



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a 7 foot variance request to the frontage requirement at 4311 North 2900 East, Liberty  
**Agenda Date:** Thursday, April 10, 2014  
**Applicant:** Brandon Lewis  
**File Number:** BOA 2014-03

### Property Information

**Approximate Address:** 4311 North 2900 East, Liberty  
**Project Area:** 3-acres  
**Zoning:** Forest Valley (FV-3) Zone  
**Existing Land Use:** Vacant  
**Proposed Land Use:** Dwelling  
**Parcel ID:** 22-008-0071  
**Township, Range, Section:** T7N, R1E, Section 18

### Adjacent Land Use

<b>North:</b> Agricultural	<b>South:</b> Agricultural
<b>East:</b> Agricultural	<b>West:</b> Agricultural

### Staff Information

**Report Presenter:** Jim Gentry  
jgentry@co.weber.ut.us  
801-399-8767  
**Report Reviewer:** SW

## 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 14 Forest Valley (FV-3)

## Background

The applicant is requesting a 7 foot variance to the frontage requirement at 4311 North 2900 East Liberty in order to build a single family dwelling. The Forest Valley FV-3 zone requires 3-acres and 150 feet of frontage at the 30 foot front yard setback. The lot, when divided off of the larger parcel had 3-acres and 150 feet of frontage according to the recorder's plat maps. The southern property line of the new lot was created and established by a deed in 1942. The earliest recorder plat maps for the Ogden Valley are from 1966. The recorder plat maps show graphic representation of property descriptions for tax purposes. This representation of the southern property line has been shown in error since 1966 and was discovered as part of the review for this subdivision. The recorder plat maps shows a 16.5 foot wide by 240 foot long strip of ground. The 1942 deed calls for this strip of ground to go to 2900 East, not just 240 feet as currently shown. The applicant was able to acquire an additional 16.5 feet from the property to the north, which gives him enough land to meet zoning area requirements but not enough for frontage.

The Weber County Surveyor in his letter dated March 18 (exhibit C) explains the following concerning the narrowing of the frontage: "Several years ago when other subdivisions were being developed to the north of this area on 2900 East street the county surveyor's office established an alignment for the road. This alignment is what we are holding to for dedications along this road. This dedication creates a difference in the distance of the road, based on the historical deed and what we are requesting to be utilized in this subdivision.

The main reason is that the bearing of the center line of the road is described in the deed as being South 2107'37" West. The alignment we are requesting is more perpendicular to the north and south boundaries of the properties. The difference in the perpendicularity and the deed bearing causes the shortening of the frontage as it relates to the right of way which is being requested by the county".

## Summary of Board of Adjustment Considerations

- One of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Codes. Weber County Land Use Code, Section 102-3-4 states that *“the Board of Adjustment may grant a variance only if the following 5 criteria are met:”*
  - A. *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 Land Use Code.*
    - 1. *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.*
    - 2. *In determining whether or not enforcement of the Land Use Code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
  - B. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
    - 1. *In determining whether or not 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.*
  - C. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
  - D. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
  - E. *The spirit of the land use ordinance is observed and substantial justice done.*

The applicant has submitted a narrative addressing the above criteria, which is attached as Exhibit B. The Planning Staff’s analysis and findings are provided below:

1. The are hardship with this property are a deed that was recorded in 1942 was not correctly reflected on the recorder’s plat maps since 1966, and 2900 East has not been dedicated so the road alignment for dedication is slightly different from the actual location of the road.
2. The hardship is not self imposed in that a deed that was recorded in 1942, and then reflected incorrectly by the recorder’s plat maps since 1966. The hardship is not economic in that the property owner has worked with the property owners to the north to obtain additional property to give the subdivision the required 3-acres. The road (2900 East) has never been dedicated. The County Surveyor is asking for a different road alignment than the alignment proposed by the property owner’s surveyor.
3. The circumstances attached to this property are special and do not generally apply to other properties in the same zone. The problems associated with this property are due to a deed that was recorded in 1942 being reflected incorrectly. The existing road alignment on 2900 East is being changed with the road dedication as part of the subdivision.
4. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. The applicant will be able to build a single family dwelling on a 3-acre parcel.
5. If the variance is granted it will not affect the goals or objectives as outlined in the Ogden Valley General Plan, and the spirit of the Land Use Code will be observed by maintaining the 3-acre area requirements.

## **Conformance to the General Plan**

Single-family dwellings are allowed as a permitted use in the Forest FV-3 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan.

## **Conditions of Approval**

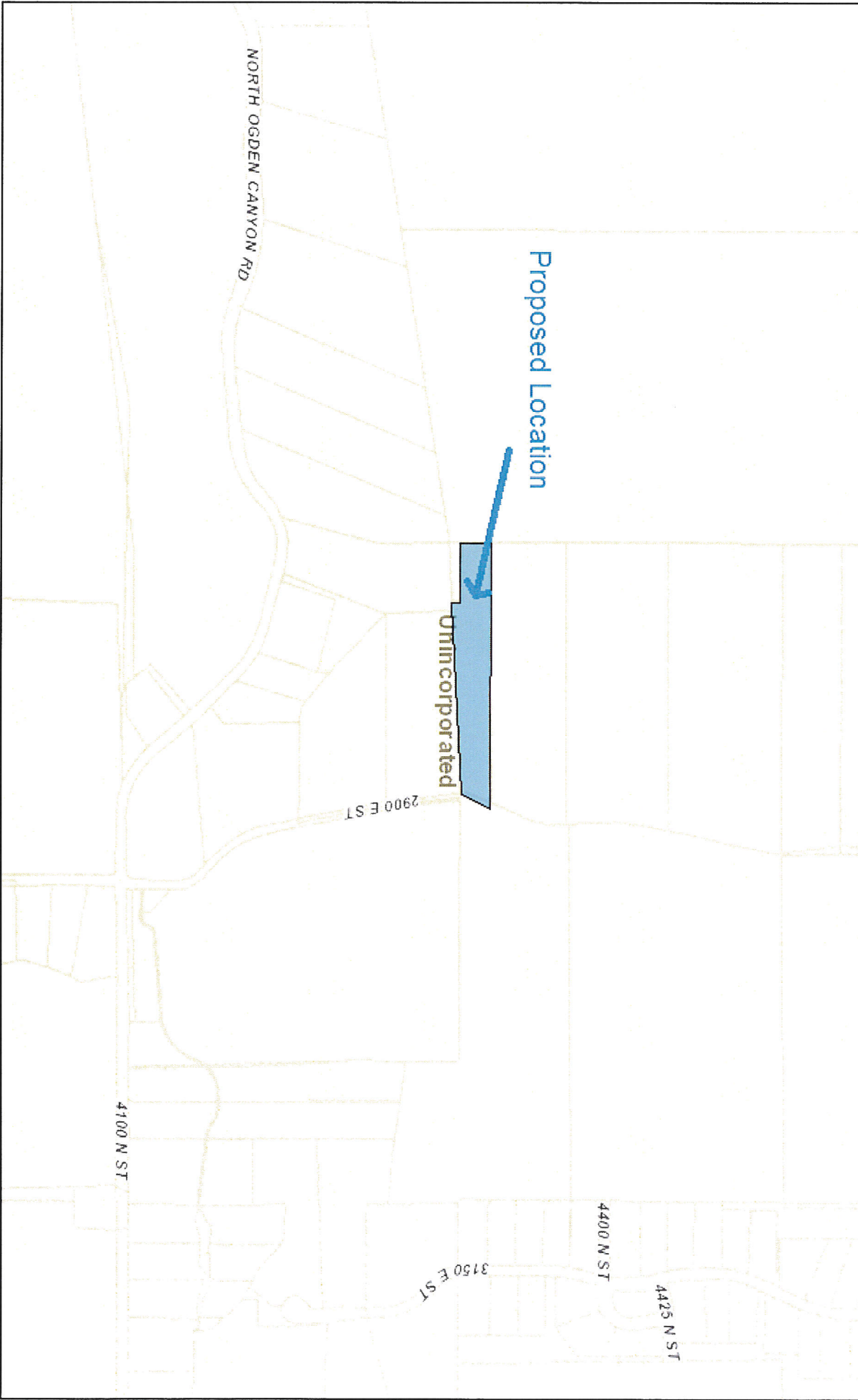
- Meeting the requirements of applicable County review agencies.
- Completing subdivision process.
- Obtaining a land use permit and a building permit prior to construction.

## **Staff Recommendation**

Staff recommends approval of the variance request for a seven foot variance to the lot width at the 30 foot yard setback, based on its compliance with the applicable variance criteria discussed in this staff report and the detailed explanation by the County Surveyor/Recorder.

## **Exhibits**

- A. Location Map
- B. Applicant's Application and Narrative
- C. County Surveyor/Recorder Memorandum
- D. 1966 Recorder's Plat Map
- E. 2014 Recorder's Plat Map



Proposed Location

Unincorporated

NORTH OGDEN CANYON RD

2900 E ST

4100 N ST

3150 E ST

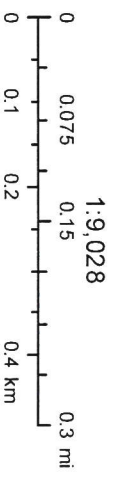
4400 N ST

4425 N ST

March 18, 2014

Street Labels

City Labels





## Variance request narrative for 4311 North 2900 East, Liberty, UT

1-

In early July 2013, I purchased the piece of land located at approximately **4311 North 2900 East, in Liberty Utah**. This parcel of land was created by Entry # 2545886 and #2545887, and as noted by the county plat maps, does not comply with State Code. The previous land owner had submitted drawings for a Subdivision Application to the County under the name "Steve Rich Subdivision", so we continued the subdivision process under that name. County Records had shown this parcel as being 150 feet Northeasterly along the centerline of the county road from the South Section line. At the beginning of the review process for this subdivision it was discovered the 150 foot frontage needed to be at the 30 foot setback line. The previous land owner negotiated with the land owners to the North to purchase a small sliver of land to gain the required frontage to the setback line.

Shortly after me purchasing the property, the owner of the adjacent land to the West (Mike Rhodes) informed me and the County offices, that he had a right-of-way easement through the Southern 16.5 feet of the lot. After months of investigation and meeting with real estate attorneys, all parties agreed that not only did Mr. Rhodes have a right-of-way, but he actually owned the Southern 16.5 feet of the lot which I had just purchased. The County Maps were incorrect, and seemed to have been that way for many years.

I negotiated with the land owners to the North again, and purchased another sliver of land to replace the 16.5 feet taken from the South. Thinking that I finally had done everything to make the lot compliant, I asked my surveyor (Landmark Surveying) to submit the revised survey to the Weber County Surveyors office.

Through this next review process my surveyor was given a new alignment of the centerline of the road which changed the angle along my land from the current recorded centerline. This change caused my frontage to fall below the 150' requirement. My surveyor worked with the County Surveyor to find an alignment that would allow this property to meet the frontage requirement, but neither found a solution. Why this new alignment wasn't mentioned or made aware in the previous several months this subdivision was under review I do not know, but with the suggestion from the County Surveyor this variance is being requested. I am not a land developer or investor. I am a private owner and I simply want to build a home for myself. I have been doing my absolute best for the last 7 months to keep this parcel in compliance with the zoning requirements but now ask that a variance be granted to allow my 143.3 feet of frontage so that I may continue in the process of building my home.

2-

This variance will not affect the comprehensive plan of zoning. This land is in an FV-3 zone and according to the site standards me land will meet or exceed all other minimum requirements. This lot contains over the minimum 3 acres which will allow me to build a home as well as protect the naturalistic environment as is the zones objective. If the frontage requirement is strictly enforced this parcel will never be allowed to have a home on it for me or any future land owners to enjoy.

3-

This property did meet the frontage requirements as did all other properties in this area until the road realignment by the County Surveyors office caused this parcel to be non-compliant.

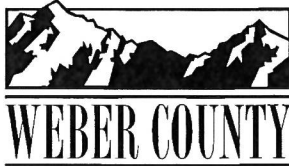
4-

All other land owners in this area still have the comfort of knowing they have or can build a home on their land, which comfort I no longer have because of this realignment.

5-

The special circumstances associated with my parcel are not self-imposed, but in my opinion is the cause of two errors on the County's part. The first being not having the plat maps reflecting the 16.5 foot strip of land on the South as belonging to the Rhodes, which once the documents were found and analyzed caused the subdivision application to be delayed. Once that error had been rectified and I thought my land would be in compliance, the county road had been realigned without any forewarning to me though the County knew about my land and the subdivision application.

March 18, 2014



## INTERNAL MEMORANDUM

### SURVEYING

***Ernest D. Rowley, P.L.S.***

***County Recorder / Surveyor***

***Debra A. Conley***

***Recorder / Surveyor***

***Administrative Assistant***

2380 Washington Blvd., Suite 370  
Ogden, Utah 84401  
Office: (801) 399-8441 or (801) 399-8020  
FAX (801) 399-8316

RE: Steve Rich Subdivision

Weber County Planning, Sean Wilkinson:

This letter is to help the planning office and if necessary the Board of Adjustments, to understand the circumstances surrounding this subdivision application and variance request. Because of the issues surrounding frontage on this subdivision I have suggested to the land owner that they petition the BOA for a variance because I believe that this circumstance is not a self imposed hardship, in fact, it is just the opposite.

The land owners have made efforts to comply with the county requirements for area and frontage after learning that they did not have as much property as they were lead to believe at the time of purchase and have supplied to my office a letter titled "Explanation of events concerning the Steve Rich Subdivision" that gives some of the history on how they have tried to resolve a deed matter that has been mis-represented by the county recorders office for many decades.

Attached you will find a copy of the 1966 Ownership plat. This map is produced by the County Recorder's office for tax purposes. The purpose of the map is to accurately show the configuration of the tax record for weber county properties for the use of the county assessor. The maps are also used by the public in general to see what the county has on record as a basis for taxation.

In the bottom-left side of the plat you will see a parcel that is shown to be 240 feet long (east to west). The deed for this parcel reads:

A part of the Southeast Quarter of Section 18, Township 7 North, Range 1 East, Salt Lake Base and Meridian, Unites States Survey: Beginning at the Southeast corner of the Southwest Quarter of Section 18, and running thence East 240 feet, *more or less, to the*

**West line of the County Road**; thence Northeasterly along the West line of County Road to a point 1 rod North and 240 feet, more or less, East from the point of beginning; thence West 240 feet, to the West line of said Southeast Quarter Section ; thence South 1 rod to the place of beginning. (Dee book 154 page 265 dated January 1942)

I have highlighted the important part of the text of this description. The Utah courts have (virtually without exception) interpreted the language of a metes and bounds descriptions (which this is, the metes are the compass direction and distances, the bounds part is the call for the West line of the County Road) when conflicts arise between the metes portions and the bounds portions so that the bounds of a description take precedence.

¶8 When the Wards obtained their parcel, the eastern boundary was described in two different ways in the deed - - with metes and bounds and by reference to a natural landmark, the Epperson Ditch.[FN1] Because both descriptions are equally legitimate ways in which property can be described in a deed, a legal presumption has developed to resolve conflicts when two such descriptions do not match: “**[F]ixed monuments or markers of a permanent nature which can be definitely identified and located take precedence over calls of courses or distances, or plats, or amounts of acreage . . .** because it is reasonable to assume that the parties are more apt to be familiar with such monuments or markers.” *Scott v. Hansen*, 18 Utah 2d 303, 422 P.2d 525, 527-28 (1966) (footnotes omitted). Thus, we must assume that reference to the Epperson Ditch sets the eastern boundary of the Ward parcel unless this assumption is unreasonable. See *Neeley v. Kelsch*, 600 P.2d 979, 982 (Utah 1979) (failing to apply the presumption where a general description of all land north of a county road would encompass two parcels clearly owned by someone else); *Williams v. Oldroyd*, 581 P.2d 561, 563 (Utah 1978) (holding that if using a monument as a boundary “drastically” changes what the parties intended, then legal presumption does not govern).

¶9 There is nothing unreasonable in taking Epperson Ditch to form the eastern boundary of the Ward parcel. On the contrary, it is undisputed that after acquiring their parcel and while Ellsworth still owned what is now the Khalsa parcel, **the Wards occupied the land right up to the Epperson Ditch.** Therefore, the Epperson Ditch sets the eastern boundary of the Ward parcel.

FN1 The deed reads, in relevant part: “thence South 0754'36" West along a ditch 680.80 feet (207.51 meters) to the point of beginning.”

*Khalsa v. Ward*, 2004 UT App 393

This particular court case the portions that pertain to the situation at hand I have again highlighted. Bounds control over metes, the contrary must be proven by evidence. We have done some research to see if there was a county road at the 240 foot distance location and we have found no records that would lead us to believe that any road existed at this location that could be called a county road.

In this court case the Wards also occupied the land. In the case of the Steve Rich Subdivision, the James Lewis property has been subject to a two track road that runs on the south side of this parcel for a long time indicating occupation.

The property now owned by Rhodes which was originally deeded to Charles Rhodes in a January 1942 deed which would cover this two track road by description holding to the bounds of the deed which is the call to the county road. Mr. Lewis makes the following statement regarding the strip and the road.

Shortly after purchasing the property, the owner of the adjacent land (Mike Rhodes) informed me and the county offices, that he had a right-of-way easement through the southern 16.5 feet of the lot. After months of investigation and meeting with real estate attorneys, all parties agreed that not only did Mr. Rhodes have a right-of-way, but he actually owned the southern 16.5 feet of the lot which I had just purchased. The county records were incorrect, and seemed to have been that way for many years.

This statement brings the matter of an error to the county record. Having examined the deeds and plat records it is evident that the recorders ownership plats were drawn incorrectly based on a long standing practice of the office to use metes over bounds. This is a practice that I am attempting to correct with my mapping staff. Had the county mapped the deed book 154 page 265 correctly when this originated in accordance with legal principles of deed interpretation the county maps would have shown the 16.5 foot strip separated from the parent tract decades ago and when Mr. Lewis purchased the property and it was severed from the larger parcel it would have been purchased without trying to include the 16.5 foot strip of ground.

Mr. Lewis, in the process of trying to correct this problem purchased 16.5 feet of ground from the neighbor to the north. This purchase essentially traded the 16.5 feet on the south of the parcel for the additional 16.5 feet on the north of the property. Now, to understand the issue relating to the request for a variance for frontage we need to examine some of the circumstances relating to the descriptions of the frontage and the mathematics of the parcels relating to the street dedication which is being required by the county.

When Mr. Lewis purchased this property it was described in document Entry Number 2644026 as follows:

Part of the Southeast 1/4 of Section 18, Township 7 North, Range 1 East, Salt Lake Base and Meridian, U S Survey, described as follows:  
Beginning at a point on the west line of Section 18, Which point lies North 00°11'09" East along the 1/4 section line 130.5 feet; thence south 89°24'28" East 1060.04 feet to the center of a county road; thence along the center of said road south 21°07'37" West **150 feet to the south line of Section 18**, thence along said south line North 89°46'46" West 766.4 feet; thence North 00°11'10" East 16.50 feet; thence North 89°46'46" West 240.00 feet to the point of beginning.

Notice from the description that the distance of 150 feet is called to be along the center of the county road. Several years ago when other subdivisions were being developed to the north of this area on 2900 East street the county surveyor's office established an alignment for the road. This alignment is what we are holding to for dedications along this road. This dedication creates a difference in the distance of the road based on the historical deed and what we are requesting to

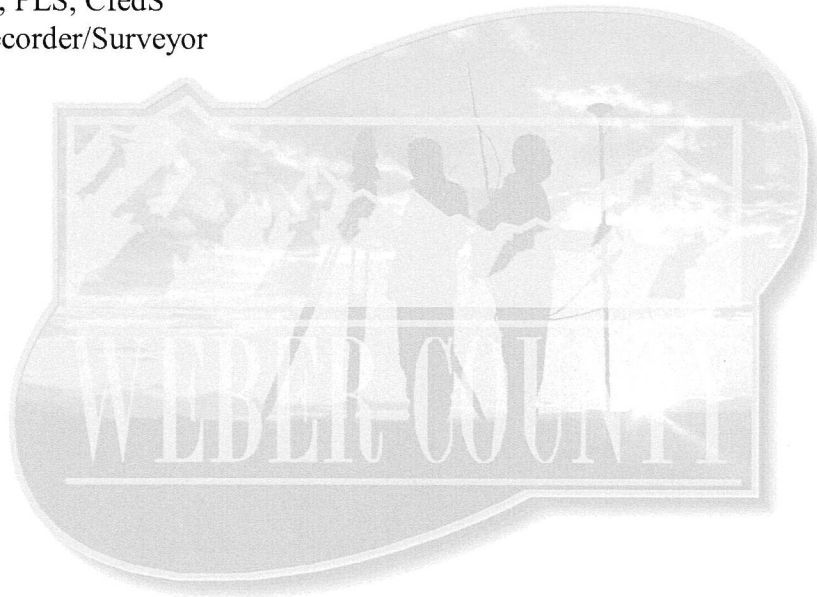


be utilized in this subdivision.

The main reason is that the bearing of the center line of the road is described in the deed as being South 21°07'37" West. The alignment we are requesting is more perpendicular to the north and south boundaries of the properties. The difference in the perpendicularity and the deed bearing causes the shortening of the frontage as it relates to the right of way which is being requested by the county.

Therefore, due to the fact that the land owner has been trying to resolve the issues caused by the error in mapping of the parcels by the county recorders office and the requirement of the county surveyor's office on the alignment of the right of way for 2900 East Street differing from what the deed has assumed the road right of way to be, it is my recommendation that a variance be granted.

Respectfully,  
Ernest D. Rowley, PLS, CfedS  
Weber County Recorder/Surveyor



**2014**

WOLTHUIS FAMILY PARTNERSHIP  
220080063  
13.01 AC±

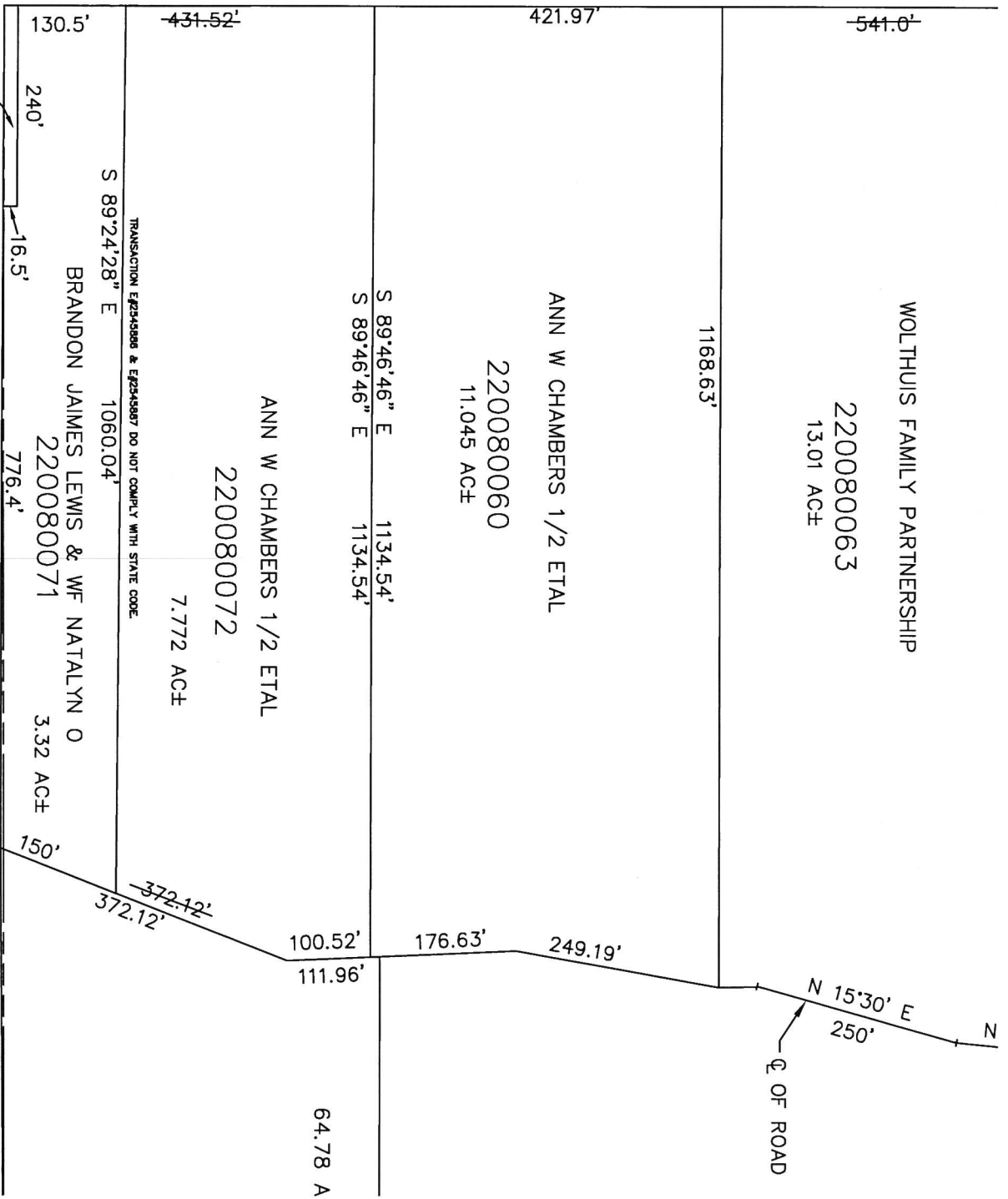
ANN W CHAMBERS 1/2 ETAL  
220080060  
11.045 AC±

ANN W CHAMBERS 1/2 ETAL  
220080072  
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BRANDON JAIMES LEWIS & WF NATALYN O  
220080071  
3.32 AC±

POWELL G RHODES  
& GWEN S RHODES TR=1/3 ETAL  
220080016

SEE PAGE



15.13 AC. ±

5. 1155'

THE  
FILE

BARTT

W

1966

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CHARLES DHOES

10636 - 09 AC

10536 - 73

64.

~~10636 - 09 AC~~

WES & W  
C

1966

2100

2100

2100

WILLIAM WEE BARRY  
1832 CL

GRAND WILLIAM BARRY  
EMER AINSY  
1832 CL

WILLIAM WEE BARRY  
1832 CL

BARRY  
WOLTHUIS

1832 - 1837 CL

14.78 AC. ±

CHURCH STREET