

Minutes of the Board of Adjustment Meeting held on December 9, 2010, in the Weber County Commission Chambers, in the Weber Center, 1<sup>st</sup> Floor, 2380 Washington Blvd, commencing at 4:30p.m.

**Present:** Celeste Canning, Vice Chair; Phil Hancock; Deone Smith; Max Hohman; Doug Dickson

**Absent/Excused:** Sue Wilkins; Robert Heffernan

**Staff Present:** Robert Scott, Planning Director; Sean Wilkinson, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

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#### **Regular Agenda Items**

1. **Minutes:** Approval of the August 26, 2010 meeting minutes

**MOTION:** Phil Hancock moved to approve the August 26, 2010 meeting minutes with the noted corrections. Doug Dickson seconded the motion. A vote was taken and Vice Chair Canning indicated the minutes were approved with all members present voting aye. Motion Carried (5-0)

2. **BOA 2010-06** Consideration and action on an appeal of an administrative decision by the Weber County Planning Division to issue a Land Use Permit for Lot 8 of Middle Fork Ranches with access by a right-of-way through Lot 7, and an appeal of the Planning Division's application of the Weber County Zoning Ordinance in issuing this Land Use Permit. (Christine J Brown, Applicant)

Sean Wilkinson referred to the staff report and gave a brief history of the Middle Fork Ranches Subdivision focusing on a 15-foot right-of-way for Lot 8 through Lot 7.

The Board of Adjustment should consider the following:

1. Was the Board of Adjustment application submitted after the 15 day appeal period had expired?
2. Is there a basis for the Board of Adjustment to determine that they have jurisdiction to act on this appeal.
3. If the Board of Adjustment determines that they do have jurisdiction to act on this appeal, was the land use permit issued correctly, and was the subsequent interpretation and action on the zoning ordinance correctly applied.

Item 3 should not be addressed until the Board makes a determination as to whether or not they have the authority to act on this appeal.

Vice Chair Canning asked if the Planning staff's position was that the owners of Lot 8 are required to take access through this right-of-way? Mr. Wilkinson replied that the note on the Land Use Permit is an acknowledgement that the owner intends to use the right-of-way as access.

Vice Chair Canning asked if staff would object to the owners of Lot 8 taking their access from the road. Mr. Wilkinson replied that staff would not object.

Doug Dickson asked if the right-of-way was designated for any purpose such as utilities. Mr. Wilkinson replied that staff does not know what that designation for the right-of-way is. All we know is that it is a right-of-way for Lot 8 and that Lot 8 has the right to use that access to their lot. The details associated with the right-of-way are a private matter between the two property owners.

Doug Dickson asked if there was a problem with Lot 8 accessing their building lot from the established road, and Mr. Wilkinson replied that there is no problem if Lot 8 chose to access from the road.

Deone Smith asked is the concern for the Lot 7 neighbor that their home is so close to the right-of-way. Mr. Wilkinson replied that this was one of the concerns mentioned in the application.

Phil Hancock referred to Section 29-3, the duties and powers of the board, it states "upon the timely ..." He took some time to look through some county ordinances and that's all it states. Mr. Wilkinson replied that is the only language that we have regarding appeal time frames. A conditional use for example, has appeal

language specific to conditional uses, but as far as an appeal to an administrative decision, Chapter 23 is all we have.

Mr. Hancock stated that there are no exceptions to the appeal time frames and the Board needs to decide if the appeal was filed within the 15 days, before hearing the other issues.

Christine Brown indicated that as Mr. Wilkinson stated, the land use permit does not convey the right to the right-of-way so that is not really the issue. The Board of Adjustment has the power to interpret the ordinance. She is being impacted by the way the county has interpreted the law, and has the right to ask the Board of Adjustment to interpret the Weber County Ordinance. In Rob Scott's letter dated October 27, 2010, she asked Mr. Scott the county's interpretation and application of the law, and received a response giving the interpretation. She is appealing to have the board read the ordinances and interpret the zoning ordinance and then makes a determination whether the county's interpretation of the ordinance is correct.

Vice Chair Canning asked Ms. Brown what decision she was appealing. Ms. Brown replied that she is appealing so that Troy Green will abide by Weber County Zoning Ordinance 24-2a which states that all lots in the subdivision shall access from the front lot line abutting the public street.

Vice Chair Canning asked Ms. Brown when she believed that the decision was made. Ms. Brown said that they drove across the property on October 29<sup>th</sup>.

Vice Chair Canning asked Ms. Brown if the issue was that the Greens are driving on a right-of-way that's been duly recorded on a plat since 1974. Vice Chair Canning asked Ms. Brown if she wanted the Board to review a decision that was made by a body with the authority to make the decision over 30 years ago. Ms. Brown replied in 1974 the lot existed, in 1996, the lot existed but the driveway did not exist. The right-of-way was noted on the plat and that is questionable.

Vice Chair Canning stated that she was still confused as to what the appeal is. What requirement, decision, or refusal in the enforcement of the ordinance is being appealed? Ms. Brown replied she received a letter from Rob Scott on October 27, 2010 stating that the right-of-way is approved as a legal access.

Vice Chair Canning asked Ms. Brown if the October 27 letter from Rob Scott is the order from which she is appealing. Ms. Brown replied yes; the Greens drove across her property, which is in violation of the Weber County Ordinance.

Phil Hancock clarified the dates in question. On March 11<sup>th</sup> the official land use permit was issued by the Planning Division. On October 27, after several meetings with the Planning staff, Ms. Brown received a letter in response to her inquiries from Rob Scott. Then on November 9, 2010, she filed the appeal. Mr. Hancock asked Ms. Brown if her contention is that the decision was made on October 27, 2010 and not on March 11, 2010. Ms. Brown agreed with the dates but said she is appealing the interpretation of the law.

Vice Chair Canning stated that the Board has to get through the timing issue first before they can even worry about the other issues. She stated that if an appeal had been filed in March, within the 15 days, then they would have had the authority to get to the merits of this case. What they are grappling with is Ms. Brown did not timely file her appeal so the Board does not get to consider the merits of the appeal. The Board members must deny the appeal if it was not filed timely and that is why they are focusing on that very narrow issue right now.

Vice Chair Canning paraphrased for clarification; when you say you're not just appealing the land use permit, you are taking the position that because the Planning staff didn't send someone to prohibit the owners of Lot 8 from using that right-of-way for any purpose, that decision triggered another right to appeal on your part.

Karen Roylance, Christine's daughter, responded for Ms. Brown, stating that every time the Green's drive across her property, she is appealing the county's interpretation of the zoning ordinance. The right-of-way in question does not meet the Weber County Zoning Ordinance requirements for a private access. According to Weber County Ordinances both in 1974 and 2010, the access to the lot has to be a minimum of 16 feet, that right-of-way is 15 feet, and therefore, it does not meet county ordinance.

Christine Brown asked what constitutes a refusal to enforce the laws. If there is a violation of the law, then the people who are responsible, which are the Planning Director and Planning staff, should enforce the county ordinance, but then they refused. Now we have a refusal that can be appealed, and the Board can interpret whether they followed the zoning ordinance.

Deone Smith asked Ms. Brown at what point did she realize that they had a permit there and that they were going to start using that right-of-way? Ms. Brown replied on September 24 she asked the county if a land use permit had been issued as she had no knowledge prior. She then asked for a copy and then asked staff to enforce the ordinance.

Vice Chair Canning verified that on September 24, Ms. Brown became aware that a permit had been issued. Ms. Brown confirmed that construction on the home started a couple of months prior to Ms. Brown asking for the land use permit or building permit. Ms. Brown replied that she didn't know the land use permit existed and they never accessed through that right-of-way. No one had ever driven on this right-of-way prior to October 28<sup>th</sup> or 29<sup>th</sup>.

Vice Chair Canning asked for comments from those in favor of the applicant's petition.

Karen Roylance, 1181 E 3050 N, North Ogden, stated when the land use permit was first given, it was to use the applicant's property and no one informed her that this permit was given. Ms. Brown's property was the only one that was affected by this land use permit, and the county did not inform her that it existed. The Greens began building their home using the access from 1400 North. It was pointed out to them that they wanted to use the right-of-way as a private access. Then they began asking questions and through various meetings, found out that information was withheld; that what they could do was not contained in the permit. After some research, they found out that this access directly violated the ordinances. We went to the county to point out that this directly violated the ordinances. We went home and found out that Rob Scott is the Planning Director who is responsible to enforce the ordinance. We then wrote a letter to Mr. Scott asking for enforcement of the ordinance and he replied with the letter that you have dated October 27<sup>th</sup>, so that is the timely factor within the 15 days for us.

Vice Chair Canning asked if her position was that the October 27<sup>th</sup> letter from Mr. Scott constituted a decision of the planning staff that you're appealing from. Ms. Roylance replied yes. When they were given a copy of the land use permit they were told the permit was issued in March and we had 15 days to appeal it. They read through a specific ordinance, and it stated that any permit issued in violation of this ordinance, is null and void without any time limit, and that's when they appealed to Rob Scott to enforce the ordinance. That's when he gave the decision that he would not enforce it. They appealed that decision to the Board of Adjustment and that was within the 15 days.

Max Hohman asked if it was explained that the right-of-way was there when the property was acquired. Ms. Roylance replied that her mother bought this property in 1975. The plat states that there is a 15 foot right-of-way to Lot 8, but it is not on our deed, their deed, or in the dedication. Through personal experience, usually a right-of-way is described and its uses would be described in one of those places, and it is not.

Ralph Bollom, 7800 E 1300 N, Huntsville, President & Border Master for Mountain Canal Irrigation, stated that his concern is with a 15 inch pressurized waterline that is in that same area and it looks to him like the driveway is going to be right on top of the waterline.

Vice Chair Canning asked for comments from those against the applicant's petition.

Zane S. Froerer, Attorney for Troy Green, stated he wanted to focus on the time issue. The decision to record and approve a 15 foot right-of-way took place in 1974. What Ms. Brown is really asking this board is to review that decision. What was done on March 11 was simply the planning staff approving the use as it was approved on the plat. There are two issues when talking about the timeline; one is the March 11 timeline and the other is Ms. Brown asking the Board of Adjustment to make a decision regarding the what process was done 1974. To summarize, the idea that Ms. Brown heard about this right-of-way in July or August is not the consensus. Mr. Green spoke to Ms Brown a year prior to getting the building permit and they told her about their plan. That's important because when they told her they were going to build and use the right-of-way, they were changing the orientation of the home, so the right-of-way would be their main driveway. Instead of facing the road, they turned it so it would face the right-of-way and Ms. Brown didn't indicate any objection at that point. Even though they didn't use the right-of-way until October 29, she was aware that they intended to use it long before that. They only started using the right-of-way on October 29 because before that they were trying to be amicable neighbors and work out an arrangement. There is substantial evidence that Ms. Brown knew what was going on and knew of their intentions. They oriented their house based upon a lack of verbal objection prior to this, and they went through the whole process, and obtained their building permit based upon approvals in 1974.

Vice Chair Canning asked Mr. Froerer if it is his opinion that the decision they are asked to consider is a decision that was made in 1974 when the subdivision was recorded. She also asked if it is his position that the March 11 date should have triggered the 15-day appeal period. Mr. Froerer replied no, the March 11 date should have triggered it, but even if the October 27 letter triggered it, the Board's decision still has to be based on what happened in 1974. She was provided a verbal explanation of why the county did these things in several meetings based upon information obtained by the county. This was just a written confirmation of what she had already been told.

Zane Froerer, stated in June 2009 when he acquired the land, he visited with Ms. Brown, walked the right-of-way, and Ms. Brown implied and stated to him; "great, we'll clean it out, things will be great." In 2009, he deeded Lot 8 to Troy and Victoria Green. They started their building, the Land Use Permit states March 11, and their construction came out of the ground in July giving constructive notice of a permit. The timeline should go back to notice which was, at the latest, when the dirt was broken at the site.

Troy Green, 7522 E 1400 N, Huntsville, stated that he concurred with the timeline. The timelines were there clear back when they gave notice on July 17, 2010 when they broke ground on that home. That was constructive notice and she was given visual notice at that time.

Vice Chair Canning asked Ms. Brown if she felt the Weber County Planning staff granted the right-of-way to the Greens by issuing the land use permit. Ms. Brown replied that by the study of the law and the ordinance she did not believe the permit granted access. The lot did exist in 1974 but their home and driveway did not. It's not the land use permit but the interpretation of the ordinance that she is being adversely impacted by.

Jeaniel Sauer, 1475 N 7500 E, noted that on March 11, Weber County Planning Division issued the land use permit. She quoted the letter from Rob Scott and stated this is illegal because they "relied" on information in the letter. If they looked at that same plat that was made in 1974, they should have seen that the right-of-way was 15 feet wide, and the definition in the ordinances both then and now state that a lot right-of-way for use as private access is a strip of land not less than 16 feet wide. There is no timeline that you have to worry about because it did not meet that standard, plus the right-of-way must be mentioned in the Metes and Bounds on that same plat. It was never mentioned and there is no description of the right-of-way, which must be there in order for it to be legal. Therefore, the March 11<sup>th</sup> permit was not legally done at all and there is no reason for Ms. Brown to have a 15 day appeal time limit. There is a mistake made by the Planning Commission to go ahead and approve the right-of-way when they gave the land use permit. Her opinion is that just because there was a mistake made in 1974, it shouldn't be repeated in 2010, just

because they “relied” on information to be allowed to stand at the expense of Ms. Brown’s property. There should be no 15 day appeal timeline here because it was illegally done back in 1974.

**DISCUSSION:** The Board entered into a deliberation and came to the following conclusions:

1. This appeal was more of a legal issue beyond the Board’s jurisdiction.
2. The appeal was on a decision that was made back in March, not on October 27.
3. The Board is being asked to reevaluate and revisit a decision that was made in 1974.
4. The Board of Adjustment clearly has no power to force the Planning Division or any other entity in the county to enforce ordinances.
5. The land use permit was issued on March 11, 2010. The appeal is dated November 9, 2010 which is certainly beyond the 15 day time frame to appeal.
6. Proper public notification was done and the purpose as previously stated is a legal matter, and is far beyond the Board’s scope.

**MOTION:** Phil Hancock moved that the application for the appeal BOA 2010-07 be denied for the following reasons: The reasons stipulated by staff as well as the explanation that Item #1 on the applicant’s appeal in 1974 is well beyond the 15 days and that is beyond our authority. Item #2 we don’t have the authority to enforce the ordinances or make anyone else enforce them. Item #3 the timeline on the appeal of the land use permit is well beyond the 15 days. Deone Smith seconded the motion.

**VOTE:** A vote was taken and Vice Chair Canning indicated the appeal was denied with Phil Hancock, Deone Smith, Max Hohman, Doug Dickson and Celeste Canning voting aye. Motion Carried (5-0)

**3. Handbook: Consideration and discussion of the Board of Adjustment Handbook**

Rob Scott informed the board that over the past year or so we have been engaged with working with the board by providing them with training and also by providing information that is hopefully helpful to them as part of their mediator responsibilities as a board. We thought it would be helpful to put together information regarding rules of procedures, the opening meeting statement, the county ordinance, and a place for additional training materials. Over time as they are able to look at this, and there is other information that would be helpful to the board, please let us know. Staff is interested in information that the board members need so they can have the ability to make appropriate decisions as part of their charge.

**4. Training: 2011 Training Schedule**

Sean Wilkinson stated that they proposed to continue the training as they have over the last couple of years. For the 2011 Training, they have proposed three training meetings this year in April, August, and December. The dates are tentative and on the first Thursdays of each of those months.

In April, they should be done with the Amendments of Chapter 29, which focuses on the board’s duties, powers, and responsibilities, and hopefully that amendment will have been approved by the County Commission. Phil Hancock asked if they are going to see the proposed amendments before staff presents them to the County Commission. Mr. Scott replied if they remember they had a work session about the ordinances and if there is anything that staff is proposing outside of what they previously discussed, he didn’t see that to be a problem to call a special meeting in order to review those with the board. Mr. Wilkinson added that they could have a special meeting in January or February. They don’t have topics as this point for the additional two training sessions and they are open to any suggestions the board members may have about training topics they would be interested in.

**5. Staff Communications:**

**5.1. Planning Director’s Report:**

Rob Scott stated that some of you were able to attend the annual dinner and some were not. For those that were able to come, he hopes that they had a great time and those that could not hopefully next year they would be able to have the dinner to meet everyone’s schedule. Staff wants to wish you and your families a Merry Christmas.

5.2. Board Member's Remarks:

The board members congratulated Vice Chair Canning on maintaining order during the meeting, focusing on the timeline and bringing the discussion back to the issue at hand.

6. **Adjourn:** The meeting was adjourned at 6:25 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Kary Serrano".

Kary Serrano, Secretary,  
Weber County Planning Commission