BOARD OF ADJUSTMENT

MEETING AGENDA
Thursday, August 28, 2014
4:30 p.m.

**Pledge of Allegiance*

Regular Agenda Items

1. **Minutes** **Approval of the May 22, 2014 meeting minutes**
2. **Planning Director's Report:**
3. **Adjournment:**

The meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah

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Minutes of the Board of Adjustment Meeting held May 22, 2014 in the Weber County Commission Chambers, 1st Floor, 2380 Washington Blvd, commencing at 4:30 P.M.

Present: Deone Smith, Chair; Rex Mumford; Phil Hancock; Bryce Froerer; Nathan Buttars
Absent: Doug Dickson; Celeste Canning;
Staff Present: Sean Wilkinson, Planning Director; Steve Parkinson, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

**Pledge of Allegiance*

Regular Agenda Items

1. **Minutes: Approval of the April 10, 2014 meeting minutes**

   MOTION: Rex Mumford moved to approve the meeting minutes of February 27, 2014 as written. Bryce Froerer seconded. A vote was taken with all members present voting aye. Motion Carried (5-0)

2. **BOA 2014-06: 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 in the Residential Estates (RE-20) Zone for the Pas De Calais Subdivision located at approximately 6050 South 2900 East (Carol C. Browning, Applicant)**

   Sean Wilkinson said Pas De Calais Subdivision was submitted to the Weber County Planning Division on June 14, 2013. The area map shows the subdivision and the Right-of-Way (ROW) in question. The subdivision consists of 3 lots and two of those lots would have access on a private ROW located on property owned by Weber County. The applicant for the subdivision, Matthew Rasmussen, contacted Nate Pierce who is the Weber County Operations Director and asked about the possibility of receiving a ROW from Weber County. Mr. Pierce informed Mr. Rasmussen through email that the county would be willing to work with him, 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, 2014 by Weber County Planning Director, Robert Scott, 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. 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 and this matter was forwarded to the Western Weber Planning Commission (WWPC). Just prior to the WWPC meeting on January 14th, representatives from the Planning and Engineering Divisions, and Commissioner Matthew Bell met with the residents and Mr. Rasmussen regarding what was taking place here and what the proposal was. It appeared that there was progress being made, however, no official decision was made at that meeting. Later that evening, the WWPC unanimously recommended final approval of this subdivision to the County Commission, subject to the requirements of all the review agencies and the County Commission granting the 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 one week, to April 1st, so they could receive that additional information. At this meeting the County Commission voted 2-1 in favor of granting a private ROW for the subdivision. The appellant, Carol Browning, filed an appeal of the County Commission's decision on April 16, 2014.

   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 and the recommendation for subdivision approval by the WWPC. Neither of these decisions was appealed within the 15 day time period allowed by Weber County Land Use Code which then would have come to the Board of Adjustment. Based on that, staff's recommendation is that 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 Cod, nor is it an administrative decision as required by Weber County Land Use Code. Therefore, the appeal should be denied.

   Bryce Froerer asked why is the County Commission even involved with this if they didn't need their input, if the decision could have been made by Robert Scott. Mr. Wilkinson replied that the County Commission has to be the authority to grant the access on county property. In considering the actual application of the land use code, that is not something that the County

Commission has to consider in that decision. Their decision is whether or not they want to grant a ROW. The decision on whether or not that potential ROW would meet the land use code was already made by Robert Scott.

Bryce Froerer asked was that done unilaterally and Mr. Wilkinson replied yes, acting as the land use authority as the Planning Director, under the Weber County Land Use Code, he does have that authority.

Chair Smith clarified that this Board will decide if they are going to hear the appeal and determine whether they have the right to hear the appeal. Mr. Wilkinson replied that is correct.

Richard Reeve, attorney representing Carol Browning, said the primary issue being discussed that staff has gone over is the issue of jurisdiction. They disagree with staff's decision and their recommendation that this Board does not have jurisdiction over this appeal. He asked to review certain provisions of the code and the statute that he believes gives this Board the necessary requisite jurisdiction. This Board has jurisdiction because the Board is identified in the County Code Section 102-3-1, as the county's final arbiter of issues involving interpretation or application of the Weber County Land Use Code. The purpose of the County Code Section 102-3-1 is to consider appeals from decisions applying and interpreting the county's land use code. Section 102-3-3 specifically gives this Board the power and authority to review, *"all decisions in which the land use code is interpreted and applied."* In this matter, the application and interpretation of the county's land use code is squarely at issue, and a specific provision of the county's land use code, Section 108-7-31.

On March 25th and April 1st, the County Commission held a public hearing that focused on the application for an access exception. The code was referenced and sited in staff reports, discussed with the County Commission, and they asked for a copy of the code and read the code. They asked for legal counsel to read the code, to have a discussion, and then give his recommendation as to how that code should be interpreted and applied. It's clear that it was an application asking the county to give public land to a private individual. The Planning Department's position is that the County Commission can't and does not consider the code in making the decisions. Isn't that supposed to be what the County Commission is basing their decisions upon? They base their decisions according to law. For land use decisions that law is the Weber County Land Use Code, and that code was discussed at all public meetings relevant to this issue. The interpretation and application of that code is and was the subject matter. They are not appealing the decision made to approve the subdivision application. The focus is specifically on the application for an access exception.

Under the code and under the statue, the County Commission makes a variety of different types of decisions. The county now states that the County Commission didn't make a decision on April 1st. What they did was enter into a contract with the private landowner. He never heard of a contract formation that involved public hearing, public notice, public discussion, and then a 2-1 decision granting an application. He did not believe that a contract between the County and Mr. Rasmussen had yet been drafted, signed, or executed. The county also tried to argue that Mr. Scott's acceptance of the application for an access exception constitutes the use of the land use authority; that is problematic, as there was no public notice given prior to Mr. Scott's approving and signing that acceptance of the application. If that is an exercise of land use authority, where is the due process with the notice to the public and the opportunity to comment prior to that decision? How can his clients appeal a decision that they were not aware of. How could they appeal a decision within 15 days with no notices given? Mr. Scott didn't reach a final decision. His decision in the acceptance of that application was reviewed by the Planning Commission; reviewed and approved by the County Commission. He did not think that was the appealable decision of the land use authority when Mr. Scott signed on August 9, 2013.

Finally, the county in error relies on Section 17-27a-703 that is part of the statue that focuses on the county's appeal process for counties and that is just a general provision. Section 17-27a-104 is the section that allows the counties to differ from general standards set out in the Utah Code. It allows them to adopt stricter standards, and different and stricter procedures for the appeal process. The county has obviously done that in this case, they have set up a different appeal procedure, and the code specifically says that this Board is the appeal authority for all decisions that interpret or apply a land use decision.

Phil Hancock asked Richard Reeve if the basis of his appeal is that the County Commission erred in its decision approving the easement and his contention is that the easement is identical in fact to the use of the property for the subdivision, and/or meeting the ordinance as far as access to the subdivision. Mr. Reeve replied yes, and why he believed that the County Commission erred in their interpretation and application of the code. This code in short basically provides a list of criteria that the county is supposed to follow whenever it grants a right or an interest in public property to a private individual. His argument is that the County Commission didn't follow the very specific and very plain criteria of the code section when giving

Mr. Rasmussen access via an easement. The access that was granted is going to be an easement given to Mr. Rasmussen to cross public property to access his subdivision. It's not a road that has been historically used for the purpose of accessing land for subdivision or residential use. The land where the subdivision was going to be built was until fairly recently, Bybee's Pond in Uintah Highlands.

Phil Hancock asked if Mr. Reeve believed that granting the easement and granting of land use were identical. Mr. Reeve replied no, to clarify, the application for access exception is made in reference to and can only be granted in reference and pursuant to a section of the Land Use Code 108-7-31 that talks about and lays out the authority that the county has to grant access across public land to a private individual. By granting that application in the form of an easement, they are applying and interpreting a provision of the Land Use Code.

Chair Smith asked in regards to the notice period, you stated that there was no notice given out so there was no way for the 15 day period to actually start since there was not any notice; so how did he hear about it? Mr. Reeve replied there was notice given at one point. There was the March 25th hearing that occurred before the County Commission and public notice was given for that hearing. What the county is saying though is, that is not when the land use decision happened. They claim that decision happened on August 9, 2013, when Mr. Scott signed the application that was submitted by the applicant. By signing that, they claim that is the Land Use decision and nobody was given notice that Mr. Scott was given an application. There was no public hearing that was given on his decision, so if they don't know about it, how could they appeal it within the 15 days?

Matt Rasmussen resides at Pas De Calais Subdivision in one of the lots to be vacated, and said that he agreed with Mr. Wilkinson and Mr. Allred that the decision was made earlier and it was confirmed in an overlapping way. Mr. Scott gave the administrative decision and that was a stepping stone that led to another matter, the subdivision. In order for the subdivision to be considered, it must have an access, and there was no access to this land without the grant of Weber County's easement. Mr. Scott approved that and it was confirmed at the Planning Commission meeting who confirmed the subdivision. Without the easement, the subdivision cannot be considered so they were both reconfirmed and recommended for final at the County Commission. The county invests a considerable resource in the highly competent staff; they reviewed and carefully scrutinized over all of this. It eventually went to Western Weber Planning Commission, who was noticed, and if Ms. Browning had wanted to appeal, she could have appealed the Western Weber Planning Commission decision but she did not do that. It had then gone on to the County Commission where it was approved 2-1.

Sean Wilkinson said the decision that was made by Rob Scott in August 2013 was a final land use decision. That authority is granted in Section 102-1-2 entitled Administrative Authority, first paragraph. It states that the Planning Director or his designee is authorized to deny, approve, or approve with condition an application for administrative approval. Administrative approval can be specifically given for, *"access to a lot or parcel using a private right-of-way or access easement."* That is something the Planning Director has specific authority to grant administrative approval of. Mr. Scott was not merely signing off on an application that was submitted, he was making a land use decision to state that this access exception request is hereby approved, based on certain conditions. One of the conditions was that ultimately, the County Commission has to grant a right-of-way and they are the only ones that can do that.

Phil Hancock asked if the Planning Director is required to publish that decision? Mr. Wilkinson read Item B of that same section which states, *"the administrative approval process includes public notice and comments from adjacent property owners as required by State Code."* State Code is very specific for subdivisions, subdivision vacations, road vacations, and several other items. There is no specific requirement in State Code for us to notice for this type of decision; part of the reason is that this is directly tied to a future subdivision, which will be noticed to adjacent property owners. The subdivision was noticed twice. Staff does not feel that there was public notice required by State Code and that Rob Scott had authority to make a final land use decision regarding this access.

Nathan Buttars said he did not understand how the County Commission approval of that easement is not a land use decision. Chris Allred replied if you look at a couple of the definitions from the code, the county of course can enter into some sort of an agreement or grant an easement to people but it is not necessarily a land use decision because it may or may not have anything to do with affecting the land use code. If we look at these definitions in Utah Code 17-27a-103 subsections 26 & 27; and if you look at 27 first, it is the definition of Land Use Authority. The definition of the Land Use Authority means, *"A person or commission agency or other body designated by the local legislative body to act upon a land use application."* That's when we are talking about someone acting as a land use authority and they act upon a land use application. In subsection 26, Land Use Application means, *"An application required by a County's Land Use Ordinance."* There is no application required by a County's Land Use Ordinance for a

county to convey an easement to somebody. It is simply not a land use decision as defined in the Land Use Code. They make all kinds of decisions that may affect property in different ways that are not technically land use decisions.

Richard Reeve said he would have to respectfully disagree with counsel and staff. Mr. Allred just read you Section 17-27A-103, and 104 is the next code section and it states, *"Counties are free to adopt standards that are more restrictive to those laid out in Utah Code."* That brings us to the County Code and 103 also states, *"The County Commission can appoint appeal authorities through a legislative process. The legislative process is drafting and approving the County's Code."* That is legislation that the county issues and the language is right from the County Code; we could call this a land use decision, an administrative decision, an agreement, or whatever but the County Commission says this Board has the power and the duty to review all decisions that involve the Weber County Land Use Code. In looking at the transcripts provided; the Staff Report on March 25th quoted Title 108-7-31, it included language in the Staff Report. They provided that to the County Commission because what they were being asked to do hinged on the interpretation and application of that code section. The three commissioners asked staff if they had a copy of that code section so they could read that language themselves. The county attorney read the transcripts out loud for them and then again provided his advice on how the County Commission should proceed in reference to that code section. If that is not applying and interpreting the Land Use Code, he could not imagine another definition of that phrase, *"to apply and to interpret."* Obviously after it was approved, an appeal has been made. There is always an effort to redefine, and the Planning Commission and the County Commission don't approve, they reconfirm. If Rob Scott approved the application on August 9, 2013; what would have happened if the Planning Commission or the County Commission had denied the application? Would this have moved forward anyway, because the appealable use of authority happened on August 9th? What happens if the County Commission says no, does Rob Scott say he is the land use authority and moves forward? We can call what the County Commission did, they want to call it confirming, but it is an application and interpretation of the Land Use Code.

Rex Mumford stated that Legal Counsel has stated that the decision here isn't a matter of whether or not to make a decision on the appeal but whether the appeal is even a legal decision that they could move forward on. Mr. Wilkinson has indicated that they do not believe that it is a legal decision; so where does the county attorney's office stand. Mr. Allred replied that is correct; and he agreed with Mr. Wilkinson's decision. He has looked at that quite clearly, and there is no question whatsoever that Rob Scott's decision was a classic land use decision. It could have been appealed and was not. Mr. Reeve does bring a good point regarding notice, because an affected landowner does have to have some kind of notice that a decision has been made affecting their property. However, he hasn't characterized that decision as the decision he is appealing. If they look at the County Commission decision, which is what Mr. Wilkinson is saying and to which he agrees, the only decision they made at the County Commission level, was to convey that easement. At that meeting there was quite a bit of discussion about the previous decisions that were made, to provide context, but the discussion was centered on decisions already made. The only actual decision that was made was not a land use decision. The reason that is important, is that people who own property and pursue approvals and obtain them, at some point have to be able to rely on the approvals they have been given.

Chair Smith asked for clarification; they are dealing with an easement and that's the key word, and because it's an easement, they have to go through a process because its government land that this easement is on. Easements are granted everyday by people that want to give an easement to a neighbor, and they don't have to go through a process. They can just go record that if they want to do that on their own land. This is just like that, but because its government land, they have to go through and get the easement granted, is that correct? Mr. Allred replied yes the County Commission is the one that has the authority to convey that easement.

Chair Smith said so if it was just me giving my neighbor an easement on my property, she could do that and she wouldn't have to get approval by everybody else around me to do that. Mr. Wilkinson replied if it was for an access exception, it would go through the exact same process, and one of the conditions would be that you grant the right-of-way. In this case the condition is that the County Commission has to grant the right-of-way.

Richard Reeve said that he didn't believe that an easement had been granted. All they did was give approval subject to different concerns; they're twisting how to look at this. Has an easement been granted? Mr. Wilkinson replied an easement has not officially been granted, but the decision has been made to do so.

Richard Reeve said the discussion is over the application called an access exception application. They are saying that they approved this application and they are going to allow a different than normal access, and it was very clear that easement won't be granted until a lot of things are done in the final subdivision process.

Chris Allred said the Board needs to remember that the County Commission did not approve the access issue, that was already done by Rob Scott and that was a different land use decision that was made and they are not required to approve it.

Bryce Froerer asked what alternative the applicant has if this is not granted today. Mr. Allred replied if they didn't get the easement; he didn't know if they would have an alternative. He was not familiar with this property, and if there were other possible accesses they would have to pursue those, or if this Board came to a decision that they disagreed, they would appeal it to the District Court.

Rex Mumford said the decision that this Board is looking at today, is the decision made by the County Commission on April 1st to grant an easement across public property and yet you are saying that didn't occur on April 1st. Mr. Wilkinson said the decision to grant the easement occurred on April 1st. The actual easement document has not officially been signed but the decision to grant that easement was made.

Richard Reeve said as he looked at the Land Use Code 108-7-31, Ms. Browning's concern the appeal is based on is that she doesn't believe that the commission considered that there hasn't been an analysis of substantial evidence that may support an approval of a private right-of-way or access easement as access to a lot/parcel that may include but not be limited to unusual soil, topographic, and property boundary conditions.

Bryce Froerer asked if Ms. Browning's position was they didn't do an analysis of the easement? Mr. Reeve replied yes, they didn't consider practical and possible alternatives. As the code states that financial adversity to the developer cannot be considered as one of the factors. There are other ways that a property can be accessed.

MOTION: Nathan Buttars moved that the Board of Adjustment does have jurisdiction to hear the appeal. Rex Mumford seconded.

DISCUSSION: Chris Allred said in your discussion if you could lay out your rationale for that decision because this may be appealable and we need to be able to follow your logic. Mr. Buttars said that he would site County Code Section 102-3-3 Subsection 1. Phil Hancock said that he was not convinced yet. Even in the applicant's conclusion for this appeal it says, the decision of the commission approving the easement across public land should be overturned and that is not a land use issue. In the application itself it talks about the easement, and in all the years that he has been involved in the Planning Commission and the Board of Adjustment, Planning has never been involved in the approving of an easement. If that easement grants access to property, and it meets the Land Use Ordinance to grant access that's fine, but the land use of the property itself is definitely the easement. We're mixing two different things here and he is really concerned about this. He didn't believe that this Board should be hearing this issue. They have no right to make a decision of whether the County Commission decision to grant an easement could be overturned by this Board. Chair Smith suggested voting on the motion.

Rex Mumford asked to review the motion. Nathan Buttars said his motion is that the Board does have jurisdiction to hear the appeal based on County Code Section 102-3-3 Subsection 1. Mr. Froerer said that under the statue, they have the authority but he didn't think they should. Chair Smith stated that the key issue here is that it is an easement, and it's within Mr. Scott's authority to make that decision, and that he did not have to have notice given to the surrounding neighbors, because of the type of action that they are dealing with. Nathan Buttars said that maybe he is just conflicting the definition of an easement and land use; and to him an easement is land use but maybe Mr. Allred could explain. Chris Allred said that an easement is just ownership of property. You could have many potential land uses associated on a particular easement. When you look through the zoning ordinances, it describes a variety of land uses, residential uses, agricultural uses, and things of that nature. The existence of an easement by itself doesn't tell you anything about land use per se. Mr. Buttars asked Mr. Froerer if he heard of an easement to ever be considered as a land use. Mr. Froerer replied yes, if you grant an easement to somebody. Chair Smith said an easement does not define the type of property that it is, so the land use is defined by the property that you are dealing with. You can have an easement on any type of property and it's not going to upset the zoning. Mr. Allred said you could have a residential or a commercial piece; you could grant somebody an easement, and that may not implicate any land use. You would have to look at land use issues associated with it but the conveyance of the easement itself doesn't require a land use application. Chair Smith, stated that for example, we are constantly giving easements to utility companies and that doesn't change the use of the property, and we don't have to go through all kinds of issues when they need an easement. Mr. Allred said but the County Commission will also grant easements periodically as it sees fit, and it's not required to go through a Planning Commission. Chair Smith said that easements can limit but don't change change the use of the property; it doesn't define the use of the property. Mr. Hancock said this easement is for access, this isn't an easement to give additional property

to the subdivision so it meets other land use, and it's just to gain access from point A to point B.

Mr. Reeve said that once the Board goes out of its discussion and brings in comments from staff, that it gives him the right to have the last word. Mr. Allred said that he is counsel to the Board and if they wanted to ask Legal questions, they are welcome to do that at any point. Mr. Mumford said that Mr. Buttar's motion has to do with land use and whether or not this Board has the authority to hear an appeal to land use. He struggles a little bit because there is no doubt in his mind that an easement is a land use that is granted. Mr. Hancock said but not according to the land use definition listed in the Weber County Land Use Ordinance; they have to go by that definition. Mr. Mumford asked if that was referenced in their meeting packet. Mr. Wilkinson replied the definition that they are referring to was read by Mr. Allred from the State Code. Mr. Allred said that he read the definitions of Land Use Application and Land Use Authority. Mr. Mumford asked Mr. Allred if he had a definition of land use that would help them on this motion. Mr. Allred said he didn't have a definition of land use but what Mr. Hancock is saying is that land uses are the uses described in the land use ordinance. He didn't know of a specific definition that defines land use. Mr. Buttars said according to the County Code Title 102-1 it does satisfy the Land Use Code and Zoning Map, so the easement doesn't fall into that, and he would have to withdraw the motion.

MOTION: Phil Hancock moved to deny hearing this application BOA 2014-06 based on the staff report and on the conclusion that the Board of Adjustment does not see the granting of an easement as a Land Use issue. Bryce Froerer seconded.

VOTE: A vote was taken with Phil Hancock, Bryce Froerer, and Chair Smith voting aye; and Nathan Buttars and Rex Mumford voting Nay. Motion Carried (3-2)

3. **BOA 2014-05: Consideration and action on a variance request for a reduction of lot width for two (2) lots with existing homes within the Agricultural (A-1) Zone located at approximately 706 S 4100 W and 708 S 4100 W in Ogden (Dan Musgrave, Applicant)**

Phil Hancock recused himself based on the conversation prior to the meeting.

Steve Parkinson said this request for a variance is for a reduction of lot width of two lots with existing homes in the Agricultural-1 (A-1) Zone. The zoning ordinance requires that each lot within this area has 150 feet of frontage, and as existing, these two homes will only have 100 feet of frontage. To give a brief history, the home at 708 South was originally a small dwelling built in 1856. According to county records, it was torn down and a new home was built around 1910 and was based on the assessment and this home exists today to the south corner of the property. The home to the north, which is 706 South, was built in 1953. Both of these homes were built prior to the zoning ordinance and has continued to exist today. In the area there have been additional homes that have been built on this larger property; originally the first subdivision was done in 1981 and the second subdivision was done in 1983. These two homes have the required street frontage.

The current owner would like to separate these two homes to be able to sell them independently. If it is denied, they could continue to stay as non-conforming uses, two dwellings on one property. A little enforcement of the Land Use Code would deem one of these two dwellings unusable if they were to continue, sell, and divide. The neighborhood won't increase because they already exist and have existed since 1953. The special circumstance is basically the history of the area; the home was built where it was and when the home was built to the north in 1953, there wasn't those standards that needed to occur. Zoning gives the property rights to be able to construct new building units, and when these buildings were constructed they were legal and still remain legal. This will not affect the General Plan because no new homes and no new dwellings will exist or be created. The variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, and in order to separate these two homes for separate ownership, they need to subdivide it. Staff recommends approval of these variances to reduce the lot width by 50 feet down to 100 feet for each property, subject to going through the subdivision process and getting it platted.

Rex Mumford clarified that there are separate driveways and separate everything on these two lots? Mr. Parkinson replied yes, separate addresses and everything has been separate for years.

Rex Mumford said along 2900 South and on the map it almost looks like there are some other lots less than 150 feet wide. Mr. Parkinson replied that he hadn't gone in the area and measured, but in the area these are the only two that have less than any other lots. In between these two homes would be 150 feet, the home to the north of them does have 150 feet, and there are no other subdivisions beyond that because it's a farm.

Chair Smith asked if this variance is granted will there be any rebuilding on the lots. Steve Parkinson replied no, the two homes will continue as they are. If on one of the homes they decide they want it bigger, they are not going to increase the number of homes in the area; it will still be just those two.

Chair Smith said currently they can't get a rebuild letter because it is nonconforming. Steve Parkinson replied they can get one because the two homes have been in existence since 1953; they just want to separate it into individual parcels. In every other aspect; setbacks and lot area will be met.

Dan Musgrave, who resides in Ogden, said when his original family settled down in that area, they put this home where they thought it would be best, and there were no rules or zoning during that time. When his grandfather built this second home in 1954 next door, again there were no zoning laws or requirements. In order to proceed and move forward, he is asking for this adjustment and these homes do meet all setbacks. There are actually two small homes on large one acre lots, so they are able to break them apart. They have separate addresses, driveway, utilities, and all those things; but in order to get a loan or insurance, because they are nonconforming, they are unable to get that. That is their request to get an adjustment and they will have 100 foot frontage which is pretty large for a small home, with good spacing between the homes that are there.

Rex Mumford asked if this were granted, and in the future they wanted to build a bigger home, would it have to comply with all the current setbacks, side lots, etc.? Steve Parkinson replied that is correct and the only thing that you are granting is the lot width being reduced and that would be the variance they would get. If they tore down any one of those homes, and wanted to build something bigger, they would have to meet current setback requirements.

MOTION: Nathan Buttars moved to approve BOA 2014-05 based on staff's recommendations to reduce the lot width to 100 feet for each lot. Rex Mumford seconded.

VOTE: A vote was taken with all members present voting aye. Motion Carried (4-0)

Phil Hancock returned to the meeting.

4. **BOA 2014-07: Consideration and action on a variance for a reduction to the required 30 foot front yard setback up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates Subdivision in the Forest Residential (FR-1) Zone located at approximately 673 Ogden Canyon (Jerry and Kathy Burgess, Applicants)**

Steve Parkinson reported that the applicant is requesting a reduction to the required 30 foot front yard setback of up to 2 feet 6 inches. There used to be an old shack that was built a long time ago and was about 4 or 5 feet from the property line. They volunteered to move that and made an application to build the existing home. On the application they indicated a 30 ft. front yard setback and that they were going to meet the required setbacks on both sides and the rear. When it came to building the home the Building Department came in and measured from what they could estimate where the property line and their measurements indicated that the front setback was 33 ft. so the y allowed the applicant to pour the footings and the foundation. It wasn't until the applicant came in to request to build a garage onto the home that it was discovered that the house was built skewed, so they are not sure where the Building Department measured the setback at. Half the house is 30 plus feet away and half the house steps into the setback.

The zoning ordinance requires a 30 ft. setback in this area due to zoning but if you look at the neighborhood when you look at the layout of the properties within it, this property is almost four times further away from the road than any other dwelling there, especially along the northern side. As far as the landscaping, they measured from one corner but not from the other side, and without laser technology they cannot find out exactly if the house is straight on the property. Visually it still appears to have a 30 foot setback all the way around but when it was measured using the Global Positioning System (GPS) and truly surveyed to the exact inches they found that it wasn't. In staff's review and going through the enforcement of the code, it would require two feet six inches of the home to be removed, and that would be a detriment to the applicant. The home has been there for 13 years; special circumstances with the property are with the setbacks that were measured inaccurate, no new dwellings are going to be built, and the variance is not an attempt to circumvent the requirements of the land use code, but to correct an error that was made.

Chair Smith said that she realized that she knew about this property, had this house for sale, and maybe she should recuse herself. Chris Allred replied that she probably had a financial interest in the outcome. Chair Smith replied no, it had been years ago, however, she knows the property very well and the applicants. Mr. Allred said he misunderstood, he thought she had it listed currently. He didn't think that simply knowing the applicants creates a conflict and thinks its okay unless the Board disagrees.

Rex Mumford said in looking at the home next door to this property; it doesn't seem that its setback is as far as what is being addressed here. So the house is already there, what difference does it make? Mr. Parkinson replied it's because of the zoning requirements of 30 feet; they removed the old shack which is how the requirement came about. This variance will satisfy the need to get off the road, there are several homes close to that right-of-way and the zoning ordinance requires 30 feet. It doesn't give that leeway of what the neighborhood looks like and the letter of the law indicates they need to. This variance request is to fix what errors were made and make this a legal property.

Rex Mumford asked if there was a reason they are only doing two feet six inches, why not go three feet. Mr. Parkinson replied because that is where the house is according to a survey.

Bryce Froerer asked isn't the house 27 feet 6 inches from that? Mr. Parkinson replied they have encroached two feet six inches into the 30 foot setback. Their plans for the garage are to meet the requirements because it's attached to the house that is beyond it.

Jerry Burgess, applicant, 673 Ogden Canyon, said that his grandparents were the residents there when it was lease property and there was just a shack on the property within five feet of the front door. In 2001 they removed the shack, built this home, and the intent was to setback 30 feet; the center of the house is 30 feet. It wasn't until a lawsuit they had with a neighbor that they had the property officially surveyed with laser and GPS. It's well documented where a missing corner point which was down at the far corner; but when they went to apply for a permit for the garage on the southern end which is farther away, then the setback requires in the entire addition of the garage, which would totally rest within the property that's allowed the setback. They found that they couldn't pursue building the garage because the other end of the house skewed into the setback. So the method to resolve this issue was to come before the Board and request a variance to permit the house to exist so that everyone can recognize it is legal and pursue the garage.

Rex Mumford asked Mr. Wilkinson if anyone in this subdivision desired to make an addition would have to go through this same process if they didn't meet the requirements. Mr. Wilkinson replied that they have a provision in our nonconforming use chapter that would allow a structure to expand as long as it isn't encroaching any further into the setback that it has now. For example the brown house, it could expand to the rear in a straight line as long as it met the rear yard setback, or it could expand to the other side of the house, as long as it met that setback; unless they got a variance, it would not be able to come any closer towards the road.

Rex Mumford asked this request for a variance; the applicant is not building into the two feet six inches that they are discussing, what is the logic behind doing the variance? Mr. Wilkinson replied the variance is required because currently the house does not meet the setback. It was assumed that it did meet the setback because it was measured and signed off by building inspectors, but the survey proved that it did not meet the setbacks. Therefore, we are going through this process to officially recognize that this is now the case.

MOTION: Rex Mumford moved to approve BOA 2014-07 to grant the two foot six inch variance on the required 30 foot setback on this Lot 14 of the subject property. Phil Hancock seconded.

VOTE: A vote was taken with all members present voting aye. Motion Carried (5-0)

5. **Other Business:** There was no other business.

6. **Adjournment:** The meeting was adjourned at 6:00 p.m.

Respectfully Submitted,

Kary Serrano

Kary Serrano, Secretary;
Weber County Planning Commission