



Weber County Planning Division

February 25, 2016

Ms. Carol C. Browning
6182 South 2855 East
Ogden, Utah 84403

Ms. Browning:

The Weber County Planning Division has received a request for an approval to use a private access easement as the primary access for two proposed residential building lots that will not have frontage on a street. This Access Exception project number is AE#2013-03.

Consistent with the Second Judicial District Court's Order, I am writing to officially notify and invite you to submit comment concerning this project at or prior to an administrative meeting that will be held in the Weber County Planning Division Office located in Suite #240 in the Weber Center (2380 Washington Blvd, Ogden Utah) on Thursday, March 24, 2016 at 4:00 pm.

If you have any questions, please do not hesitate to call the Planning Office at 801-399-8791.

Sincerely,

Scott Mendoza
Assistant Planning Director
Weber County Planning Division

cc: Christopher Crockett, Deputy Weber County Attorney, Civil Division
Sean Wilkinson, Community and Economic Development Director
Rick V. Grover, Planning Director
Matthew and Laura Rasmussen
Richard H. Reeve



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a request to use a private access easement as the primary access for two lots that do not have frontage on a street.

Agenda Date: Thursday, March 24, 2016

Applicant: Matthew and Laura Rasmussen

File Number: Access Exception (AE 2013-03)

Property Information

Approximate Address: 6050 South 2900 East (Approximate)

Project Area: 2.59 Acres

Zoning: Residential Estates Zone (RE-20)

Existing Land Use: Residential

Proposed Land Use: Residential

Parcel ID: 07-574-0001 (Subdivision Lots) 07-254-0010 (Access Easement Location)

Township, Range, Section: T5N, R1W, Section 24

Adjacent Land Use

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

Staff Information

Report Presenter: Scott Mendoza
smendoza@co.weber.ut.us
801-399-8769

Report Reviewer: RG

Applicable Land Use Codes

- Weber County Land Use Code Title 104 (Zones) Chapter 3 (Residential Estates Zones RE-15 and RE-20)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations)

Background

Due to a Second Judicial District Court decision to vacate an approval that was originally granted to this access exception application on August 9, 2013, this application is being reconsidered. See Exhibit H for Order Granting Plaintiff's Motion For Summary Judgment (Civil No. 140904054).

The applicants are requesting an approval to use a private access easement as the primary access for two proposed lots that will not have frontage on a dedicated street. The proposed lots are located at approximately 6050 South 2900 East (in the Uintah Highlands area), total 2.59 acres combined, and sit within what is currently described as Lot 1R of the Calais Subdivision which consists of 4.206 acres. See Site Map on page 4 for project location. See Exhibit A for the application and project narrative. See Exhibit G for the original Calais Subdivision Plat.

The easement will include a legal description that locates the private access along the southwesterly boundary of property owned by Weber County (Lot 36, Eastwood Subdivision No. 10, Tax ID# 07-254-0010) and presently used as a stormwater detention basin. It connects two proposed lots to 2900 East Street (approximately 180 feet) where the private access entrance will be constructed. Once the easement leaves County property (heading south), a private drive (and corresponding reserved access easement) will continue along the southwesterly boundary of (the proposed) Lot 3 approximately 440 feet to where it will then terminate in a turn-around area on (the proposed) Lot 2. These lots, if the access exception is approved, will be dedicated as part of the proposed Pas De Calais Subdivision. See Exhibit B for the proposed Pas De Calais Subdivision plat that shows the proposed private access.

The applicants have submitted detailed plans for Weber County to review and have approached the Weber County Commission requesting that the Commission grant the above described access easement. This request was presented and

discussed during public meetings held on March 25, 2014 and April 1, 2014. During the meeting held on April 1st, the County Commission approved the request and accepted the applicant's offer to convey (to the County) certain property that is currently occupied by an embankment that forms a portion of the County's existing detention basin. See page 5 of Exhibit A for the applicant's proposal to convey certain property to Weber County. See Exhibit C for a site plan that shows the property that would be conveyed to the County. See Exhibits D and E for Weber County Commission meeting minutes dated March 25, 2014 and April 1, 2014.

The access easement and private improvements are required to meet the design, safety, and lot/parcel standards listed in §108-7-29 of the Weber County Land Use Code. In addition to these standards, the requested access exception is required to comply with the criteria and conditions listed in §108-7-31 which is specific to access by a private right-of-way or access easement. These standards are listed immediately below under "Summary of Planning Division Considerations." Approval of the access exception does not act as an approval of the subsequent subdivision plat.

Summary of Planning Division Considerations and Analysis

Section 108-7-31 of the Weber County Land Use Code states the following:

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.

The Weber County Planning Division Staff (designated as the land use authority according to §102-1-1) after giving consideration to the criteria found in §108-7-31 of the Weber County Land Use Code, has reviewed the request for an access exception and has provided the following Staff analysis and findings:

- The subject property is shown, on a Utah Geologic Survey Map (<http://geology.utah.gov/apps/intgeomap/>), as being (potentially) situated in between the Wasatch Fault and another fault. Due to the property's proximity to potential faults, the Planning Division feels that it is impractical to require the construction of a public road (and other infrastructure) that would intentionally cross a fault line. The alignment of the proposed access easement (and private driveway improvements) does not cross fault lines as shown on the Utah Geologic Survey Map. See Exhibit F for UGS Map.
- Property boundary conditions are such that the lots to be subdivided do not have access from a street. Although the applicants do own adjacent property with frontage on Melanie Lane, access to the proposed lots at this location would not be practical due to steep slopes (the existing lot is a restricted lot which indicates that the land exceeds 25% slopes), an existing dwelling, and a stream with dedicated drainage easement. A road located in this area would intersect Melanie Lane at an unsafe location (limited sight distance due to curve), be disruptive to the existing dwelling and dangerous due to steep slopes and other geo-technical considerations i.e., surface rupture faults and landslides. It

is unsafe and impractical for a road, serving only two lots, to be constructed in this area. See Exhibit G for the original Calais Subdivision Plat.

- The applicants have received an approval for an access easement from Weber County. The easement location is shown on the proposed preliminary (Pas De Calais) subdivision plat that has been submitted to the Planning Division.
- Prior to approval of a subdivision application, the applicants will 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 access easement with a dedicated street that would serve as the access to the proposed lots or any other additional lots.

Conditions of Approval

- The access easement granted by Weber County shall be recorded at the same time the proposed Pas De Calais Subdivision is recorded.
- An access easement, across (the proposed) Lot 3, providing access to (the proposed) Lot shall be reserved/recorded in an appropriate manner and shown on the final subdivision plat.
- 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 access easement with a street that would serve as a required access to the lots.
- Any other conditions imposed by applicable review agencies.

Staff Administrative Approval

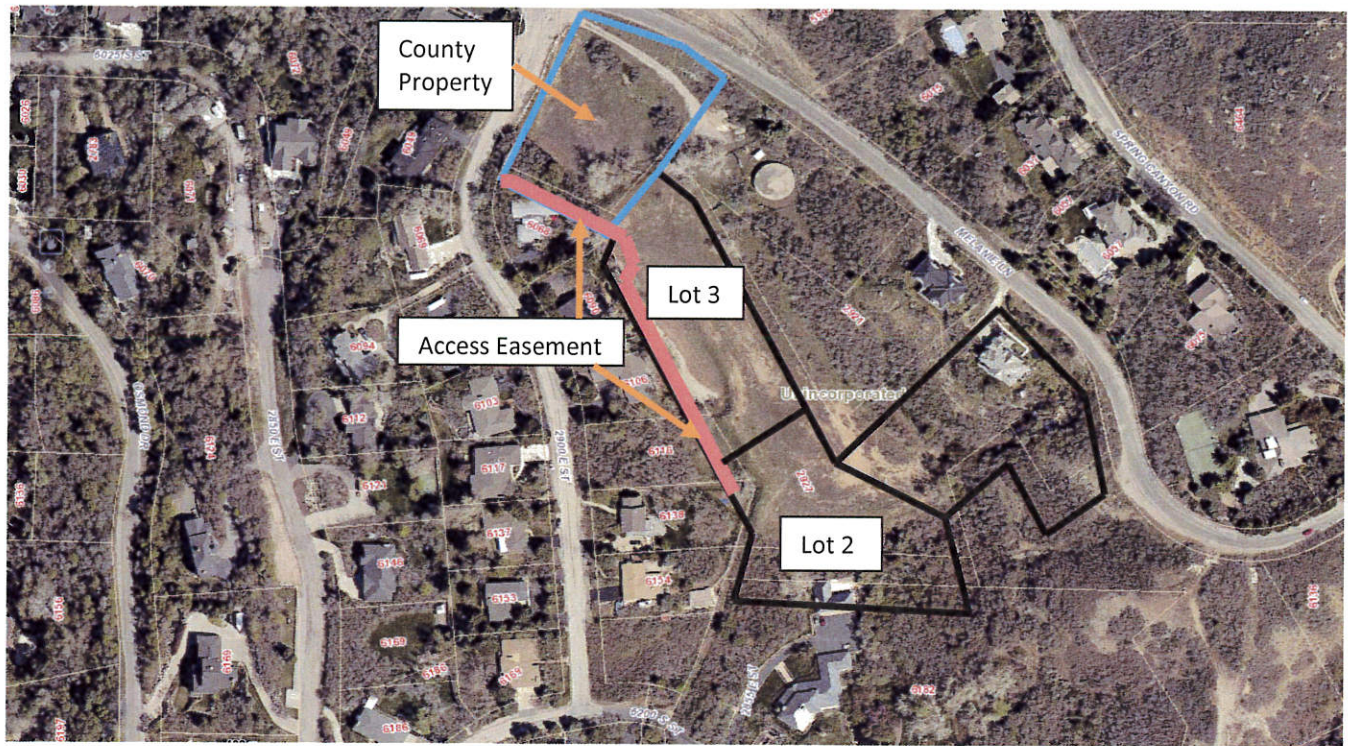
Based upon the findings listed above, administrative approval for use of a private access easement as the primary access for two lots without street frontage is hereby approved this _____ day of March, 2016.

Rick V. Grover
Weber County Planning Director

Exhibits

- A. Application with project narrative.
- B. Proposed Pas De Calais Subdivision plat.
- C. Site plan showing the property that would be conveyed to the County.
- D. Weber County Commission meeting minutes dated March 25, 2014.
- E. Weber County Commission meeting minutes dated April 1, 2014.
- F. Utah Geological Survey Map.
- G. Original Calais Subdivision Plat.
- H. Second Judicial District Court Order (Civil No. 140904054).

Site Map



Weber County Access Exception Permit Application

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

Date Submitted /Completed <i>04/17/2013</i>	Fees (Office Use) <i>225.00</i>	Receipt Number (Office Use)	File Number (Office Use) <i>AE2013-03</i>
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Application Type

☒ Access by Private Right of Way	☐ Access at a Location Other Than Across the Front Lot Line
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Property Owner Contact Information

Name of Property Owner(s) <i>Matthew & Laura Rasmussen</i>		Mailing Address of Property Owner(s) <i>2927 Melanie Lane Ogden, UT 84403</i>
Phone <i>801-668-4197</i>	Fax	
Email Address (required) <i>mrasmus@msm.com</i>		Preferred Method of Written Correspondence ☒ Email ☐ Fax ☐ Mail

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) <i>Matthew</i>		Mailing Address of Authorized Person
Phone	Fax	
Email Address (required)		Preferred Method of Written Correspondence ☐ Email ☐ Fax ☐ Mail

Property Information

Project Name <i>Calais Lower Lot(s)</i>	Total Acreage <i>Approx. 3 acres</i>	Current Zoning
Approximate Address <i>Intersection 2900 East & Melanie Lane</i>	Land Serial Number(s) <i>07-574-0001</i>	
Proposed Use <i>Single Family Residence(s)</i>		

Project Narrative

Proposed that owner deed land to Weber County for further control of retention pond. Weber County would grant right-of-way easement for 20'-25' access road as per schematic.

(see also enclosed letter). Purposed easement is to provide access for intended two lots. Property + easement exchange with Weber County will take place at recording of subdivision.

Basis for Issuance of Access at a location other than across the front lot line

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access, subject to the following criteria:

The applicant demonstrates that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access across the front lot line as follows:

Access via exchange of land with Weber County proposed. Existing road creates some traffic hazard. Weber County would receive land which would allow it to more fully control retention pond and spring run-off.



Attach proof that appropriate and legal access exists 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.

Basis for Issuance of Access by Private Right of Way

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:

- 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.

Please explain the substantial evidence:

☐

Attach proof to this application 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.

☐

The landowner of record or authorized representative agrees 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.

Property Owner Affidavit

I (We), Matthew Shane & Laura M. Rasmussen, 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.

Matthew Rasmussen _____

Property Owner

[Signature] _____

Property Owner

Subscribed and sworn to me this 20th day of May, 2013.

Julie Simpson _____

Notary



JULIE ANN SIMPSON
Notary Public o State of Utah
Commission # 580211
COMM. EXP. 09-20-2013

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

PROPOSAL TO WEBER COUNTY PLANNING & ENGINEERING

I, Matt Rasmussen, legal owner of parcel # 07-574-0001 propose to grant a section of land on my North-NorthWest property line to Weber County in order that Weber County might more fully control the perimeter and contours of the adjoining retention pond. This pond serves as an overflow basin which often fills to near capacity in the spring due to rain, storm drainage, and any leakage from the spring in Spring Canyon. It protects several properties on the lower portion of Melanie Lane from damage that could arise from uncontrolled water flows.

The berm which encircles the pond falls partially within the survey of this private parcel #07-574-0001. A significant amount of ground (including both interior and exterior berm slopes and crest on SSE border) would be granted to Weber county which would preserve it in perpetuity from any compromising excavation or disturbance and would allow comprehensive maintenance of the earthwork without fear of private interest objections. Weber County has a compelling interest in securing full rights to their retaining structure and would benefit by the provision of access to the pond by having ready ingress/egress for maintenance, cleaning, and inspection. This section of land will be reviewed and accepted by the County Engineer and County Surveyor.

In consideration for the applicant's concession, applicant requests that Weber County designate an easement to the southwesterly property line as shown in engineering drawings whereby applicant and assignees might access the parcel's land.

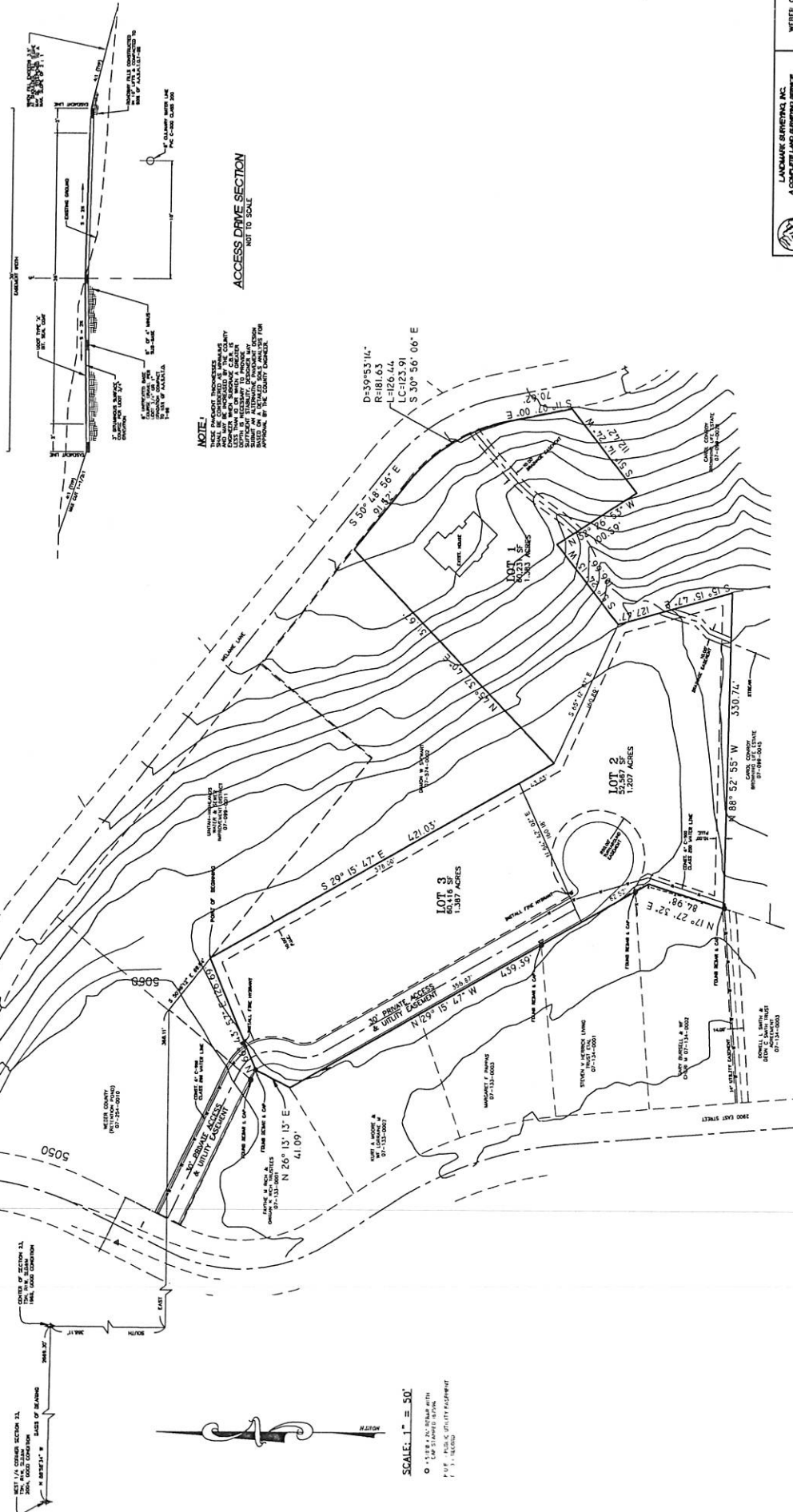
Applicant would bring unpaved road into conformance with planning and engineering's guidance on final development.

This would entitle Weber county to ownership of land which allows it full control of its retention pond while providing only easement for access less than or equal land square footage. Applicant wishes Weber County to have an equivalent or superior outcome in this exchange.

Matt & Laura Rasmussen

May 23, 2013

PAS DE CALAIS SUBDIVISION A PART OF THE S. W. 1/4 OF SEC. 24, T. 5 N., R. 1 W., S.L.B. & M. WEBER COUNTY, UTAH IMPROVEMENT PLANS

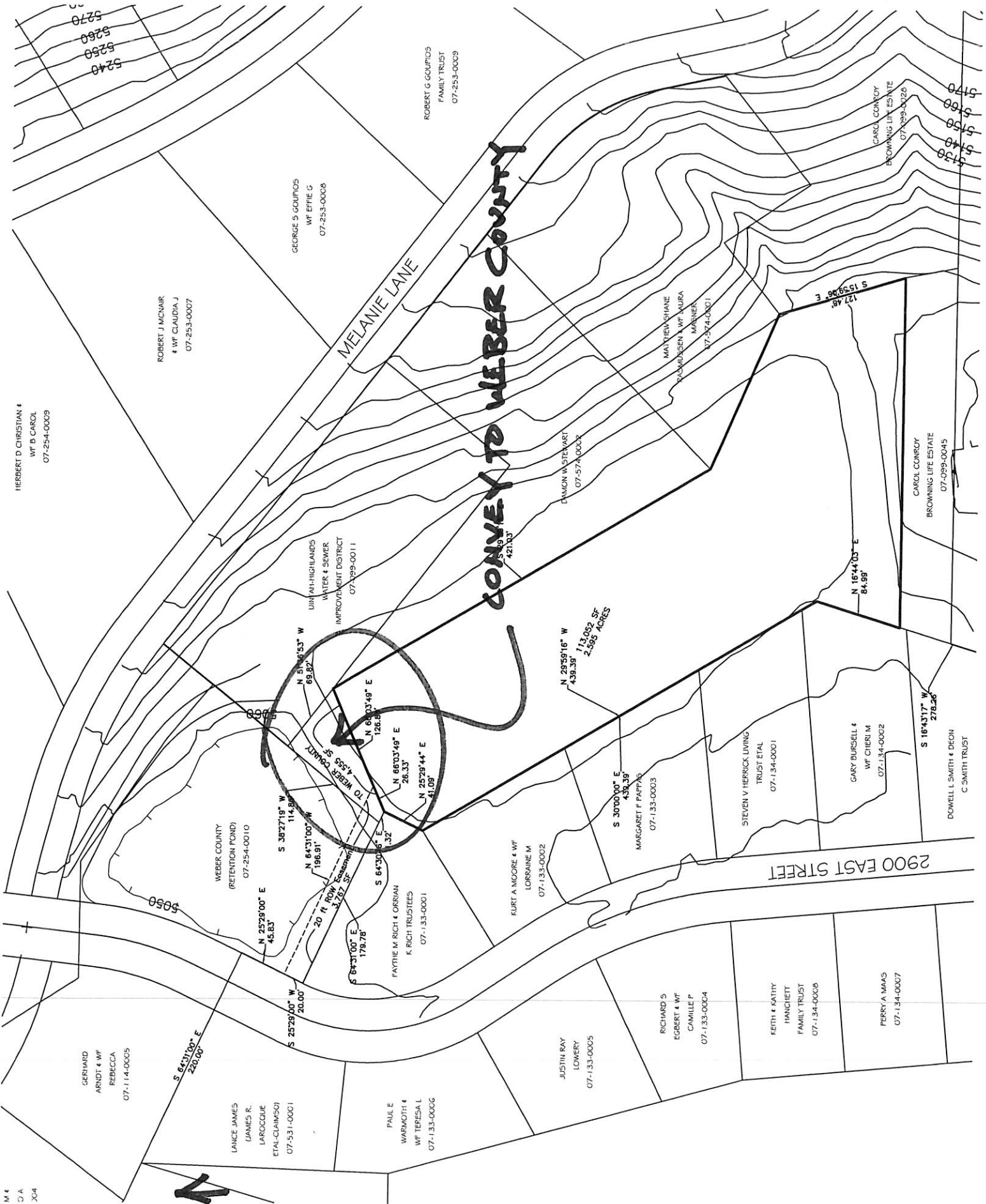


NOTE:
THESE PLANS WERE PREPARED BY THE SURVEYOR AND ARE NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE SURVEY. THE SURVEYOR IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE PLANS OR THE FIELD WORK. THE SURVEYOR IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE PLANS OR THE FIELD WORK.

ACCESS DRIVE SECTION
NOT TO SCALE

SCALE: 1" = 50'
 0 = 1/8" = 10' (road width)
 PAVE = PAVED UTILITY EQUIPMENT
 F = 1" = 10' (road width)

LANDMARK SURVEYING, INC. A COLORADO SURVEYING FIRM 4444 E. 2000 N. M-3, WEST HAVEN, UTAH 84446 PHONE: 801-734-4444 FAX: 801-734-4444		WEBER COUNTY RECORDER COUNTY # _____ FEE _____ FILED FOR RECORD & RECORDS THIS _____ DAY OF _____ 20____ AT _____ IN BOOK _____ OF _____ SURVEYED: JUNE 2013 PAGE _____	
CLIENT: MATT RASMUSSEN LOCATION: PART OF THE S.W. 1/4 OF SEC. 24, T. 5 N., R. 1 W., S.L.B. & M.		REVISIONS: DRAWN BY: T.K. CHECKED BY: J.S. DATE: 6-12-13 FILE: 2013-06-12-01	



MINUTES OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY

Tuesday, March 25, 2014 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

COMMISSIONERS: Kerry W. Gibson, Chair, Jan M. Zogmaister and Matthew G Bell.

OTHERS PRESENT: Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; and Fátima Ferneliuss, of the Clerk/Auditor's Office, who took minutes.

A. WELCOME – Chair Gibson

B. PLEDGE OF ALLEGIANCE – Sylvia Salsbury

C. THOUGHT OF THE DAY – Commissioner Bell

D. PRESENTATION: INTRODUCTION-NEW FOREST SERVICE DISTRICT RANGER & FOREST SERVICE UPDATE

Robert Sanchez, Forest Service District Ranger, introduced himself and asked for the commissioners' continued input about how the county and the Forest Service can continue to work together and stay engaged. Mr. Sanchez noted that currently there is proposal for a cabin rental program in the Uinta-Wasatch-Cache National Forest and they are seeking comments. The commissioners expressed appreciation for the county's relationship with the Forest Service.

E. CONSENT ITEMS:

1. Purchase Orders for \$711,586.42
 2. Ratify Warrants #307320 -#307508 for \$773,305.12 dated March 18, 2014
 3. Warrants #307509 - #307714 for \$726,924.25
 4. Minutes for the meeting held on March 11, 2014
 5. New business licenses
 6. Ratify a new beer license
 7. ACH payment to US Bank for \$75,305.13 for purchasing card transactions made through 3/17/2014
 8. Set public hearing for 4/15/2014, 10 a.m., to consider rezoning property at approximately 156 N. & State Road 158 (extending from Ogden City water treatment plant, easterly to Pineview caretaker's house) from Forest 40 (F-40) Zone to Forest Residential-1 (FR-1) Zone to create 1 building lot & put into place development standards that are more compatible with relatively smaller lots
- Commissioner Bell moved to approve the consent items; Commissioner Zogmaister seconded, all voting aye.

F. ACTION ITEMS:

1. DISCUSSION TO APPROVE AN ACCESS EASEMENT FOR THE PAS DE CALAIS SUBDIVISION

Jared Andersen, County Engineer, showed area maps. The petitioner, Matthew Rasmussen, plans to subdivide his landlocked property into two lots and is requesting access across the county's property. There is one access easement on the road that Uintah Highlands Water & Sewer Improvement District (the District) has obtained. Currently the county has a berm on the backside of the detention pond. Mr. Rasmussen's proposal included moving the property line and giving the county a small triangular piece of property that would help the county's interests. He would maintain a berm on his property. Chair Gibson asked if there is a benefit to the county in getting the triangular piece of property and Mr. Anderson said that currently the backside of the berm is on Mr. Rasmussen's property. It would be an extensive process to move the berm.

Mr. Rasmussen stated today that the east of his property is extremely steep, in most cases above 25% grade. The lower portion of the land is inaccessible by standard vehicles. He would like to give the county additional land to maintain its development at the retention pond that handles overflow water from some springs and heavy storms. Mr. Rasmussen had a document from 9/2008 that he said was obtained by the chair of the District, which was subsequent to the District's decommissioning of the reservoir that was on that property. He said that that Uintah Highlands' easement is a non-exclusive prescriptive easement and he requested the same consideration.

Commissioner Bell asked when he purchased the property and Mr. Rasmussen responded that his family purchased it around 1983. Commissioner Bell stated that they could have built a road on the side of Melanie Lane, although it would have been expensive. He asked why the Rasmussens knowingly purchased landlocked property and how they planned to access it. Mr. Rasmussen said that they just loved the property and a dying neighbor needed to sell it. Commissioner Bell noted that the District was using the access to provide services for many years before they obtained legal access. He also noted that for some reason past commissions have not wished to move forward and he wants to do a lot more research to feel comfortable.

Mr. Rasmussen clarified that this is the first time he has formally approached the Commission for access, but that in the past he had spoken with the former County Engineer and a former staff with County Property Management. He said that the District obtained the prescriptive easement after the decommissioning of the reservoir with the intent to convert the property to residential use. He feels that it is a legal precedent. He said that recently Commissioner Bell had urged him to redesign the easement, in which case he seemed to indicate being amenable to giving Mr. Rasmussen approval. Commissioner Bell stated that during that conversation they had discussed putting the road on the other side, however, that the road is not there and the only change made by Mr. Rasmussen was that he moved the road where it comes in to the Uintah Highlands road (on the corner of 2900 East and Melanie Lane) where they have an easement from the county. Mr. Rasmussen agreed but stated that it increased the length of the road 40-80 feet. Commissioner Bell noted that if he had moved the road to the other side it would have been shorter. Mr. Rasmussen said that the county needs the berm to protect its interests and that it would be costly and problematic for the engineers to move it. He said that county staff had unanimously recommended approval and that he has followed the best practices. He understands that people are upset because the open space is going away, which in the aforementioned meeting a few people showed interest in purchasing some of that property for that purpose but have subsequently recanted.

Richard Reeve, Attorney retained by Carol Browning (an adjoining property owner), to speak to this matter, said that his client respects the petitioner's private property rights if the project is designed correctly and takes into account the unique characteristics of the land. There are issues/characteristics of the land, which need to be addressed. Mr. Reeve stated that it is an unusual for the county to give county property to a private developer and this should be looked at very carefully. While Weber Code §108-7-31 addresses related issues such as soil, topography, and boundary issues, it states that, "financial adversity is not an issue that can be considered in determining whether or not it is appropriate to grant an access easement." There are practical and feasible alternatives to access the property such as off of the hillside (although expensive), and there is also a vacant lot off of 2900 East that currently is for sale and is flat and would be an easy and quick access point to the property. This is a former pond bed with unusual soil characteristics. There are many natural springs and a lot of water run-off through this area. This area has a history of land and mud slides, thus, any road or disruption of property needs to be done very carefully with the right data in hand. His client's concern is that the right data has not been acquired such as geotechnical

Mr. Reeve's client urges the commissioners to carefully look at this issue, request the necessary data and studies and make sure the other property owners' rights are protected. Mr. Reeve addressed Commissioner Bell's question stating that it is a downward slope to the Browning property and any removal of the berm or shoreline area created by the pond will allow water to go downhill easier.

Blaine Brough, with Uintah Highlands Improvement District, stated that the District would like to be assured that any changes/improvements made to the property will not diminish its access.

Commissioner Zogmaister noted that a lot of the concerns being raised are regarding the petitioner's future plans for the development, which she believes is not normally done at this stage. She said that after obtaining access he can move forward with the development process, including the research, analysis, etc. Mr. Andersen concurred and that is the reason why only the access easement is being presented at this time; it would not be prudent for the petitioner to get a long list of studies done without first obtaining access. He agrees that they have to evaluate what happens on that property very carefully.

Sean Wilkinson, County Planning Division Director, stated that the Western Weber Planning Commission made a recommendation for approval of this subdivision to the County Commission with some conditions, the major one is obtaining access first, and also that all of the other agency requirements will need to be addressed. All of the studies and information will have to be in place and be approved before it comes before the County Commission for final subdivision approval.

Commissioner Zogmaister hesitates to not grant access if it is feasible and if there is a need on the side of the citizens because of where the road comes in and because of the berm and retention pond. The county has clearly stated that it prefers to have that piece of property to have proper access. She said that it is not unusual to work with landowners regarding finding access and noted that the county is not looking at removing any requirements from the development process. She said the process needs to be strictly followed so that the results are good for the property owners and the potential new development. Mr. Reeve said that the relevant code requires review of certain issues such as unusual soil, topography, and property boundary issues, in connection with this request. He said that additional issues will be brought under a different code section that requires different sets of analysis.

Mr. Reeve said that whenever a new road is constructed and disrupts the property, an analysis needs to be done. He requests an analysis specifically of the road and its impact on the property owners. Mr. Reeve said that it is a dirt road and he does not believe it is an acceptable road for a subdivision. He noted that the petitioner is considering both a slight change of location and a great change in the improvement of the road, which will disrupt the current use of that road, surrounding property, and that impact needs to be analyzed. This is not taking away the petitioner's property rights; it is protecting the property rights of the other property owners. He said that the county should not be in the business of bailing people out of bad investments, if there are feasible and practical options available. Chair Gibson concurred with the last statement recognizing that the county has a need regarding the retention pond. Mr. Wilkinson addressed Chair Gibson's question stating that this is a special access exception and can be granted for flag lots, property that does not have frontage or for property that has frontage but will access it at a location other than across the front lot line, which is the case for the Uintah Highlands piece of property. It has frontage on Melanie Lane but it is not used due to the steep grade.

Commissioner Zogmaister asked if all of the studies on the road have to be completed in order to grant this easement. Mr. Andersen's opinion is that the access is needed first in order to know if they can move forward (start the process of where the road will be located, its design, grading, geotechnical report, the water impacts, etc.). Mr. Andersen addressed Commissioner Bell's question stating that the easement width would be the same as was granted the District. The location may have to change somewhat depending on the results of the studies in order to build the road correctly and to standard. Mr. Andersen said he would look into the road width but believes it would not vary much.

Rick Browning, Carol Browning's son, stated that he had a stack of letters regarding the needed hydrological information, which does exist at this time. As an engineer, he said that there would need to be retention walls, hydrological surveys, etc., and that it does not make sense to take the retaining wall down now because it would affect the properties that would be constructed on the property. The community wants this done properly and they would like to have the pertinent information before moving forward because it is all needed information to make informed decisions. He feels there is not enough information on the impacts that this right of way contributes.

Mr. Rasmussen wished to correct Mr. Reeve's comment stating that the Commission would not be giving any county property to a private builder but would gain about 4500 square feet of property, which defends the county's interest. He said that there have not been any hydrological issues on this property. There is a manmade stream that passes remotely through one of the corners of the property and carries through the Browning property. The development that was done in the property above his was done with very extensive studies and guidelines and will also be done on his property. His development is being done as sensitively as possibly with strong scrutiny of the county and following all RE-20 zoning laws. Mr. Rasmussen said that he will place any home that he develops as far east as possible and the road design was done so that some open space is preserved.

Mr. Wilson read the following from County Code stating that these are the conditions that may be considered: "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." Mr. Wilson said that if the road cannot be extended, the county can look at granting another easement and look at the stated criteria to see if that is a better location for it. Chair Gibson understood that the county has the legal authority to grant this petition and Mr. Wilson concurred. Mr. Wilson noted that further development issues always follow, that not all issues can be solved today and the developers takes some risks.

Commissioner Bell moved to deny the petition. It died for lack of a second. Commissioner Bell moved to put this item on hold for a couple of weeks to do further study; Commissioner Zogmaister seconded on condition that this item is brought back in a timely manner, preferably in the next meeting. Chair Gibson concurred with not postponing this item too long. He expressed confidence that staff has looked at this very thoroughly. All voted aye.

2. ~~CONTRACT WITH PICTOMETRY TO ACQUIRE AERIAL PHOTOGRAPHY TO SUPPORT THE REVIEW OF PHYSICAL CHARACTERISTICS AS REQUIRED BY UTAH STATUTE – CONTRACT C2014-44~~

John Ulibarri, County Assessor, stated that because the county entered into a multi-year contract, it received a 10% discount on flights. This contract is for three flights over 6 years.

Commissioner Zogmaister moved to approve Contract C2014-44 with Pictometry to acquire aerial photography; Commissioner Bell seconded, all voting aye.

3. **CONTRACT WITH STEPHANIE LINDSEY TO HOLD THE SPIKERS HIGH SCHOOL RODEO AT THE GOLDEN SPIKE EVENT CENTER ON APRIL 4, 2014 – CONTRACT C2014-45**
4. **CONTRACT WITH JANN KING TO HOLD THE DOUBLE HIGH SCHOOL RODEO AT THE GOLDEN SPIKE EVENT CENTER ON APRIL 5, 2014 – CONTRACT C2014-46**

Jennifer Graham, County Recreation Facilities Director, presented these two contracts together. Commissioner Bell moved to approve Contract C2014-45 with Stephanie Lindsey to hold the Spikers High School Rodeo on 4/4/2014 and Contract C2014-46 with Jann King to hold the Double High School Rodeo on 4/5/2014 at the GSEC; Commissioner Zogmaister seconded, all voting aye.

5. **RESOLUTION APPOINTING A MEMBER TO THE ARENA BOARD – RESOLUTION 12-2014**

Jennifer Graham, County Recreation Facilities Director, noted that there are two vacancies and presented one name at this time. Ms. Galvez was interviewed by Executive Committee members. Commissioner Zogmaister moved to adopt Resolution 12-2014, appointing Lisa Galvez to the Arena Board to fill the remaining of an open term, which expires 12/31/2014; Commissioner Bell seconded. Roll Call Vote:

Commissioner Bell	aye
Commissioner Zogmaister	aye
Chair Gibson	aye

6. **CONTRACT WITH WINTERSET CONCERT EVENTS – KAHUNA BEACH PARTY PERFORMANCE AT THE 2014 WEBER COUNTY FAIR – CONTRACT C2014-47**

Jan Wilson, with the County Fair, presented this contract. Commissioner Bell moved to approve Contract C2014-47 with Winterset Concert Events – Kahuna Beach Party performance at the 2014 Weber County Fair; Commissioner Zogmaister seconded, all voting aye.

7. **CONTRACT WITH HARRIS COMPANY TO REPLACE THE COOLING TOWER ON THE WEBER CENTER AND ALL WORK ASSOCIATED WITH THE REPLACEMENT – CONTRACT C2014-48**

Nate Pierce, County Operations Department Director, stated that this year's bid came in lower than anticipated over a year ago of about \$100,000, which amount had been put in the budget. This contract is for \$44,579.00.

Commissioner Zogmaister moved to approve Contract C2014-48 with Harris Company to replace the cooling tower on the Weber Center and all work associated with the replacement; Commissioner Bell seconded, all voting aye.

8. **APPROVAL FOR THE DEPARTMENT OF OPERATIONS TO USE CIP FUNDS FOR A NEW PROJECT (WEBER CENTER RESTROOM IMPROVEMENTS)**

Nate Pierce, County Operations Department Director, referred to the above contract stating that the county will use the remaining amount of about \$55,000 to replace fixtures at the Weber Center, which are in need of repair. Funds for both of these types of improvements are recovered at 30% with the partners in the Condominium Association agreement for common area charges.

Commissioner Bell moved to approve the use of CIP Funds by the Department of Operations for the Weber Center restroom improvements project; Commissioner Zogmaister seconded, all voting aye.

D 6/8

9. **CONTRACT WITH KLEINFELDER FOR ENGINEERING SERVICES FOR THE WEBER COUNTY LANDFILL CLOSURE – CONTRACT C2014-49**

Nate Pierce, County Operations Department Director, noted that the county has agreements with the Environmental Protection Agency relating to the landfill closure and conducts studies to ensure that the closure is being properly managed. Kleinfelder will conduct engineering services relating to methane emissions.

Commissioner Bell moved to approve Contract C2014-49 with Kleinfelder for engineering services for the Weber County Landfill closure; Commissioner Zogmaister seconded, all voting aye.

10. **CONTRACT AMENDMENT WITH CALDWELL RICHARDS SORENSON (CRS) CONSULTING ENGINEERS FOR THE WEBER COUNTY EMERGENCY STORM WATER PROJECT CONSTRUCTION MANAGEMENT CONTRACT – CONTRACT C2014-50**

Jared Andersen, County Engineer, presented this contract amendment for additional EWP work, mainly for bank protection projects at three sites.

Commissioner Zogmaister moved to approve Contract C2014-50, contract amendment with Caldwell Richards Sorenson Consulting Engineers for the Weber County Emergency Storm Water Project Construction Management Contract; Commissioner Bell seconded, all voting aye.

11. **INTERLOCAL AGREEMENT WITH NORTH OGDEN CITY DESIGNATING THE CITY AS THE APPROVAL AUTHORITY FOR PROPERTY IN UNINCORPORATED WEBER COUNTY LOCATED AT APPROXIMATELY 1850 NORTH WASHINGTON BOULEVARD – CONTRACT C2014-51**

Sean Wilkinson, County Planning Division Director, showed an area map. The city approached the county requesting this agreement for the property where the old Country Boy Dairy commercial building is located (1850 N. Washington Blvd.-the front property) and which lost its non-conforming commercial status. This item is for the front piece of property, which will now be in the city; the agriculture piece in the rear will remain in unincorporated Weber County. The lot lines are not changing. The property owner has been working with the city. The property is currently being annexed into the city, which has requested to be the approval authority for site plans, building permits, etc.

Commissioner Bell moved to approve Contract C2014-51, Interlocal Agreement with North Ogden City designating the city as the approval authority for property in unincorporated Weber County at approximately 1850 North Washington Blvd.; Commissioner Zogmaister seconded, all voting aye.

12. **CONTRACT WITH THE UTAH DEPARTMENT OF TRANSPORTATION (UDOT) TO ESTABLISH FUNDING TERMS AND CONDITIONS FOR PROJECT No S-0108(29)10 SR-108; CLOSE 3500 W. ACCESS, SAFETY SPOT IMPROVEMENT PROJECT – CONTRACT C2014-52**

Douglas Larsen, Weber Economic Development Partnership Director, showed an area map and stated that this is for the partial closure of 3500 West due to safety concerns. A primary concern as Wasatch Area Council of Governments (WACOG) and the county worked through this was to ensure that the business on the west side of 3500 West had sufficient access and access will remain off of Midland Drive. There will also be a secondary access off of 3500 W. to that business. The county will provide a total of \$900,000 to this \$1 million project. These funds will come from \$330,000 from the corridor preservation funds and \$570,000 from the third quarter percent sales tax. UDOT will provide the remainder.

Commissioner Bell moved to approve Contract C2014-52 with UDOT to establish funding terms and conditions for Project No S-0108(29)10 SR-108; Close 3500 W. Access, Safety Spot Improvement Project; Commissioner Zogmaister seconded, all voting aye.

13. RESOLUTION APPOINTING A MEMBER TO THE WEBER COUNTY LIBRARY BOARD OF TRUSTEES –
RESOLUTION 13-2014

Commissioner Zogmaister outlined the process that has been followed for the past 15+ years to fill Library Board vacancies, which includes posting, followed by review by the Library Board and interviewing of the top six applicants. She noted that there had been very good discussion about the applicants and there was criteria for selecting them because it is important that they bring certain skill sets to the Library Board. She noted that this is a critical time due to the extensive current library construction projects. Three applications were submitted to the County Commission with a recommendation from the Library Board to consider in the order of choice: Charles Trentleman, Kathleen B. Jensen and Joe H Richie. The Commission had requested all the applications, which had been provided. She expressed thanks to all who applied and had been very impressed with the quality of applicants.

Chair Gibson noted that it is within the commissioners' purview to select any applicant they deem appropriate. He invited any of the applicants to address the commission and no comments were offered. Commissioner Bell recommended appointing Brent Innes. Commissioner Zogmaister could not support that because he was not even in the top six applicants and stated that she respects the work and process of the Library Board. The other two commissioners said that they also respect it. Commissioner Zogmaister asked if out of respect for their recommendations they would nominate someone out of the top 3. Chair Gibson said that they could nominate anyone they wished, that there are many quality applicants. Commissioner Bell felt that the opportunity to serve should be passed around so that others can have that opportunity.

Commissioner Bell moved to adopt Resolution 13-2014 appointing Brent Innes to the Weber County Library Board of Trustees with a term expiring 6/30/2018; Chair Gibson seconded; Commissioner Zogmaister said that as the Library Board discussed each name they pointed out what skill sets that individual could bring to this Board and the knowledge each could bring during this construction period. She asked the commissioners to elaborate on the person they were nominating. Commissioner Bell said that Mr. Innes lives in the unincorporated area Weber County and most current members are from Ogden, one is from Ogden Valley and one from Roy City, and that Mr. Innes would be a good voice on the Board.

Roll Call Vote:

Commissioner Bell	aye
Commissioner Zogmaister	nay
Chair Gibson	aye

G. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, APRIL 1, 2014, 10 A.M.

H. PUBLIC COMMENTS:

Kathy Gambles, of South Ogden, appreciates the seriousness with which the commissioners take their jobs. She read the mottos on the wall behind them. She celebrates the beautiful, stellar example of all of all of those statements that the Weber County Library is and the incredible job they have done over the years and continue to do. She honors the wisdom to allow that good strong leadership. She said that it is unfortunate to dilute the Library Board, to not allow that quality thinking to go forward that honors and respects all of the county, to not see what the Library Board is doing and how fortunate it would be to keep all of that in place. There was applause by those in attendance.

Chair Gibson said that people could not be disparaging or say that it is diluting a library board just because someone does not think the same way, that there was an appropriate vote taken based upon the majority of the Commission deciding how to move forward and how they wish to be represented on this Board. Ms. Gambles apologized stating that it was unfortunate that this what the chair got out of what she said.

Scott Spencer, of the Weber County Library, said that today the Commission had chosen an applicant not recommended in the top three by the Library Board of Directors. He asked if there is going to be a change in the selection process and if the county commissioners are going to receive the applications and appoint the directors themselves. Chair Gibson said that the selection process has not changed—the Library Board reviews the applications and sends the Commission their top three choices and the Commission makes the appointments, even if the person did not apply.

Evelyn Bertilson, with Friends of the Library, said that there has been a change of precedent and it upsets the Friends of the Library that the Commission chose someone other than the well established precedent.

Chair Gibson said that it is a heavy responsibility as commissioners to stand before the people for election and to have to defend their actions, which is what the process is about. It makes good sense that all of the commissioner take that responsibility seriously and are doing their best to represent each member of our community.

I. ADJOURN

Commissioner Bell moved to adjourn at 11:58 a.m.; Commissioner Zogmaister seconded, all voting aye.

Attest:



 Kerry W. Gibson, Chair
 Weber County Commission



 Ricky D. Hatch, CPA
 Weber County Clerk/Auditor

**MINUTES
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, April 1, 2014 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

COMMISSIONERS: Kerry W. Gibson, Chair, Jan M. Zogmaister and Matthew G Bell.

OTHERS PRESENT: Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; and Fátima Ferneliús, of the Clerk/Auditor's Office, who took minutes.

A. WELCOME – Chair Gibson

B. PLEDGE OF ALLEGIANCE – Fátima Ferneliús

C. THOUGHT OF THE DAY – Commissioner Zogmaister

D. CONSENT ITEMS:

1. Purchase Orders for \$2,223,043.81
 2. Warrants #307715 - #308047 for \$2,332,073.95
 3. Minutes for the meeting held on March 25, 2014
 4. New business licenses
 5. Request for Assurances relating to real property acquisition for the debris removal and bank protection sites for the Weber County Emergency Watershed Protection project
 6. Set public hearing for April 22, 2014, 10 a.m., to consider amending Weber County Land Use Code, Title 104 (Zones); Chapter 5 Agricultural-1); Section 7 (Site Development Standards) by reducing the minimum separation (setback) standard in between a main building & an accessory structure
- Commissioner Bell moved to approve the consent items; Commissioner Zogmaister seconded, all voting aye.

E. ACTION ITEMS:

1. APPROVAL OF THE WEBER COUNTY 2014 POLLING LOCATIONS

Jennifer Morrell, County Elections Director, noted that Elections had provided the commissioners with a list of 40 polling locations. Elections is proposing to have a Saturday early voting at the Weber Center and the Ogden Valley Library Branch, and this will depend on building security, etc. Commissioner Zogmaister asked about noticing the citizens and Ms. Morrell responded that they are working to improve the website, are sending information to the cities to mail to residents, working with the State to have Weber County-specific information on their web page, etc.

Commissioner Zogmaister moved to approve Weber County 2014 polling locations; Commissioner Bell seconded, all voting aye.

2. ADDENDUM TO THE LEXIPOL CONTRACT FOR CUSTODY POLICY MANUAL AND DAILY TRAINING BULLETINS FOR THE CORRECTIONS DIVISION – CONTRACT C2014-53

County Sheriff Terry Thompson stated that his office works with Lexipol to achieve standards/goals of operations in the Sheriff's Office. This has been very valuable in helping them achieve the best statutory required practices. He addressed Commissioner Zogmaister's question stating that the contract amount of \$18,000 is for the addendum and includes daily training briefs.

Commissioner Bell moved to approve Contract C2014-53, addendum to the Lexipol contract for the Custody Policy Manual and daily training bulletins for the Corrections Division; Commissioner Zogmaister seconded, all voting aye.

3. WEBER COUNTY P-CARD POLICY REVISION – POLICY 10.1

Brianna Spencer, of County Purchasing, noted the only change to the policy for allocating funds spent on purchasing cards through US Bank; the procedure has been converted from being done manually and will now be done online. Commissioner Bell noted that this item was discussed in Audit Committee, which suggested a couple of minor revisions.

Commissioner Zogmaister moved to approve the revision to Policy 10.1, Weber County P-Card Policy; Commissioner Bell seconded, all voting aye.

4. CONTRACT BY/AMONG WEBER COUNTY, WEBER FIRE DISTRICT (DISTRICT) & THE UTAH DIVISION OF FORESTRY FOR AMENDMENTS TO THE FUNDING OF THE WEBER COUNTY FIRE WARDEN – CONTRACT C2014-54

David Austin, Weber Fire District Chief, stated that since 2003 there had been a four-way agreement between the county, the Division of Forestry, Fire and State Lands, the U.S. Forest Service and the District, which was very beneficial. The costs for the Wildland and Fire Warden and for the Assistant Fire Warden were shared. Due to funding reductions, the Forest Service cannot participate in this agreement and it results in a funding loss of \$14,996 to this program. The Forest Service was not party to the original two-way agreement between the State and the county. Generally, the participation agreement is between the county and the State but to have a full time Fire Warden the District joins to help facilitate some of the costs. Weber County is the very last agreement from which the Forest Service has removed itself. The Forest Service is still in the District but will not receive the same services.

This addendum removes the Forest Service and amends the agreement for one year rather than eight months. Previously, the District funded four months and the remaining three participants funded eight months. The Fire Warden is a full time position (since 2003). Exhibit 4, the financial plan, was added to this amendment and can be amended annually to adjust the funding of the Fire Warden. The county's portion will be approximately 1/3 of the total cost. The Fire Warden position also used to be seasonal but it has substantial responsibilities in the county (i.e., mitigation, planning) for prevention and suppression of wildland fires and has greatly benefited areas such as the Nordic Valley, Uintah Highlands, Powder Mountain, Snowbasin and Causey Estates.

Chief Austin addressed Commissioner Zogmaister's questions stating that the Forest Service has a unit that it staffs during wildland fire season and that the District has not considered going back to a part-time Fire Warden position because of the significant benefit to the county. He believed the cost of a part-time warden was between \$20,000-\$30,000.

Chief Austin introduced Rick Cooper, stating that for the past three years the District has had a very elite wildland firefighting team through a contract with the State and Mr. Cooper has been its program manager. Mr. Cooper stated that the Wildland MOU program is a cooperative agreement between the District, the Division of Forestry, Fire and State Lands, the U.S. Forest Service, the Bureau of Land Management and the Bureau of Indian Affairs. This team responds nationally. He said that the program has been very beneficial and participation enhances their wildland firefighting skills and knowledge, which they can pass on to those in our area and reduce the probability of major catastrophes.

Commissioner Bell moved to approve Contract C2014-54, Participating Agreement between Weber County, Weber Fire District and the Utah Division of Forestry for amendments to the funding of the Weber County Fire Warden; Commissioner Zogmaister seconded, all voting aye.

5. CONTRACT WITH CK CONSTRUCTION CORPORATION TO REPLACE COUNTERTOPS IN THE WEBER CENTER PUBLIC RESTROOMS, ALONG WITH NEW SINKS/BASINS AND THE RELATED HARDWARE – CONTRACT C2014-55

Nate Pierce, County Operations Department Director, stated that because the restrooms are part of the common area in the building, the county will receive from the Condominium Association partners about \$8,500 at the end of the year.

Commissioner Zogmaister moved to approve Contract C2014-55 with CK Construction Corporation to replace countertops in the Weber Center public restrooms, along with new sinks/basins and the related hardware; Commissioner Bell seconded, all voting aye.

6. CONTRACT WITH THM REMODELING SERVICES FOR THE REMODELING OF THE WEBER CENTER CONFERENCE ROOM – CONTRACT C2014-56

Nate Pierce, County Operations Department Director, stated that this is to use Capital Improvement Plan funds from 2013. At the end of last year, Operations was asked to look at costs to renovate the Commission conference room and the criterion was developed with some of the commissioners. This contract is to install those improvements. The cost is \$21,597.

Commissioner Zogmaister said that when they had discussed the needs in the conference room it was for improved lighting and some electronics/technology that is needed. She stated that this contract is extravagant and goes over and above those improvements. She noted that this contract includes new cabinetry for \$11,000, paneling for \$8,200, and the ceiling and lighting for \$1,700 because staff would do some of the work, but the electronics was not even included. She did not feel the county should be spending that kind of money and could offer other county uses for that money or just not spend it right now when the only improvements needed are the lighting and electronics capability. By way of information, Mr. Pierce said that it would still leave about \$18,000 in the CIP account that could be used for the electronics. He outlined the lighting improvements to be done and said that an electrician on staff would do a lot of the electronics. He said that the \$1,700 is basically for the demolition and installation of ceiling panels. Commissioner Zogmaister said that this is a good opportunity to do what is needed but not spend the additional \$19,000 for cabinetry and panel. Chair Gibson said that the room has always seemed very odd in its layout with the pressed wood cabinetry along the one side of the room, that it gets a lot of use and is not functional. Commissioner Zogmaister said that people claim the Commission is building Taj Mahals for libraries and now they are building a Taj Mahal-type conference room for the Commission.

Commissioner Bell moved to approve Contract C2014-56 with THM Remodeling Services for the remodeling of the Weber Center conference room. Commissioner Zogmaister said that the room itself is functional; the lighting is poor and some technology is needed, but to add the aesthetics is over/above what is needed. She supports the lighting and electronics for about \$20,000 but not the cabinetry and paneling for another \$19,000; Chair Gibson seconded. Commissioners Bell and Gibson voted aye. Commissioner Zogmaister voted nay.

7. APPROVAL OF AN ACCESS EASEMENT FOR THE PAS DE CALAIS SUBDIVISION

This item was discussed last week and was tabled. Richard Reeve had asked that it be held based upon an engineering study that was being done. Jared Andersen, County Engineer, stated that he had not received any calls from an engineer doing any type of study. He stated that a geotechnical firm will first need to do a boring where the existing roadway comes into the pond area, but not on the existing roadway. He is concerned that a study may be in progress without any communication with the county. He reiterated that County Engineering will make sure the design and all necessary studies are done make to ensure this is done correctly.

E 4/6

Mr. Anderson said that certain items have to receive approval prior to the roadway cross-section being approved. Without approval from the studies, the road cannot be constructed. The easement section is across county property but the same approvals will be needed for the roadway up to the two homes. He has discussed with Matthew Rasmussen, petitioner, the two borings that will be needed for the location where the two homes will be constructed.

Mr. Rasmussen had indicated to Commissioner Bell that he does not plan to build on the property for some time, and particularly because this is a controversial issue, he does not feel there is a rush to get it done, and he wants it done right.

Commissioner Bell said that the road will probably be shared for three houses (including the Uintah Highlands Improvement District (District) property that they may sell as a lot). Commissioner Zogmaister wants the rights of property owners respected and that the county gets the 4,600 square foot piece of property to protect its pond and interests there. Chair Gibson said that this is an opportunity to clear up an issue that has existed for the county for a long time to ensure there is access and for continued maintenance of the pond. He feels that the easement and property exchange are separate issues from approval of the subdivision, that the latter is what requires the studies, in conjunction with County Planning and Engineering, which will direct what studies and information is needed. He feels the studies are part of a different process, thus he is comfortable proceeding at this point and allowing the studies to come forward with the subdivision.

Richard Reeve, representing Carol Browning, referred to the request by voice mail and email sent to the commissioners last night. He said that the Browning family has retained Shane Taggart, an engineer, who is in the process of reviewing the plat maps and process but has not yet conducted a site inspection. If Mr. Taggart rushes the report he could have a report two weeks from today with actual data to consider whether this is a good move for the county. He agreed that there are two separate processes: granting public property to a private land owner, giving him an easement, and there is the subdivision process.

Mr. Reeve urged the commissioners to follow the code about granting public property to a private land owner and said that they have to find substantial evidence that there is no other way Mr. Rasmussen can build a practical and feasible way to access the road. Code states that they have to find substantial evidence that shows it is impractical or infeasible for Mr. Rasmussen to build any other road to access his property. He would like the findings entered into the record but does not believe substantial evidence can be found. He said it is not the normal language found in county land codes, which indicates that a higher burden is put upon the Commission to find substantial evidence. He refuted the comment that the county would receive a benefit because the berm has been there for a long time, adverse and prescriptive use has been established for the county, and he said that no one will remove it because the county has rights to it.

Regarding the easement granted to the District, he had spoken with John Reeve, District Chair, and said that it had not been given willingly. The District had shown that they had prescriptive use to that easement for more than 40 years and the county granted the easement based on historic use. However, Mr. Rasmussen has no historic claim across county property to get a prescriptive easement. The code requires the County Commission, before giving up public land, to see if there is any other way that is practical and feasible for a road to be brought to that property, but cannot consider financial adversity to the developer. He brought a copy of the plat map and stated that there is a lot for sale that has frontage on the road that adjoins Mr. Rasmussen's property that is flat, thus Mr. Rasmussen has a feasible and practical way to access his property. It involves purchasing a lot, but the Commission can consider whether it is economical according to county code.

Chair Gibson feels comfortable with county legal counsel's advice that approving this easement would be admissible under code. The county may have a prescriptive right granted by courts to the berm, but the county has an opportunity to solve an issue that has been a challenge for some time, that the county has a pond but does not own part of it. This would eliminate the risk of having to make extraordinary arrangements for that basin.

Commissioner Zogmaister moved to approve an access easement for the Pas de Calais Subdivision, with the county receiving the portion of land needed for ownership where the berm is located; Chair Gibson seconded. Commissioners Zogmaister and Gibson voted aye. Commissioner Bell voted nay.

F. PUBLIC HEARINGS

1. Commissioner Bell moved to adjourn the public meeting and convene the public hearings; Commissioner Zogmaister seconded, all voting aye.
2. **PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE WEBER COUNTY LAND USE CODE TITLE 108 (STANDARDS) CHAPTER 1 (DESIGN REVIEW), TITLE 101 (GENERAL PROVISIONS) SECTION 101-7-7 (DEFINITIONS), AND TITLE 106 (SUBDIVISIONS) CHAPTER 1 (GENERAL PROVISIONS) SECTION 106-1-8 FINAL PLAT REQUIREMENTS AND APPROVAL PROCEDURE**

Jim Gentry, of the County Planning Division, said that these amendments are to help clarify language and streamline the process. A provision is being added that the County Engineer can approve financial guarantees up to \$25,000 (from \$10,000). The definition for financial guarantees is also being amended. Both Planning Commissions recommended approval. Commissioner Zogmaister asked how many subdivision approvals would be affected by the increase to \$25,000 and how they came up with that amount. Mr. Gentry said that they feel comfortable with that amount, that many escrows are received for landscaping for commercial buildings, for a few fire hydrants or minor ditches that need to be filled, piping, etc., and that it is usually for minor items and for smaller subdivisions. He also stated that the release of the escrow funds would be done through County Engineering after the request is received and the inspection is conducted.

Sean Wilkinson, County Planning Division Director, stated that Planning is in favor of these changes. In some subdivisions two fire hydrants can exceed the \$10,000 amount and the \$25,000 may cover all the needed minor improvements. Instead of waiting 1-2 weeks to bring it to the County Commission to approve those escrow agreements, it will give County Engineering the flexibility to handle this and potentially save developers a few weeks. The escrow agreements will be recorded and all actions documented. Chair Gibson invited public comments and none were offered.

3. **PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE WEBER COUNTY LAND USE CODE TITLE 104 (ZONES) CHAPTER 23 (OGDEN VALLEY MANUFACTURING ZONES MV-1) SECTION 2 (PERMITTED USES) BY ADDING SMALL BREWERY AND DISTILLERY AND TITLE 101(GENERAL PROVISIONS) SECTION 101-7-7 (DEFINITIONS)**

Jim Gentry, of the County Planning Division, stated that the applicant wishes to amend the MV-1 Zone to allow a small liquor distillery. The Ogden Valley Planning Commission recommended adding the definitions of distillery and small brewery, which definitions come from State Code. A small brewery will manufacture less than 60,000 barrels of beer per year. Chair Gibson invited public comments and none were offered.

4. Commissioner Zogmaister moved to adjourn the public hearings and reconvene the public meeting; Commissioner Bell seconded, all voting aye.

G. ACTION ON PUBLIC HEARINGS:

1. **(F.2) - AMENDMENTS TO THE WEBER COUNTY LAND USE CODE TITLE 108 (STANDARDS) CHAPTER 1 (DESIGN REVIEW), TITLE 101 (GENERAL PROVISIONS) SECTION 101-7-7 (DEFINITIONS), AND TITLE 106 (SUBDIVISIONS) CHAPTER 1 (GENERAL PROVISIONS) SECTION 106-1-8 FINAL PLAT REQUIREMENTS AND APPROVAL PROCEDURE – ORDINANCE 2014-6**

Commissioner Zogmaister moved to adopt Ordinance 2014-6 amending the Weber County Land Use Code Title 108 (Standards) Chapter 1 (Design Review), Title 101 (General Provisions) Section 101-7-7 (Definitions), and Title 106 (Subdivisions) Chapter 1 (General Provisions) Section 106-1-8 Final Plat Requirements and Approval Procedure; Commissioner Bell seconded.

Roll Call:

Commissioner Bellaye
Commissioner Zogmaister.....aye
Commissioner Gibsonaye

2. **(F.3) - AMENDMENTS TO THE WEBER COUNT LAND USE CODE TITLE 104 (ZONES) CHAPTER 23 (OGDEN VALLEY MANUFACTURING ZONES MV-1) SECTION 2 (PERMITTED USES) BY ADDING SMALL BREWERY AND DISTILLERY AND TITLE 101(GENERAL PROVISIONS) SECTION 101-7-7(DEFINITIONS) – ORDINANCE 2014-7**

Commissioner Bell moved to adopt Ordinance 2014-7 amending the Weber County Land Use Code Title 104 (Zones) Chapter 23 (Ogden Valley Manufacturing Zones MV-1) Section 2 (Permitted Uses) by adding Small Brewery and Distillery and Title 101(General Provisions) Section 101-7-7(Definitions); Commissioner Zogmaister seconded.

Roll Call:

Commissioner Bellaye
Commissioner Zogmaister.....aye
Commissioner Gibsonaye

H. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, APRIL 8, 2014, 10 A.M.

I. PUBLIC COMMENTS: None

J. ADJOURN

Commissioner Bell moved to adjourn at 11:13 a.m.; Commissioner Zogmaister seconded, all voting aye.

Attest:

Kerry W. Gibson, Chair
Weber County Commission

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

The Order of the Court is stated below:

Dated: January 27, 2016
01:33:42 PM

/s/ W BRENT WEST
District Court Judge



EXHIBIT H 1/4

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Attorney for Plaintiff

**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
WEBER COUNTY**

CAROL C. BROWNING,

Plaintiff,

vs.

WEBER COUNTY, a body politic, WEBER
COUNTY COMMISSION AND WEBER
COUNTY BOARD OF ADJUSTMENTS;

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Civil No. 140904054

Judge W. Brent West

On or about December 11, 2015, Plaintiff filed a Motion for Summary Judgment, seeking a summary ruling as to Plaintiff's procedural challenge of the decision of the Weber County Board of Adjustments. After the submission of memoranda by the parties, Plaintiff's Motion for Summary Judgment came on regularly for decision on the 8th day of January, 2016 before the Honorable Judge West. Plaintiff and Defendants appeared through their respective counsel of record and provided oral arguments on the motion. The Court, having considered the parties' written memoranda, the arguments of counsel, and being otherwise fully advised in the premises,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

1. Weber County avers that the access application, challenged by Plaintiff at the Board of Adjustments and in this judicial review, occurred by the appropriate land use

authority on August 9, 2013.

2. The Weber County Board of Adjustments declined to hear Plaintiff's appeal because they determined that an appeal had not been timely appealed under the deadlines established by County Code.
3. The record does not contain any indication that Plaintiff received notice about the access application prior to August 9, 2013, or within 15 days of that date.
4. The Court is not convinced that Weber County did not need to provide Plaintiff with separate notice of the approval of the access application and would consider that to be an unconstitutional violation of her due process rights.
5. As a result of the lack of notice, the Court determines that Weber County deprived Plaintiff of her constitutional right to receive notice and to be heard on a decision that impacted her real property. The Court determines that the lack of notice makes the decision "illegal." The Court does not comment on the substance of the opinion and is not stating that the decision was "arbitrary or capricious."
6. The Court hereby grants Plaintiff's Motion for Summary Judgment, vacates the decision made on August 9, 2013, by then Planning Director Robb Scott, and remands the matter back to the Weber County Planning Department for the application to be reconsidered with input from Plaintiff according to the process outlined in the current version of the Weber County code.
7. The access application is to be reconsidered by whomever is currently designated by the County as the land use authority who would consider a new application of this type.
8. Notice of the access application shall be given to Plaintiff within thirty (30) days of

the entry of this Order. Plaintiff shall have a 20 day period in which to submit written comments to the designated land use authority and to meet, in person or through her designated agent or counsel, with said land use authority to deliver her comments on the access application. Only Plaintiff is entitled to submit comment on the remanded application.

9. This remand is on procedural grounds only. The land use authority is under no direction from the Court to decide the application in any way.

NOTICE TO PARTIES AND THEIR COUNSEL

Pursuant to Utah R. Civ. P. 5(j)(5) and 6(c), the undersigned shall submit the above and foregoing ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT to the Court for entry upon the lapse of ten (10) days from the date of service hereof.

DATED this 13th day of January, 2016.

REEVE LAW GROUP

/s/ Richard Reeve

By: _____
Richard H. Reeve
Attorney for Carol Browning

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2016, in accordance with Rule 5(b)(1) (B) and 5 (d), I caused to be delivered via electronic mail only, this ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT to the following:

Christopher K. Crockett
Weber County Attorney's Office
ccrockett@co.weber.ut.us
Attorney for Weber County

/s/ Richard Reeve
