



BOARD OF ADJUSTMENT

AMENDED MEETING AGENDA

**Thursday, September 17, 2020
4:30 p.m.**

Join Zoom Meeting

<https://us02web.zoom.us/j/83349560451>

Meeting ID: 833 4956 0451

One tap mobile

+12532158782,,83349560451# US (Tacoma)

+13462487799,,83349560451# US (Houston)

- *Pledge of Allegiance*
- *Roll Call*

Regular Agenda Items

1. Minutes: Approval of the August 13, 2020 meeting minutes.

2. BOA 2020-06: Consideration and action on a request to appeal the approval of Schildhauer Subdivision, and the associated private access easement, located at 3946 N 3175 W, Ogden.

Applicant: Kristen Zaugg; Staff Presenter: Steve Burton

3. Adjournment

Minutes of the Board of the Adjustments meeting of August 13, 2020, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1. Ogden UT at 4:30 pm & Via Zoom Video Conferencing

Members Present: Rex Mumford-Acting Chair
Kevyn Grimes
Neil Barker

Staff Present: Rick Grover; Planning Director; Steve Burton, Principle Planner; Chris Crockett, Legal Counsel, Marta Borchert, Secretary

Both Chair Warburton and Vice-Chair Froerer are not present, an acting chair will need to be elected.

MOTION: Neil Barker nominates Rex Mumford as acting chair. Kevyn Grimes seconds. Motion carries (3-0)

Pledge of Allegiance

Roll Call

1. Appreciation of Service Presentation: Phil Hancock: Director Grover states that Phil Hancock served for quite some time on the Board of Adjustments and he has now resigned. Weber County staff would like to express their gratitude to him and his family. Director Grover notes that Planning Staff presented him with a commemorative clock. His advice and counsel was great. He always read his packet and that was greatly appreciated. Board members agree Phil Hancock will be missed on the Board of Adjustments.

2. Minutes: Approval of the July 9, 2020 meeting minutes.

MOTION: Kevyn Grimes moves to approve the minutes. Neil Barker Seconds. Motion carries (3-0) Minutes are approved as presented.

3. BOA 2020-06: Consideration and action on a request to appeal the construction of a home located at 3946 N 3175 W.

Steve Burton states that this application on an appeal construction of a home located at 3946 N 3175 W. The address isn't specifically assigned to a parcel. The applications cited parcel number 193920002. The received date on that application is June 25, 2019. Matt Wilson was legal counsel for Weber County at the court hearing and he can explain in greater detail. This case was remanded to the Board of Adjustments from the District Court.

Matt Wilson states that this is correct, there was an application that was received, and in consideration with Planning, they determined that it was not filed timely. Because of this, it was not forwarded to the Board of Adjustment. They filed with the District Court. There was a hearing either last month or at the end of June, and the District Court felt there was a procedural error and wanted it to be brought back before the Board of Adjustments.

Mr. Burton states it wasn't clear what was being appealed. The appellant hasn't stated a specific land use decision that is being appealed. Also, there isn't an actual date, for Planning to measure the 15 calendar days. Looking at the land-use code that relates to the Board of Adjustment 102- 3-4 (A)(4) it states *All appeals to the Board of Adjustments shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land-use authority.* Looking back at the date, June 25, 2019, there simply were not any land-use decisions that were made 15 days before that, nor were there any notices of decision that were posted 15 days before this date. For this reason, Staff is making a recommendation that the appeal application be denied. Staff feels that the application was not filed timely.

Chair Mumford asks what is being appealed. Based on what is on the screen there is already a home on the parcel. Mr. Burton states that in the application it states that they are appealing the construction of the home.

Matt Wilson states that he can shed some light on this. There are three different land-use decisions that they took issue with. The first was for alternative access because the parcel did not have the necessary frontage. The second was the subdivision of that, because before it was just one parcel. The third was the building permit, which was issued on May 6, 2019. These are the three land-use decisions and that's why Planning Staff and the legal always believed it is untimely because it came in more than 15 days after any land use decision for those properties there.

Chair Mumford asks if the home is finished. Mr. Burton states that it is and the certificate of occupancy was granted on October 18, 2019. Chair Mumford asks who is appealing the decision and what decision is being appealed?

Mr. Burton states that this might be a good question for the applicant and based on what was presented to Planning staff, the applicant did not state in their application what they're appealing, other than the construction of a home, the appellant is Kristen Zaugg who is a neighbor directly to the South.

Chair Mumford asks if the Board members have any questions for Matt Wilson or Steve Burton. There are none at this point.

Chair Mumford asks Mr. Crockett if the item should be opened for public comment. Mr. Crockett states that he does not believe that it should be because the Board of Adjustments is responsible for reviewing the record that has been presented. This is what their decision should be based on. Public comment wouldn't be relevant. The applicant has a right to speak and to address the issues on the record.

Zane Froerer, representing Kristen Zaugg states, that the meeting agenda for the Board of Adjustments has the wrong application two applications were filed. He explains that looking at the front page of the application for the Board of Adjustments at the top it says international building code appeal. This was not the application concerning the issue that was meant to be heard. He adds that this application was filed by his client. This one did specifically address the building. However, also filed on that same day was an appeal to the Board of Adjustments that, put at issue, a couple of decisions. The reason why the appeal was filed so late was due to his client alleging discrepancies in the notices that were sent out. The first time his client Kristen Zaugg had an actual notice that something was happening was on the neighboring lot was when construction started on the access of the front. Shortly thereafter Mrs. Zaugg came to the Planning office and attempted to file a Board of Adjustments appeal. There was a bit of a process and some problems with that. That is why the court remanded it to the Board of Adjustments because the court agreed with Mrs. Zaugg that the question of timeliness of that appeal should be answered by the Board of Adjustments and not by any other department within the County. He asks that hearing be continued until the Board of Adjustment is provided with other applications in the packet. The reason the other application that was filed along with this one is because there was an International Building Code appeal. The appeal that was taken up to the district court was the appeal of the subdivision request in the alternate access request. The Board of Adjustments has not been briefed on that. He adds that he could brief the Board on it but it would be more appropriate for the County to have an opportunity to put that into the agenda and put that into the report.

Matt Wilson states that he would not object to that. He notes that this was the only application that was received. Mr. Wilson states that they can put that on him. He adds that he would be fine if the meeting is continued for the Board to be able to review that application.

Mr. Burton states that speaking for a Planning Division staff. They did not receive other applications with the one presented. He adds that he can't speak to other applications being filed.

Mr. Froerer asks if the meeting can be continued so that Planning Staff and Applicant can work out whether or not it was filed. The one that was presented is not the one that his office prepared. He notes that he sent it with his client he is not sure what was submitted.

Director Grover asks if Mr. Crockett received any applications in his office. Mr. Crockett states that the only information he received is the Board of Adjustment agenda and packet that was emailed out to the members. He states that he hasn't seen anything else related to this case or any other file provided by the Planning Department. He adds that he agrees that they need to make sure that there is a complete file so that they may review the entire record. He states that if they want to take time to verify the application this would be appropriate. He adds that they need to make sure that any papers that are provided to the Board have been filed with the Planning Department. He asks Director Grover how quickly they can verify that there is a complete application for the Board to consider. The next thing is that the Board needs to be comfortable with the amount of time that they've been given to prepare the materials. There are several things they can do. The question is are they comfortable proceeding with the information that they have before them. The first thing would be to verify that the Board has been provided an entire record.

Director Grover asks Mr. Burton how long would it take you to just go through and verify that the applicant has submitted a complete record.

Mr. Burton asks Matt Wilson, concerning court proceedings and the decision was remanded, was it about three separate appeal applications? Mr. Wilson states the application was never provided to the court. Mr. Burton asks if they didn't specify which applications were remanded. Mr. Wilson states that he believes that it would be the same result on any of the applications because nothing was forwarded to the Board of Adjustment. It would still have to go before the Board of Adjustment.

Mr. Froerer states that he believes Mr. Wilson is correct and in his petition for review did reference the alternate access, and the subdivision. He notes that his office records show that what was sent over were those appeals. And that's what he was meant to be appealing and that's what he took up to the court and that's what he briefed. If there was a disconnect between Matt Wilson and him, it never came out in the briefing it was never brought up. He is not sure how that got past both of them. He states that he wants to continue this and get with the County and find out what happened with that appeal.

Mr. Wilson states that he is fine with that because ultimately the court felt there was a procedural error and then it needed to come before the Board of Adjustment. He adds that they need some time but he will leave that up to the Board.

Mr. Burton states that from the Planning Division after those court proceedings, the application that was presented is what Kristen Zaugg filed with the Planning Office.

Mr. Wilson states that as Mr. Froerer pointed out the alternate access and the subdivision. That was what was remanded by the court and there was probably some kind of disconnect and the application needs to be located.

Mr. Burton asks if even though they have the dates of those decisions would a full record be the minutes and everything because, because if our if the stance is that they weren't filed timely. Nothing was filed.

Mr. Crockett states that concerning the application that it was attached to the agenda, the Board could make a decision on that issue as far as timeliness but if there's another appeal application out there that was submitted at a different date, it would have to be verified. If this is the only thing that was brought to the Planning Department there's a complete record and the Board can take up the timing issue. If the Planning Department never received those other appeal applications, and that's not part of the record and shouldn't be considered by the Board.

Mr. Burton states they did not receive anything else and those court proceedings happened in July of this year.

Mr. Froerer states that he would like the Planning Department to go back and verify that this was the only application they received. And he doesn't want to deal with an application that is not correct. There's no reason to just push ahead with the wrong application. The application that was attached to the agenda was not what was argued at the District Court. If the County wants to go through

this again he will take it up to the court again and it will be brought back again. He states that he is asking for a continuance so that this can get straightened out and they don't have to go through the hassle, but it's up to the County.

Mr. Burton states that he has the file and the date that it was accepted. He states that he can present it.

Mr. Wilson states that he is not objecting to it being continued. He notes that review could probably just happen between Planning Mr. Froerer and himself at another time to allow everyone to review that.

Mr. Crockett states that he agrees with that, it might be wise just to take a step back, make sure that everyone has all of the information, and then come back at another time. This must be done correctly to make sure that the Board has a complete packet. He notes that it may be what has been provided but it would be wise to make sure.

Chair Mumford asks if there is a Board member who would like to make a motion to table this and allow the County to take the necessary time to review and see if there are additional applications and work with Mr. Froerer to make sure that the file is complete.

Neil Barker states that after listening to Mr. Wilson and Mr. Froerer, it sounds like they both agree that it would be wise to wait. He states that he would ask Mr. Froerer, if he feels like he has the applications to show some proof of that, rather than putting it all on to the Planning Division. His client should also have a record of that. He adds that he would like to see a timeline, rather than just dates thrown out. It should be organized. It would be helpful for the Board members to be able to see a timeline of events.

MOTION: Neil Barker moves to table, BOA 2020-06: Consideration and action on a request to appeal the construction of a home located at 3946 N 3175 W. to allow Planning Department staff and the Kristen Zaugg and Counsel Zane Froerer time verify the application. Kevyn Grimes seconds. Motion carries (3-0)

MOTION: Neil Barker Motions to adjourn. Kevyn Grimes seconds. Motion carries (3-0)

Adjournment: 5:13 PM

Respectfully Submitted,

Marta Borchert



Staff Report to the Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action on a request to appeal the approval of Schildhauer Subdivision, and the associated private access easement, located at 3946 N 3175 W, Ogden.
Agenda Date:	Thursday, September 17, 2020
Applicant:	Kristin Zaugg, represented by Zane Froerer
File Number:	BOA 2020-06

Property Information

Approximate Address:	3946 N 3175 W
Project Area:	1.50 Acres
Zoning:	Agricultural Zone (A-1)
Existing Land Use:	Residential
Parcel ID:	19-392-0002
Township, Range, Section:	T7N, R2W, Section 22

Adjacent Land Use

North: Residential	South: Residential
East: Residential	West: Residential

Staff Information

Report Presenter:	Steve Burton sburton@co.weber.ut.us 801-399-8766
Report Reviewer:	RG

Applicable Land Use Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 15 (Agricultural A-1 Zone)

Background

The appellant submitted the appeal application on June 25, 2019. Under Weber County's Land Use Code (Sec 102-3-3), The Board of Adjustment has the following duties and powers:

- To act as the appeal authority from decisions applying and interpreting this Land Use Code and Zoning Maps.**
- To hear and decide variances from the requirements of the Land Use Code.

The appellant states that they are appealing the final approval of the Schildhauer Subdivision, which was granted by the County Planning Director on November 21, 2018. The appellant is also appealing the approval of the alternative access application for a private access easement, which was approved during the same meeting.

Under the board's decision criteria for appeals (Sec 102-3-4 (a)(4)), "All appeals to the board of adjustment shall be filed with the planning division not more than 15 calendar days after the date of the written decision of the land use authority." The date of both written decisions is November 22, 2018.

The Planning Division did not receive an appeal application within 15 days from any written decision. The most recent land use decision made for the subject parcel was the issuance of a building permit and land use permit on May 6, 2019. The building permit was for a single-family dwelling which received final occupancy from the county on October 18, 2019. The county does not issue written decisions for land use or building permits and an appeal application was not submitted within 15 calendar days from either the date of building permit issuance or

occupancy.

The appellant states that the notices sent to property owners adjacent to the subdivision and alternative access were misleading, given the listed 'approximate' address on the notices. An appeal was not filed within 15 days of November 22, 2018.

Staff Recommendation

Staff recommends that the appeal request BOA 2020-06 be denied. The recommendation is based on the following findings:

1. The appeal application was not submitted within 15 calendar days from the date of a land use decision or the date of a written decision of a land use application.

Exhibits

- A. Appeal application and narrative.
- B. Written Decisions from Subdivision and Alternative Access approval

Weber County Board of Adjustment Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
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Property Owner Contact Information

Name of Property Owner(s) Kelly L. and Kristin Zaugg		Mailing Address of Property Owner(s) 3944 N 3175 W Farr West UT 84404	
Phone 801-814-3740	Fax		
Email Address krzaugg69@gmail.com		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Attorney Zane Froerer		Mailing Address of Authorized Person 2661 Washington Blvd Suite 201 Ogden UT 84401	
Phone 801-621-2690	Fax		
Email Address zane.froerer@froererlaw.com		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Appeal Request

- A variance request:
 __ Lot area __ Yard setback __ Frontage width __ Other: _____
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance
- Other: _____

Property Information

Approximate Address 3946 N 3175 W yet it's 3928 N 3175 W Farr West UT 84404 recorded as Ogden UT 84404 <i>(Which is an existing established address already)</i>		Land Serial Number(s) Parcel #193920002 No land Serial on application	
Current Zoning A-1			
Existing Measurements		Required Measurements (Office Use)	
Lot Area 1.5 acre	Lot Frontage/Width 0	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback	Rear Yard Setback	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

Applicant Narrative

Please explain your request.

We are asking Weber County to retract what has happened with Kevin Schildhausers 2.58 acre lot before he subdivided it and sold 2 such lots. We (neighbors and members of the Bay View Association) did not get the opportunity to attend a meeting with our concerns regarding Mr. Schildhausers approval for a private access strip in June of 2018 and his approval for a 2 lot subdivision in November 2018. Both of which are not in compliance of Weber Counties codes and ordinances.

This property has not complied with many codes since Kevin Schildhauser purchased the property and then subdivided it against the codes set forth in the West Weber A-1 guidelines. Including but not limited to stipulations in the codes listed.

(Code Violations)

- 101-1-7
- 104-11-6 (a & b)
- 106-2-4 (c & d)
- 108-7-30
- 108-7-31
- 108-7-32
- 23-29-1 (3 & 5)
- 23-29-2 (5)
- 23-29-3 (1,2,3,**4)
- 23-30 (1,2,6)
- 23-31-1 (1)
- 23-31-2 (1)
- 23-32 (2)

Other issues have arose due to notices not being mailed out in a timely manor to property owners of interest or that live within 500 feet of property referred to. Address on such referred property was not the address or close to the address of the property that is in question of being altered without complying to ordinances for the area. Because of this, property owners were that received the notices were mislead into believing it wasn't something that would affect them. When said property owners realized the issue that was being imposed many of them contacted the county by phone or by actually going into the County Offices to try to resolve the issues and they were neglected and dismissed by the parties that they had contacted in regards to the non compliance of the ordinances and the address referred to as being wrong. This happened on multiple occasions.

Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
 - a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Variance Request (continued...)

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

5. The spirit of the land use ordinance is observed and substantial justice done.

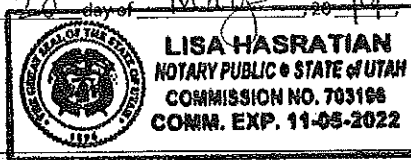
Property Owner Affidavit

I (We), Kristin Zaugg, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

Kristin Zaugg
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 20 day of May, 2019.



Lisa Hasratian
(Notary)

Authorized Representative Affidavit

I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Dated this _____ day of _____, 20____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)



Weber County Planning Division
www.co.weber.ut.us/planning_commission
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8371
Fax: (801) 399-8862

Weber County Planning Division
NOTICE OF DECISION

November 22, 2018

Kevin Schildhauer
4186 N 3175 W
Ogden, UT, 84404

You are hereby notified that your application for final approval of Schildhauer Subdivision, located at approximately 3938 N 3175 W, UT, was heard and approved by the Weber County Planning Division in a public meeting held on November 21, 2018. Final approval was granted conditioned upon meeting all requirements from county reviewing agencies.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Western Weber Plan.
2. The proposed subdivision complies with applicable County ordinances.

The next step in the process is to ensure complete compliance with the above listed conditions of approval. This letter is intended as a courtesy to document the status of your project. If you have further questions, please contact me at sburton@co.weber.ut.us or 801-399-8766.

Sincerely,

Tammy Aydelotte, Planner
Weber County Planning Division



Weber County Planning Division
www.co.weber.ut.us/planning_commission
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8371
Fax: (801) 399-8862

Weber County Planning Division
NOTICE OF DECISION

November 22, 2018

Kevin Schildhauer
4186 N 3175 W
Ogden, UT, 84404

You are hereby notified that your application for final approval of an alternative access request for a future two lot subdivision, located at approximately 3938 N 3175 W, UT, was heard and approved by the Weber County Planning Division in a public meeting held on November 21, 2018. Final approval was granted conditioned upon meeting all requirements from county reviewing agencies.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Western Weber Plan.
2. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel based on topographic and property boundary conditions which limits typical access requirements in a unique way.
3. The proposed subdivision complies with applicable County ordinances.

The next step in the process is to ensure complete compliance with the above listed conditions of approval. This letter is intended as a courtesy to document the status of your project. If you have further questions, please contact me at sburton@co.weber.ut.us or 801-399-8766.

Sincerely,

Tammy Aydelotte, Planner
Weber County Planning Division