



# Staff Report for Administrative Approval – Access Exception for a Private Right-of-Way

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a request to use a private right-of-way (R.O.W.) as the primary access for Lot 1 of what will be the KEO Homestead Subdivision that does not have frontage on a street.

**Agenda Date:** Wednesday, October 14, 2015

**Applicant:** Andy Hubbard, agent

**File Number:** Access Exception (AE 2015-05)

### Property Information

**Approximate Address:** 5550 East Hwy 39

**Project Area:** 21.273 Acres

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

**Existing Land Use:** Forest

**Proposed Land Use:** Residential Lot

**Parcel ID:** 20-015-0010

**Township, Range, Section:** T6N, R2E, Sections 14

### Adjacent Land Use

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

### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766

**Report Reviewer:** JG

## Applicable Land Use Codes

- Weber County Land Use Code Title 104 (Zones) Chapter 14 (Forest Valley FV-3 Zone)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations)

## Background

The applicant is requesting administrative approval to use a right-of-way (R.O.W) as the primary access for Lot 1 of the proposed KEO Homestead Subdivision. The property is located in the Forest Valley FV-3 Zone at approximately 5550 East Hwy 39. The proposed lot has 21.273 acres. The FV-3 Zone requires single family dwellings to be on 3 acres. The new lot will be accessed by an existing 60 foot wide and 1,903 foot long right of way to the property. The right of way was created in 1974 when the parcel was first split up and serves four additional homes.

The existing R.O.W. is required to meet the design, safety, and lot/parcel standards listed in Title 108 Chapter 7 Section 29 of the Weber County Land Use Code. The R.O.W. is maintained by all property owners using the access. In addition to these standards, the R.O.W. is required to comply with the criteria and conditions listed in Section 31, which is specific to access by a private R.O.W. These standards are listed below under "Summary of Planning Division Considerations." Approval of the private R.O.W. as the primary access does not act as approval of the separate subdivision plat.

## Summary of Planning Division Considerations

108-7-31. Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is subject to the applicant demonstrating compliance with the following criteria and conditions:

### 1. Criteria

- a. The lot/parcel is a bona-fide agricultural parcel that is actively devoted to an agricultural use that is the main use; or

- b. Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.

## 2. Conditions

- a. It shall be demonstrated that the agricultural parcel or other lot/parcel has appropriate and legal access due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right; and
- b. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

Staff has reviewed and analyzed the request for access by a private R.O.W using the criteria in Section 31. Based on review and analysis of staff's research and the information provided, staff has made the following determinations:

- Property boundary conditions are such that the parcel to be subdivided does not have access from a street and the applicants do not own additional property adjacent to a street that could be used to create a flag lot or build a road. In 1974 a R.O.W. was established at this location for four land owners. Some of them then built homes on the R.O.W. This is the final lot to be developed. If a road was required, other property owners adjacent to this property would have to agree to participate in its construction on their land. A subdivision located to the north of this property also used the R.O.W. at this location.
- Construction of a road to serve this lot from Hwy 39 is impractical due to the topography and steepness of portions of the hill. Due to these circumstances, construction of a road to serve one lot is impractical at this time as there would be only for the five homes (four existing, and one proposed) using the access.
- The applicant has provided a copy of the recorded deeds regarding the property and the R.O.W.
- Prior to receiving final occupancy on the new dwelling, the applicants must also sign an agreement to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private R.O.W. with a street that would serve as a required access to additional lots.

## Conditions of Approval

- Prior to final subdivision approval, the applicants must also sign an agreement to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private R.O.W. with a street that would serve as a required access to additional lots.
- Meeting applicable review agency requirements.

## Staff Administrative Approval

Based upon the findings listed above, administrative approval for use of a private right-of-way as the primary access for a lot without street frontage (Lot 1 of the proposed KEO Homestead Subdivision) is hereby approved this 14th day of October, 2015.



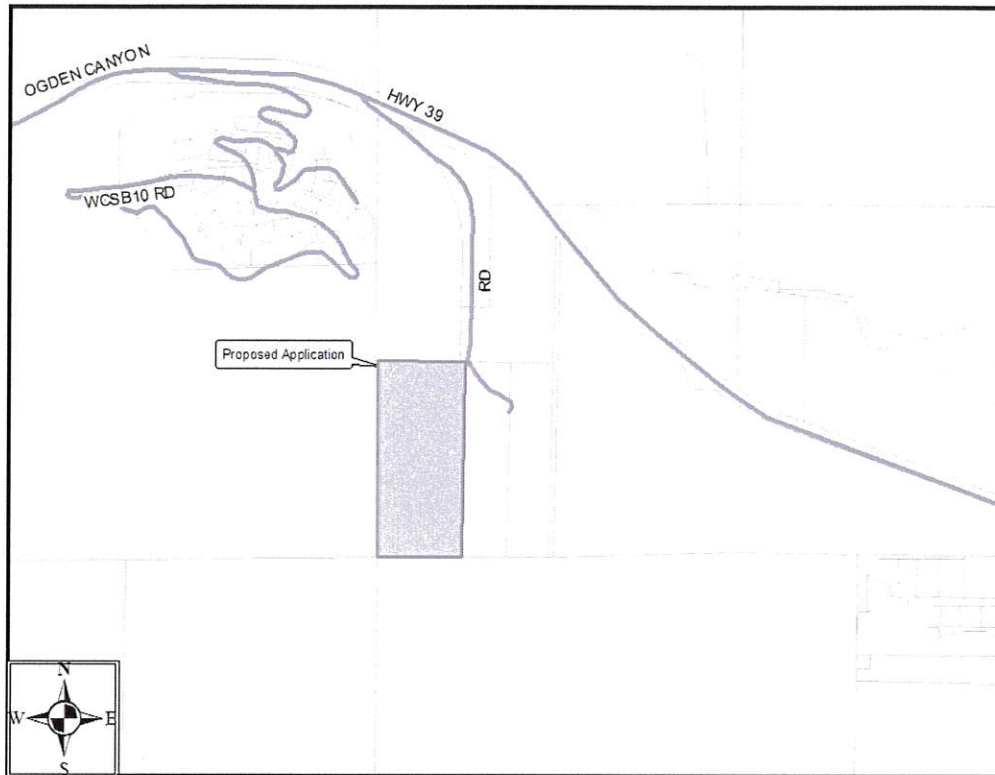
Weber County Planning Director

## Exhibits

- A. Proposed plat
- B. Application with narrative



Map 1



Map 2





## *PROJECT NARRATIVE*

KEO Pineview LLC is requesting to use an existing right of way to access the subdivided lot. We have attached a number of deeds dating back to 1974 which show the access right of way for this parcel being included as part of the transfer of property.

The owners are not proposing any additional improvements along the existing right of way and wish to maintain the rural and mountain feeling of the access and adjoining property through which the right of way passes. If granted this will be the fifth private access along this right of way which is allowed in the county ordinance.

The property owner has also received a Well permit and is in the process of finalizing the approval with Weber Morgan Health on the Septic System.