

Dear Board of Adjustment,

April 27, 2022

I am submitting this appeal of the Weber County Planning Commission's recommendation to **conditionally** approve the Weber School District New High School Design Review. Specifically, on April 12, 2022, the Western Weber Planning Commission approved the District's plan with the conditions that a 33-foot wide roadway dedication be shown along the western boundary, and that a pedestrian pathway be constructed through the District's property that the pathway be legally granted to the county as a public pathway, and that open gates be added to the boundary fence around the school.

The purpose of this appeal is to preserve any and all legal arguments the District may later wish to raise in state court. However, with all due respect, the District believes that this appeal process is unnecessary, as it is the District's understanding based on state law and regulations that the District does not require approval of its construction and design plans from the Planning Commission. The District's position is that Utah Code Ann. § 53E-3, Part 7 governs school construction. Unlike other developers in the county, a school district is its own school building authority. Utah Code Ann. § 53E-7-702; Utah Admin. R277-471-3(A)(1). *See also*, [School Construction Resource Manual](#). Utah Code Ann. § 53E-3-710 and R277-471-6 require that a school district meet with government entities to discuss concerns that each party may have including potential community impacts and site safety; to assess the availability of infrastructure for the site; and to discuss any fees that might be charged by the governmental entity in connection with the project. State law requires that the school district submit a rough proposed site plan to the local governmental entity's design review committee ***for comments*** about these, and other issues (Utah Code Ann. § 53E-3-710(2)(a)(ii)). State Board of Education rules states that an LEA shall maintain documentation for audit purposes of ***coordination, meetings, and agreements***. (Utah Admin. R277-471-6F.) The State Construction Resource Manual states, "During the site planning and design, the school district or charter school should approach the planning commission ***for their input***, as well as the municipal or county engineering staff, for information concerning roads, pedestrian ways, utilities and adjoining property usage." (School Construction Resource Manual, <https://schools.utah.gov/file/25868575-d184-42d6-a9a0-778da7fdb3bb>, page 60).

Pursuant to these statutory, regulatory, and guidance provisions, the District submitted its plans to the Planning Commission in December, 2021. The County provided comments and questions from the County Engineer on January 4, 2022, which the District responded to. The County Engineer requested a traffic impact study, which the District completed. On January 20, 2022, the Weber County Planning provided additional comments and questions about the District's plans. The January 4, 2022 review included a request to see a road dedication along the western boundary as a potential connection to 1800 South, and asked "[C]an there be a potential connection to the west, directly into the school property, for future development on parcels to the west of the school site?" The District reviewed the comments and requests and

complied with many, but determined it was not in the District's best interest to build a road or to include a walkway onto its property.

The District believes it has met all the requirements under state law to notify and receive comment and input from the County.

Having said this, the District understands and acknowledges that the District *is* subject to the County's land use ordinances, with certain exceptions. If the County is asserting that the District's plans do not comply with the land use ordinances, we acknowledge that, unless an exception applies (which we believe there are exceptions that apply), the District would be more than willing to review the land use ordinance at issue and continue working with the County to ensure compliance. The request to install a road and a sidewalk through the District's property, however, is not a land use ordinance—it appears to have begun as a suggestion and is now being asserted as a requirement, as part of the County's smart planning protocols and efforts to achieve connectivity throughout the area. While the District respects the County's future planning goals, it is wholly contrary to the needs and goals of the District, for a public walkway to run through the middle of school property, for public use by any and all at any time of the day. Unless the requirement is actually a land use ordinance, the District respectfully contends that it is not subject to the bigger planning picture of the Planning Commission.

Even if the suggestion/requirement were a land use ordinance—which we believe it is not—Utah Code Ann. § 17-27a-305(3) includes a number of exceptions to the provision that a school district is subject to a county's land use ordinances. Utah Code Ann. § 17-27a-305(3)(a), for example, states in relevant part that, "A county may not impose requirements for ... fencing[.]" Part of the Planning Commission's requirement is that the District install a gate that is open to the public. A gate in our fence is a fencing requirement, and the law specifically states the county may not impose requirements for fencing.

Additionally, Utah Code Ann. § 17-27a-305(3)(b) states, in relevant part, "A county may not... require a school district ... to participate in the cost of any roadway or sidewalk...that is not reasonably necessary for the safety of school children and not located on or contiguous to school property[.]" The Planning Commission's recommendation to put in a 6 feet paved pathway and a 33-foot wide roadway dedication is a requirement to participate in the cost of a sidewalk, and while the sidewalk would be on our property—meeting that second condition, it is not reasonably necessary for the safety of school children, nor has anyone from the Planning Commission suggested that is the reason for the sidewalk or roadway.

The recommendation for a gate in our fence, a sidewalk on the school's property, and a roadway dedication, falls squarely within the exception to the authority of the county to impose land use ordinances.

In addition to the above, most troubling about the requirement for the public pathway through the school's property is that the requirement violates the Constitution's taking clause. The County has no authority to impose such a constitutional taking on the District. Utah Code Ann. § 17-27a-103(10) defines "constitutional taking" as a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the

Fifth of Fourteenth Amendment to the Constitution; or Utah Constitution, Article I, Section 22.” While funded by public dollars, a school is not open to the public and the county’s restriction on the District’s property is a taking in every sense of the word. It creates a burden on the property that a government entity would otherwise have to pay for, and there have been no discussions about compensating the District for the easement. It is of grave concern to the District that the County would assert extra-constitutional authority in making this a requirement.

The concerns with creating a public access easement right through the District’s property are plentiful. The safety concerns alone are numerous. The sidewalk would serve as a gathering ground for students who most likely should be in school. It is common knowledge among school administrators that pathways, sidewalks, parking lots and the like far away from the school and the school’s security cameras are popular places for students to gather to engage in conduct that violates school rules and/or criminal laws. Kids vape, smoke, drink, use drugs in places where they think they will not be caught. And most sexual assaults that occur on campus occur in remote places far from the school. Additionally, in the event that an active shooter or other threat came to the school, the school would need to secure all its perimeters, and having an open gate from the west side into the school property would not allow the school to do this. The school would have to install a security camera, at its expense, and ensure it is properly functioning at all times.

Once development of those 27 acres occurs, the school will not only have to worry about its students gathering there, but also it will have to worry about all the passersby from the public. The school property would be more like a park than a school. Community members would likely ride their bikes through, stop and chat with one another, and create foot traffic that is simply not conducive to a safe school environment. A sidewalk that is dedicated as a public pathway would also likely be considered an “open public forum” where citizens can gather and protest and demonstrate. Schools are generally “closed public fora”, which means the public can come to the school for school events, but they cannot protest or demonstrate. Not only would such activity be incredibly disruptive, but it would create safety issues for the District’s students in the event that the demonstration become riotous.

Friday night football game nights would be a nightmare for the school’s residential neighbors. Schools and districts already field endless calls from angry patrons complaining that cars are blocking their drives and filling up their streets, and if an open gate and a sidewalk led from a residential neighborhood right to the football stadium, community members would naturally park in the neighborhood for easy access in and out of the school. And the District’s relationship with the neighbors would most certainly sour.

Finally, the District’s liability would increase tenfold if it was responsible for maintaining a public pathway, accessible to any and all.

The District appreciates and values that the Planning Commission is looking ahead at future developments and thinking about how to reduce traffic and connect neighborhoods to one another. But connecting neighborhoods right through the middle of a high school is seriously problematic for the high school, which is problematic for the community.

For both the legal and practical reasons stated above, the District is appealing the Planning Commission's decision to require a roadway, a gate, and a pathway through the school, dedicated back to the county as a public access easement.

Please do not hesitate to reach out to me with concerns.

Thank you,


Heidi J. Alder