8765

**Report Reviewer:** CA

## Applicable Land Use Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 1 (General Provisions) Section 2 (Administrative Authority) and Section 7 (Appeals)
- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code 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)
- Utah Code 17-27a-701(1) (Appeal Authority Required)
- Utah Code 17-27a-703(1) (Appealing a Land Use Authority's Decision)

## Background

Pas De Calais Subdivision was submitted to the Weber County Planning Division on June 14, 2013. The subdivision consists of three lots, two of which are proposed to have access on a private right-of-way (ROW) through property owned by Weber County. Prior to submitting the subdivision application, the applicant, Matthew Rasmussen, contacted Nate Pierce, Weber County Operations Director to ask about the possibility of receiving a ROW from Weber County. Mr. Pierce informed Mr. Rasmussen through e-mail that the County would be willing to work with him and review the request, but a more comprehensive plan of the proposal was necessary. Based on this information, Mr. Rasmussen also submitted an Access Exception Application with more detailed plans for the private ROW. This application was approved on August 9, 2013 by Weber County Planning Director Robert Scott, thus allowing the subdivision application to move forward.

On December 27, 2013 the Planning Division held an administrative hearing for the subdivision after noticing residents within 500 feet of the subdivision boundary. Several of the residents attended this meeting and expressed concerns with the subdivision and the proposed private ROW. Based on these concerns, no decision was made at the meeting and the subdivision was sent to the Western Weber Planning Commission (WWPC) for review. Prior to the WWPC meeting on January 14<sup>th</sup>, representatives from the Planning and Engineering Divisions, and Commissioner Matthew Bell met with the residents and Mr. Rasmussen. No decisions were made, but it appeared that progress was being made. The WWPC was

held later that day after again noticing residents within 500 feet of the subdivision boundary. Residents again attended and expressed their concerns, but the WWPC unanimously recommended approval of the subdivision to the County Commission subject to the requirements of all review agencies and the County Commission granting a ROW.

With the recommendation for subdivision approval in place, Mr. Rasmussen approached the Weber County Commission about granting the ROW on March 25, 2014. The Commission opted to receive additional information prior to making a decision and held the item for the April 1<sup>st</sup> meeting. At this meeting the County Commission voted 2-1 in favor of granting a private ROW for Pas De Calais Subdivision. The appellant, Carol Browning, filed an appeal of the County Commission's decision on April 16, 2014.

## **Summary of Board of Adjustment Considerations**

The appellant's basis of appeal states "the County Commission erred in its decision approving the easement requested by the owner/developer of the Pas De Calais Subdivision. The Commission erred as a matter of law by failing to identify the "substantial evidence" that its decision was based upon, consider other practical and feasible alternatives for access, and to consider unusual soil, topographic, or property boundary conditions) See §108-7-31." This statement is followed by an analysis of how and why the appellant feels that the County Commission's decision was incorrect (see Exhibit A).

In reviewing the appeal and consulting with legal counsel, the Planning Division does not believe that the County Commission's decision constitutes an administrative land use decision that can be appealed to the Board of Adjustment. Rather, the Commission's decision constitutes an agreement between Weber County and Mr. Rasmussen regarding his ability to use a ROW across County property, regardless of how the ROW is to be used. The decision regarding how the Weber County Land Use Code §108-7-31 applies was made by Robert Scott, acting as the "land use authority," on August 9, 2013. The County Commission was not acting as the land use authority and is not required to consider anything contained in the Land Use Code in order to make its decision. Therefore, the Board of Adjustment does not have the authority to consider this appeal because the County Commission was not acting as the Land Use Authority in administering or interpreting a land use ordinance as required by Utah Code §17-27a-703(1), contrary to the appellant's statement and references to Utah Code §17-27a-701(1) and Weber County Land Use Code §102-3-3.

The administrative land use decisions made by the land use authority pertaining to the ROW are the access exception application approved by Planning Director Robert Scott under §102-1-2, and the recommendation for subdivision approval by the WWPC. Neither of these decisions were appealed within the 15 day time period allowed by §102-1-7.

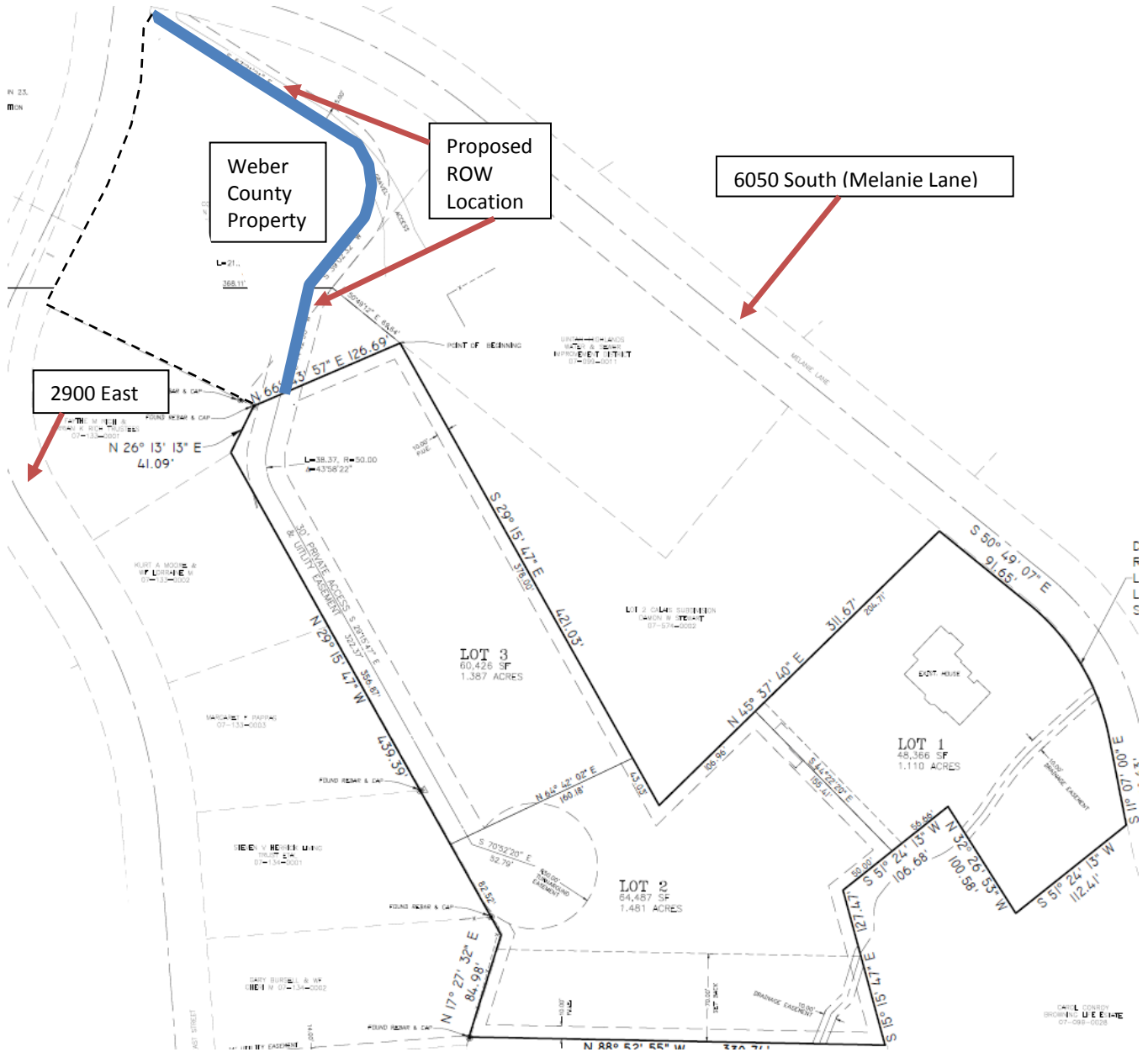
## **Staff Recommendation**

The Board of Adjustment does not have authority or jurisdiction to consider this appeal because the County Commission was not acting as the land use authority in administering or interpreting a land use ordinance as required by Utah Code §17-27a-703(1), nor is it an administrative decision as required by §102-1-7. Therefore, the appeal should be denied.

## **Exhibits**

- A. Appellant's application and appeal information
- B. Access exception approval
- C. Staff report and minutes from WWPC subdivision approval
- D. County Commission minutes
- E. Utah Code and Weber County Land Use Code references

# Map 1



## Map 2

