
WEBER COUNTY BOARD OF ADJUSTMENT

Christine J. Brown : DECISION ON APPEAL OF ISSUANCE
OF LAND USE PERMIT AND RELATED
Appellant. : ISSUES
:

BACKGROUND

The Weber County Planning Division issued a land use permit for the construction of a single family dwelling on Lot 8 of the Middle Fork Ranches subdivision. The permit identified a right-of-way across Lot 7 as access for Lot 8. The Appellant, Christine J. Brown, is the owner of Lot 7. Ms. Brown filed an application with the Weber County Board of Adjustment stating as follows: "I appeal and I allege that there is error in an order, requirement, decision, and/or refusal in enforcing the Weber County Zoning Ordinance and the Subdivision Ordinance." The application identified the following issues: "I. The ROW was never legally created. It violated the Weber County Subdivision Ordinance in 1974 when the Plat was dedicated. The right-of-way was illegal then, it is still illegal. It never existed. II. The Greens shall abide by the Weber County Zoning Ordinance 24-2A. They shall access their lot on the public street that abuts their property. III. The Land Use Permit was issued inappropriately. I appeal the enforcement of all of these laws and I appeal the refusal to enforce these laws which are attached in this application."

The Board of Adjustment held a hearing on the matter on December 9, 2010.

FINDINGS

Having reviewed the ordinances at issue, and after hearing oral argument from the Appellant and Weber County planning staff, the Board finds as follows:

1. The Middle Fork Ranches Subdivision was approved and recorded in 1974.
2. The recorded subdivision plat shows a 15 foot right-of-way for Lot 8 across the north boundary of Lot 7 which is specifically identified on the plat as "15' R.O.W. for Lot 8."
3. On March 11, 2010 the Weber County Planning Division issued a land use permit for a single family dwelling on Lot 8. The permit identifies the ROW across Lot 7 as access for Lot 8.

4. The Appellant observed construction activity on Lot 8 prior to August 2010, and she met with planning staff several times about the ROW beginning August 9, 2010.
5. The Appellant requested and received a copy of the land use permit on September 24, 2010.
6. The Appellant submitted her appeal to the Weber County Board of Adjustment on November 9, 2010.
7. Section 29-3 of the Weber County Zoning Ordinance requires an appeal to the Board of Adjustment to be filed within 15 days from the date of the final decision being appealed.
8. On October 7, 2010 the Appellant submitted a letter to Planning Director Rob Scott alleging that various provisions of the Weber County Zoning and Subdivision Ordinances were “blatantly ignored,” in connection with the issuance of the land use permit. The letter requested that Mr. Scott enforce those ordinances.
9. In response to her letter, Mr. Scott issued a letter dated October 27, 2010 to the Applicant explaining the basis for why he felt the land use permit had been issued properly.

CONCLUSIONS

Based on the above findings, the Board reaches the following conclusions:

1. Decisions concerning the creation of the ROW were made in 1974, over 30 years ago. The Board of Adjustment only has authority to act on appeals of certain decisions when those appeals are brought within the appropriate appeal period. The issue of whether the ROW was created legally in 1974 was not raised within the time limitations for appeals to the Board of Adjustment as established under Utah State Code or Weber County Ordinance. Therefore, the Board does not have jurisdiction to decide this matter.
2. An alleged failure to enforce an ordinance is not an “order, requirement, decision or refusal made in the enforcement of” the zoning ordinance. Nor is it a “decision applying the land use ordinances” as set forth in Utah Code Ann. §17-27a-701, et seq. To the extent the Appellant requests the Board to compel the county to enforce its ordinances, the Board has no authority to provide that remedy.
3. The letter issued by Planning Director Rob Scott is not an order, requirement, decision or refusal “made in the enforcement of” the zoning ordinance, nor is it a “decision applying the land use ordinance.” The letter is simply an explanation of why the Planning Division felt the decision to issue the land use permit was not in error. Therefore, the Board of Adjustment does not have authority to take any action in connection with the issuance of that letter.
4. The issuance of the land use permit was a written decision by a land use authority. However, the land use permit was issued on March 11, 2010, approximately eight months before the

Appellant submitted her appeal to the Board of Adjustment. Moreover, in addition to her discussions with planning staff concerning the ROW beginning on August 9, 2010, the Appellant actually received a copy of the land use permit on September 24, 2010 – approximately a month and a half before filing her appeal with the Board of Adjustment. Because the appeal was not filed within the 15-day time frame set forth in Section 29-3 of the Weber County Zoning Ordinance, this Board does not have jurisdiction to decide that appeal.

The minutes of the Board of Adjustment meeting are available at the Planning Commission Office upon the Board's approval of the minutes.

DATED this _____ day of January, 2011

Weber County Board of Adjustment
Vice Chair (acting as chair in the
absence of the Chair)