

Exhibit D

Minutes of the Board of Adjustment Meeting held on January 27, 2011, in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd, commencing at 4:30p.m.

Present: Celeste Canning, Vice Chair; Phil Hancock; Deone Smith; Max Hohman; Doug Dickson; Sue Wilkins; Robert Heffernan

Absent/Excused:

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

Regular Agenda Items

1. **Minutes:** Approval of the December 9, 2010 meeting minutes

MOTION: Celeste Canning moved to approve the December 9, 2010 meeting minutes with the noted corrections. Phil Hancock seconded the motion. A vote was taken and Chair Heffernan indicated the minutes were approved with all members present voting aye. Motion Carried (5-0)

2. **BOA 2010-08: Consideration and action on a request for a special exception to allow a dwelling to be built on a lot without frontage using access by a private right-of-way. (Christina Williams, Applicant)**

Sean Wilkinson reviewed the staff report and added that there are specific criteria that have to be met in order for this special exception to be granted:

1. The lot does not have frontage on the street, but has access by a private right of way.
2. The Board of Adjustment considers it unfeasible or impractical to extend a street to provide access to the lot, because of unusual topographic or property boundary conditions.
3. Before approval by the Board of Adjustment to build on any private right of way; the land owner of record, shall place a covenant to run with the land, agreeing to participate in the cost of developing any future road required by the County to replace the private right of way that is required as access to additional lots.

Based on those criteria, staff has the following comments:

- The lot does not have frontage on the street and the applicant's dead status that they have access on the existing dirt road. However, the Planning Division in no way guarantees that the right to use this road across other properties exists. Staff recommends that the applicant work with the affected property owners to obtain documentation and permission to use this right of way.
- There are topographic and property boundary conditions that make construction of a private road for one summer cabin impractical. Although it would be possible to improve the road to the county standards, there are physical barriers that would make it impractical. In order to reach the applicant's property, the road crosses a few different streams, in multiple locations, and each of these crossings may require bridges, culverts, etc., which would greatly increase the improvement costs.
- The applicant is required to sign the covenant that requires them to help pay for the cost of future road improvements if they become necessary for additional development.
- Staff recommends approval of this special exception request for access by a private right of way. Again, though the Planning Division in no way guarantees that the applicant has access on this proposed right of way.

Phil Hancock asked if staff would still recommend approval if the other property owners denied access. Mr. Wilkinson replied that staff's recommendation is based on the criteria. The applicant is claiming that they have a right of way based on their legal description. Whether or not that is a valid description of the right of way is not something that staff is going to argue.

Celeste Canning asked if the applicant would be required to demonstrate their right to use the right of way during the subdivision approval process. Sean Wilkinson replied that the access issue would have to be addressed during the subdivision process.

Celeste Canning asked if the board would be approving a specific route or just addressing access. Mr. Wilkinson replied that that the request was for access on the existing dirt road, based on the applicant's legal description.

Chair Heffernan asked what happens if the approval from the other landowners is not forthcoming. Mr. Wilkinson replied that it is a private matter between the different property owners.

Douglas Dickson asked if staff would give them additional information on the Sensitive Land Ordinance. Sean Wilkinson replied that the Sensitive Land Ordinance is part of our zoning ordinance and it requires, *"construction of a road to be at least 50 feet away from ephemeral certain streams, and if it is a year round stream, it has to be 75 feet away from the high water mark of that stream."* If there were to be significant improvements done on this road, then those criteria would have to be met, however, this road existed prior to that ordinance, and the existing road can be used as access.

Christina Williams, Applicant, 9295 E 1800 S, indicated that all she is asking for is access and the ability to build a summer cabin, with a bathroom and a sink, where she can stop while riding her horse.

Chair Heffernan asked Ms. Williams if she had taken steps to talk to adjacent landowners and she replied that she had only spoken with the Monastery who stated that they did not have any problems. She did not contact the other landowners because the Allen's indicated that they had been working with them for several years and did not foresee a problem.

Celeste Canning clarified that Ms. Williams didn't know if there is a right of way that goes through the Monastery and Bally Watts properties. Ms. Williams replied that they bought the right of way with the property that has the existing road, with a 60 foot easement. She assumed everything was okay, but for any specific questions about the validity of that right of way, the Board would need to speak to Mr. Allen.

David Allen, 350 North Main, Farmington UT, stated his father and mother owned the property and he facilitated the Williams purchase of the property. He supports the County's recommendation for a variance because it's about 2.4 miles of dirt road, and it would be completely cost prohibitive for a family or an individual, unless they were wealthy, to put any kind of a road in. They have a home up on the ranch that was built in the 30's. There was another home in the area that was part of the homestead application and was lived in when the homestead was granted. There is a gate agreement that was put in place to lock and block access to the road back in July 1970. The original copy of that gate agreement was signed by all the landowners so when the gate was put in place, the private landowners thought that it would be prudent to lock that access. They made an agreement with all the former landowners, to the following; *"The installation and maintenance of the locked gate across the Bennett Creek Roadway ..."* The Monastery, the Byram's, the Allen's, and the Basin Land and Livestock Co., all signed this, and the specific wording said that it is an unlimited and established right of easement. This is a map produced by Weber County dated 1937, after taking an inventory of county roads. The map shows a county road going to the gate of that property. He believed the road went to the gate of that property because his grandfather had homesteaded property and had a home there. Because there is no deeded history on this road, there will be a debate about access, and they are committed to have discussions with the landowners.

Scott Williams, 9295 E 1800 S, stated that they have already gone through the process on the waste water for a percolation and soil analysis with Weber County and have been approved. Their opinion should be a factor regarding the septic system and waste water system.

Jerald Engstrom, Huntsville Town Attorney, stated that Huntsville town has some concerns of allowing development in this area. The Source Protection Plan was prepared long before this application and it encompasses all of the Allen property. Huntsville is afraid that any development in this area would potentially put pollutants into the springs which furnish the major part of the water for Huntsville Town and also for the Monastery. For that reason, the mayor of the town wants to be absolutely sure that anything that is done there does not negatively impact the water supply of Huntsville, which comes from the spring. That source protection is provided by the Utah Law to allow them to protect their water source.

Sue Wilkins asked if the spring from the runoff water goes through the water treatment plant as a standard procedure. Mr. Engstrom replied that it is standard procedure for Huntsville water to go through the plant, except for the Monastery water which is not as purified as Huntsville water. The spring is jointly shared by the Monastery and Huntsville town.

Celeste Canning asked if Mr. Engstrom was alleging or claiming that it was Huntsville Town's position that if the Williams' were to access their property on this road, it endangers the drinking water of the Monastery and the town of Huntsville. Mr. Engstrom replied that they were concerned.

Celeste Canning asked Mr. Engstrom if it was his position that one more vehicle on the road a few times a year presents a danger to the drinking water. Mr. Engstrom replied that they don't want additional pollutants to come into the spring and increase their cost of purifying the water.

Douglas Dickson asked if anyone between the Monastery and Huntsville uses that water as well. Mr. Engstrom replied that there are certain people that are not in Huntsville town that they have allowed to be connected to their culinary water system.

Phil Hancock stated that most of what has just been discussed has been outside of the Board's purview. They have a petition for a special exception, and the criteria for a special exception, does not include those items that have just been discussed. They don't have the authority or the expertise to make a decision based on that discussion, so they need to get back to Chapter 29-3, Section 10A of the Weber County Zoning Ordinance for a special exception for a right of way.

Robert Froerer, Attorney representing the Monastery, stated that they have the same concerns about the water issue and believe it could be addressed without harm. Regarding the road, he has a copy of the gate agreement and the Monastery's position is to not oppose the Williams' right to access their lot, but pointed out that this is not a residential area. The Allen's have a cabin that is used very sporadically but has never been lived in except maybe when the homesteading took place. This agreement that the landowners signed is not an easement. It is simply an expression agreement between parties, of their intent to continue to use this road to access and do their farming, ranching, and recreation. It wasn't intended to be used as a way to develop the property since they decided to put a locked gate. Ms. Williams has indicated that she has a 60 foot right of way, but that deed did not have that authority to give a 60 foot right of way because there wasn't a 60 foot right of way to give. The Monastery is happy to allow people that own property in this area to access their property. They are very concerned about the future and this has generated a lot of discussion between the landowners, the town, and the Byram family who are here as Bally Watts LLC. In talking with staff, the designated water source protection area encompasses a huge area that Huntsville has filed to protect their water, and the Monastery is a beneficiary. The Monastery does not get their water from the Huntsville Culinary Plant but they get it from the same source. They are not in favor of the road being expanded and used as a public roadway to access structures.

Val Byram, 7590 S 1375 E, South Weber, said that seven years ago, he and the Allens were fighting tooth and nail on how to stop development, and now they are here begging for it. He

has the same exact road, the same exact area, and they were sued in 2004. This went to court before Judge Dutson, and everything that has been discussed tonight such as the water was discussed. The county was called to indicate if it was a county road. Judge Dutson ruled in their favor on all accounts, that it is not a public road, there is no easement or right of way there; it's just a dirt road to their property only. He doesn't think the County has the right to overturn the court ruling.

Celeste Canning stated that they were dealing with a different issue than what has already been decided by the court. The Byram's and Huntsville town wants the Board of Adjustment to stop all access, and that is not what they are considering today.

Darrell Byram, 899 E South Weber Drive, representing Bally Watts LLC, stated that he believes this would set a precedent, because there is another area where people have access on one road, but they are trying to get access up a private road because it is a shorter route. If this variance is approved, won't that set a county-wide precedence that anybody can drive on a private road?

Chris Allred responded that there is some confusion about the role of this particular board. The concerns expressed are appreciated but this board doesn't have any authority to deal with those issues, nor does the County have any authority to say that road is available to the applicant or determine those rights. As Mr. Wilkinson stated previously, if the board made a decision that such a right of way could be used as far as zoning, they do not have any power to grant them any right or authority to use that road. They would still have to go through the subdivision process where the questions about runoff, sewer, zoning, and all of those issues would get answered. The only question the board can determine is whether the right of way the applicants claim they have would satisfy a zoning requirement for a special exception.

David Allen stated that he failed to address previously, where the County says that part of the criteria for them getting a variance was that they would need a road in the future and if a road was developed, they would have to contribute funds. The Williams have already made such a covenant to them when they bought the ground, and they would be happy to put whatever funds they would be putting towards the road to that covenant with the County. In terms of the conditions of the road, that road is in disrepair right now largely because of hunting and foul weather, and they have not done any maintenance in the last four or five years, other than fixing really bad spots.

Chair Heffernan closed the item to public comment.

DISCUSSION: Celeste Canning stated she was wondering if this was brought in prematurely by the applicant and even staff has indicated there are issues that need to be addressed. Douglas Dickson stated that he concurred with that; these are issues where the landowners, need to work it out amongst themselves. Phil Hancock stated in spite of what the applicant has explained their intent is that is only a portion of what they would get if this was approved. There are no utilities available and there are a lot of issues that need to be resolved before it can come to this board. Sue Wilkins asked legal counsel to clarify that because this property doesn't have frontage on a road, there is a possibility to grant a special exception. Chris Allred replied that if they had frontage, it would go straight to the subdivision process. Since they don't have frontage, they are looking for a special exception to that frontage requirement, and so that is the issue before them, not any of the subdivision issues. If you found that it did satisfy that requirement, you would not in any way, be telling the applicant that they have any specific right to access. The board's decision would not grant them anything that they don't have now.

Phil Hancock stated Section 3.2a states, *"the board finds that the lot does not have frontage on a street, but has access by a private right of way,"* and he thinks it's premature to grant a special

exception if that lot does not have access. Chris Allred stated that if you did approve to grant access, as they have alleged they do have access, it would be in the nature of subject to the fact that they do have that right.

Doug Dickson indicated that the board should not give approval and set precedence and there are records to support that. There are four different owners involved and as a board, he believes they need to let them work it out. Sue Wilkins stated that they are not setting precedence on access if they approve this case. Celeste Canning stated that if there were an alternate route this could solve their problem.

MOTION: Douglas Dickson moved to deny BOA 2010-08 on the basis that the right of way access issues need to be resolved before it is brought in and this application was premature. Phil Hancock seconded the motion.

DISCUSSION: Phil Hancock said that normally he is in favor of special exceptions, but he believed this a little bit beyond the intent of the ordinance. Sue Wilkins asked if the motion was to deny or table it until they bring in more information. Douglas Dickson replied it is to deny. Chris Allred clarified if it's denied, he didn't think that meant that they couldn't come back and reapply with more information.

VOTE: A vote was taken with Mr. Dickson and Mr. Hancock voting aye, and Ms. Wilkins, Ms. Canning, and Chair Heffernan voting nay. Chair Heffernan indicated that the motion to deny failed. Motion Failed (2-3)

MOTION: Celeste Canning made a motion that they conditionally approve the applicant's application on the condition that the applicant, prior to receiving a building permit or proceeding with development on the lot, subject to any regulation by Weber County Planning Division, that it is established that the applicant does have a right to access on the claimed right of way. The motion is subject to the fact that this lot does not have frontage on the street, it may have a key access by a private right of way, and that is a condition that the applicant would have to establish prior to a building permit or for the use of the roadway under conditions approved by the Weber County Planning Division staff. If it isn't feasible or practical at this time to establish access to the lot by bringing a street to the lot primarily because of its remoteness and lack of development. The applicant must as a second condition, enter into the covenant to participate in the cost of road development as required by the ordinance. Sue Wilkins seconded the motion.

Rob Scott made a recommendation on the motion that instead of saying prior to a building permit, state prior to final subdivision approval.

AMENDMENT MOTION: Celeste Canning amended the motion to change from prior to building permit to prior to final subdivision approval. Sue Wilkins seconded the motion.

VOTE: A vote was taken with Ms. Canning, Ms. Wilkins, and Chair Heffernan voting aye, and Mr. Dickson and Mr. Hancock voting nay. Chair Heffernan indicated the motion carried. (3-2)

3. Election: Election of Chair and Vice Chair for 2011

MOTION: Sue Wilkins moved to reelect Robert Heffernan as chair for another term. Celeste Canning seconded the motion. A vote was taken and Chair Heffernan indicated that the motion carried with all members present voting aye. Motion Carried (5-0)

MOTION: Phil Hancock moved to reelect Celeste Canning as vice chair for another term. Douglas Dickson seconded the motion. A vote was taken and Chair Heffernan indicated that the motion carried with all members present voting aye. Motion Carried (5-0)



Weber County

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WEBER COUNTY BOARD OF ADJUSTMENT

NOTICE OF DECISION

Name: Christina Williams
P.O. Box 341
Huntsville, Utah 84317

Date: February 4, 2011

BOA Case No.: 2010-08

You are hereby notified that your request for a special exception to allow a dwelling to be built on a lot without frontage using access by a private right-of-way heard by the Weber County Board of Adjustment in a public meeting held on January 27, 2011.

The Board of Adjustment gave consideration to your request and rendered the following decision:

Your appeal to the Board of Adjustment is **approved with the following conditions:**

1. The applicant must work with a representative from the Monastery and Bally Watts LLC to establish the right to use the existing dirt road through their properties. The right to access must be established prior to final subdivision approval.
2. The applicant must sign a covenant agreeing to participate in the cost of future road improvements that may be required if the private right of way is turned into a road for the purpose of development.

The minutes from this meeting will be approved at the next meeting of the Board of Adjustment. Please contact the Weber County Planning Division for a meeting schedule. After the minutes are approved they will be available in the Weber County Planning Division office and on the Planning Division website.

Sincerely,

Sean Wilkinson
Weber County Planning Division

mailed to applicant
2/4/11