



## BOARD OF ADJUSTMENT

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### MEETING AGENDA Thursday, May 22, 2014 4:30 p.m.

*\*Pledge of Allegiance*

#### Regular Agenda Items

1. Minutes Approval of the April 10, 2014 meeting minutes
2. BOA 2014-06 Consideration and action on an appeal of a decision made by the Weber County Commission on April 1, 2014, to grant an easement across public property in the Residential Estates (RE-20) Zone for the Pas De Calais Subdivision located at approximately 6050 South 2900 East (Carol C. Browning, Applicant)
3. BOA 2014-05 Consideration and action on a variance request for a reduction of lot width for two (2) lots with existing homes within the Agricultural (A-1) Zone located at approximately 700 S 4100 W and 708 S 4100 W in Ogden (Dan Musgrave, Applicant)
4. BOA 2014-07 Consideration and action on a variance for a reduction to the required 30 foot front yard setback up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates Subdivision in the Forest Residential (FR-1) Zone located at approximately 973 Ogden Canyon (Jerry and Kathy Burgess, Applicants)
5. Other Business:
6. Adjournment:

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*The meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1<sup>st</sup> Floor, 2380 Washington Blvd., Ogden, Utah*



*In compliance with the American with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791.*

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Minutes of the Board of Adjustment Meeting held April 10, 2014 in the Weber County Commission Chambers, 1<sup>st</sup> Floor, 2380 Washington Blvd, commencing at 4:30 P.M.

*Present:* Deone Smith, Chair; Rex Mumford; Phil Hancock; Doug Dickson; Celeste Canning;

*Absent:*

*Staff Present:* Sean Wilkinson, Planning Director; Jim Gentry, Planner; Steve Parkinson, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

**\*Pledge of Allegiance**  
**Regular Agenda Items**

**1. Minutes: Approval of the February 27, 2014 meeting minutes**

**MOTION:** Phil moved to approve the meeting minutes of February 27, 2014 as written. Rex Mumford seconded. A vote was taken with all members present voting aye. Motion Carried (5-0)

**2. BOA 2014-03: Consideration and action on a 7 foot variance request to the frontage requirement of the Forest Valley (FV-3) Zone located at 4311 N 2900 E in Liberty (Brandon Lewis, Applicant)**

Jim Gentry said the applicant is requesting a 7 foot variance to the frontage requirement in the Forest Valley FV-3 Zone that requires 150 feet of frontage at the 30 foot setback and the applicant has 143 feet with a 30 foot setback. The lot was divided off of a larger parcel; when it was divided off it had three acres and 150 feet of frontage according to recorders plat. The southern property line was created and established by a deed in 1942. There is a 1966 plat included in this packet, which is the earliest recorded plat that they have for the county. This piece appeared on the recorders plat in 1966 in error to the deed that was recorded in 1942. The recorders map shows 16.5 feet wide by 250 feet long strip of ground and the 1942 deed calls for the strip of ground to go to 2900 East. The applicant was able to acquire an additional 16.5 feet from the property to the north which gives him enough land to meet the zoning area requirements for frontage. A Weber County Surveyor's letter dated March 18 explains concerns in the narrowing of the frontage. The applicant has submitted a narrative addressing the criteria which is listed in the summary of the Board of Adjustments consideration. Planning Staff's analysis and findings have been provided and recommends approval of a seven foot variance to the lot width at the 30 foot yard setback, based on its compliance with the applicable variance criteria as discussed.

Rex Mumford asked if the frontage of the lot is a long 2900 East. What has that little strip have to do with the frontage unless this map is not depicting it correctly? Mr. Gentry replied it has not been depicted correctly.

Celeste Canning asked if this map shown on the traditional north to south being up and down on the portrait page. Mr. Gentry indicated that 2900 East was not a dedicated road and that is why the applicant is going to dedicate part of 2900 East.

Rex Mumford asked if on the south where the 240 foot strip that now goes all the way across, would this be another parcel of land, or is there another road going through here or is it adjacent to a parcel and the Rhoads family own a 16 ½ foot strip of land. Jim replied that is correct.

Brandon Lewis, who resides in Orem and is here for the property on 2900 East in Liberty, said that he wanted to do a recap of his experience with the property. When he first purchased the piece of land, according to the county records, the seller, and the title company; he purchased everything that you see on the document that is before you. After he purchased it a couple of months later and tried to finish the subdivision process, the Rhoads approached him and said they owned that strip of land all the way down to the county road. So he purchased a piece of land that he did not have the right to purchase and to rectify the situation, he purchased that same amount on the other side of his property. At that point, he had done everything he could to meet the county requirements, with the 150 frontage then he learned that on the plat the road had not been dedicated; what he thought was 150 foot of frontage, because the angle of the road is now slightly different, the angle is shorter, that made his frontage down to 143½ feet. This was after he had purchased that property to the north. He believed that he has done everything

that he could to come into compliance, that is why he requesting the Board for a variance.

Rex Mumford asked when you bought this lot, on the plat it did not show that 16 ½ foot strip of land. Mr. Lewis replied that it did not; it only showed the 240 foot cutout, and he found out it was actually about 1,200 feet in length all the way down the side.

**MOTION:** Phil Hancock moved to approve BOA 2014-03 in reference to staff's recommendations and criteria established by staff and the applicant request. Celeste Canning seconded.

**DISCUSSION:** Rex Mumford asked for clarification that this is for a seven foot variance. Mr. Hancock replied that is correct.

**VOTE:** A vote was taken with all members present voting aye. Motion Carried (5-0)

3. **BOA 2014-04: Consideration and action on a variance request for a reduction of lot area of 171 sq. ft. on Lot 34 of Woodland Estates Subdivision Unit 2, in the Residential Estates (RE-20) Zone located at approximately 2275 E Woodland Drive (Stan Booth, Applicant)**

Steve Parkinson said that the Woodland Estates Subdivision Unit 2 was approved in 1959, and Lots 34 and 35 had the necessary lot area that zoning required. Over the past 55 years the line between the two lots has moved and as of 2002, the line sits where it is currently on Lot 34, leaving it 22 sq. ft. short of the required 20,000 sq. ft. minimum. In addition to that the road area there is a large boulder there. Because of the boulder the Engineering Department would like the applicant to acquire an additional 149 sq. ft., to make that right-of-way larger for snowplows to get through, and better traffic flow around that rock; thus the total variance request is for a reduction of 171 sq. ft. Staff has had discussions with the applicant regarding the possibility of asking the neighbor for some additional square footage. The applicants talked to owners of Lot 35 and this proved to be difficult because of the vegetation, the rock wall, and a large tree; making the it difficult to get that 22 sq. ft. With the 22 sq. ft. shortage, the applicant would not be able to build a home and it would deem this property unbuildable. Special circumstances are attached to the property; the previous landowners changed the Lot Lines, plus the vegetation, the building of the rock wall, etc. Staff would recommend approval for the variance for a total of 171 sq. ft. (22 sq. ft. for the reduction of the lot and 49 sq. ft. for the right-of-way land) subject to the review of other agencies and requirements.

Rex Mumford asked with the previous property owners moving the property line back and forth, did the deed not show how many square feet this property had? Mr. Parkinson replied it did not; what it does show on the aerial photo is 29,000 sq. ft., but when the math is done of the depth and width, it was 19,978 sq. ft., and the recorded plat didn't adjust for that square footage. Even at its largest size it would have been almost 22, 000 sq. ft. and if the plat was read today, it would not be presented correctly on the county websites.

Rex Mumford said so there is not a problem in reducing this lot size from the stand point of the physical layout or anything like that. Mr. Parkinson replied no, it still has the correct width requirements and would still be able to meet setback requirements; it's just that 22 sq. ft., and the county is asking for the additional 149 sq. ft.. The additional requirement from the county would have happened regardless to make that corner better.

Celeste Canning said it sounds like when the property was going back and forth, the previous owner was under the impression that they had plenty of land to play with and still meet these requirements. Are there any inherent features to these two lots that traded property back and forth that would make the boundary where they have finally arrived to make more sense how it was. Mr. Parkinson replied historically if you go back, on Lot 35 there is a large tree and a rock wall that if they moved it; it would remove that portion of property the owners didn't want to lose because they put that in there.

Celeste Canning said so there are no geographic features that would say this is a better boundary that was driven by some other choices from people who are not here today? Mr. Parkinson replied that is correct.

Doug Dickson asked if the residents of Lots 34 and 35 were happy with the current boundary. Mr. Parkinson replied

that the applicant could answer that, but he knew that the applicant went to both property owners to get the additional land.

Stan Booth, representing the Tanners, said they first realized they were 22 sq. ft. short when this buyer did their diligence. He did confront the neighbor to the south, Ross Loevy and offered him \$1,000.00 for a linear 2 ½ inches which would have given them the 22 sq. ft. They offered to pay for the subdivision and surveying fees. Ross Loevy was insistent on saving the tree and did his own survey with an irregular line that would reduce the value of this property. He then confronted his neighbor to the west and she said they had discussed this with the Loevy's and the bottom line is they didn't want a home there and were not going to sell them the 2 ½ inches required to get that 22 sq. ft. They went to the county and talked to the engineer and had him up on site. He said this is a dangerous situation in the winter with the road being so narrow and that rock; it could use some extra space for snow removal, and the future curb, gutter, and sidewalk potential.

Celeste Canning asked if he had any knowledge or information about the property line moving back and forth. Mr. Booth replied that he had Scott Mendoza have someone go through all the records to find some way that they could legally do this without going through the Board. The information jumped around from accounting and recording that they could not come to any conclusions on it.

Celeste Canning asked with the proposal from the neighbors to the southeast, would that property line have been a straight property line. Is the offer still on the table? Mr. Booth replied no, it's not a straight line it is more jagged. He was not sure but after the Tanner's received their proposal, they didn't want to go that route as it was not acceptable.

Rex Mumford asked the way the lots are right now, is the tree right on the property line? Mr. Booth replied no, the tree is on the Tanner's property and the neighbor wants the tree on his property in order to do this trade.

Ross Loevy, who resides in Ogden, said that he and his wife are the rightful owners of Lot 35 of Woodland Estates Subdivision Unit 2. The adjacent lot had been vacant since the area was platted in 1959. His property was purchased in 1990, the 15-16 feet of strip of land north of his house was being represented as part of Lot 35. The issue with the Lot 36 is indicated on the plat map, it has 20 feet of Lot 36 to the south, and they started with 8.8 feet of Lot 34 on the north; that was their legal description when they purchased their property in 1990. So what he has is Lot 35 plus 8.8 feet of Lot 34 less 20 feet of the south portion of their lot. On or about 2000, there was a strip of land between our lots that was about 200 sq. ft. that came up for tax sale. Basically they purchased that piece of land 4.2 Linear Feet at the County Tax Sale. The 8.8 feet that their legal description started with, the 4.2 feet was added, and those 13 feet was added to the current legal description. It was when the Tanner's decided to sell their property that they had Great Basin do a survey, where they found the two rebar marking the northwest and northeast corners of the property line. They made the proposal to shift two inches into their property to provide the square footage.

They hired their old surveyor and they came up with a counter proposal which Mr. Booth provided to the Tanners, and the Tanner's responded that they weren't interested; so they do understand that a house will be added to that property, and they don't have a problem with that. In summary, they are willing to work with the Tanner family and adjust the property line and make the legal lot from a square footage standpoint and they have about 1.7 linear feet to access their backyard with the current property line. His proposal would be to bounce it back to the neighbors to work out an agreeable property line. When they made the proposal that Mr. Booth presented, their thought at that time was to try and keep the Weber Basin valve in their property which is why it jogged about 9 feet. Since he has been talking to Weber Basin, Mr. Perry, they will basically be using the existing valve box coming off into a Y for Lot 34, and that irrigation box in the public easement, could stay there.

Chair Smith asked so where this strip of land is located that was purchased in 2000 and who was the previous owner of that property? Mr. Loevy replied that he didn't know who the previous owner was. He had received a notice that the county was selling a parcel of land, so he went to the tax sale and purchased that piece of property and combined the two pieces of property into one tax identification. Mr. Wilkinson replied that piece of property was originally part of Lot 34.

Celeste Canning asked if they know how that came out to be in two separate tax-identification numbers. Mr. Wilkinson replied for whatever reason back in the 1960's, the original developer took parts of lots and gave them to other lots; it was almost a succession, he did not know if they ever had county approval. Staff researched Board of Adjustment cases; any approvals and minutes from 1964, but they could not find anything affected. They have no idea why those strips were divided off. There were several small strips affected, not just this lot.

In answer to a question by Rex Mumford, Mr. Loevy replied that the main item they wanted to do was the 1.7 foot wide section between the rock wall and the big tree; that's his egress to the north side of his home.

Steve Parkinson said that as for the 4.2 feet prior to Mr. Loevy, he could not state who owned that property prior to 2001. Chair Smith replied that they do know that it was with that original lot at some point. Mr. Parkinson said in the original subdivision plat map, Lots 34, 35, and 36 were as they should be, and this new plat map shows Lots 34, 35, and 36 with all the lines adjusted.

Celeste Canning said when this subject parcel was conveyed, was the deed for all of Lot 34 or was it meets and bounds. Mr. Parkinson replied it was all of Lot 34 plus the meets and bounds description. Lots 35 and 36 have added to it because of the 13 feet and the 20 feet. Lot 34 does have some description to it and it's not all of Lot 34 minus, so it's not a regular subdivision on Lots 34, 35, and 36.

**MOTION:** Doug Dickson moved to approve BOA 2014-04 on Lot 34 of Woodland Estates Subdivision Unit 2, in the Residential Estates (RE-20) Zone located at approximately 2275 E Woodland Drive based on the request being in conformance to the variance criteria as stated in the staff report. Phil Hancock seconded.

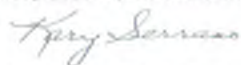
**DISCUSSION:** Rex Mumford asked if the amount of footage was added to the motion.

**AMENDED MOTION:** Doug Dickson moved to approve BOA 2014-04 the request for a reduction of lot area of 171 sq. ft. on Lot 34 of Woodland Estates Subdivision Unit 2, in the Residential Estates (RE-20) Zone located at approximately 2275 E Woodland Drive based on the request being in conformance to the variance criteria as stated in the staff report. Celeste Canning seconded.

**VOTE:** A vote was taken with Celeste Canning, Phil Hancock, Doug Dickson, and Chair Smith voting aye and Rex Mumford voting nay. Motion Carried (4-1)

4. **Other Business:** There was no other business discussed.
5. **Adjournment:** The meeting was adjourned at 7:00 p.m.

Respectfully Submitted,



Kary Serrano, Secretary  
Weber County Planning Commission



## Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on an appeal of a decision made by the Weber County Commission on April 1, 2014, to grant an easement across public property for the Pas De Calais Subdivision

**Agenda Date:** Thursday, May 22, 2014

**Applicant (Appellant):** Carol C. Browning

**File Number:** BOA 2014-06

#### Property Information

**Approximate Address:** 6050 South 2900 East (Approximate)

**Project Area:** 2.58 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 (ROW Location)

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

#### Adjacent Land Use

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

#### Staff Information

**Report Presenter:** Sean Wilkinson  
swilkinson@co.weber.ut.us  
801-399-8765

**Report Reviewer:** CA

### Applicable Land Use Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 1 (General Provisions) Section 2 (Administrative Authority) and Section 7 (Appeals)
- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 31 (Access to a lot/parcel using a private right-of-way or access easement)
- Utah Code 17-27a-701(1) (Appeal Authority Required)
- Utah Code 17-27a-703(1) (Appealing a Land Use Authority's Decision)

### Background

Pas De Calais Subdivision was submitted to the Weber County Planning Division on June 14, 2013. The subdivision consists of three lots, two of which are proposed to have access on a private right-of-way (ROW) through property owned by Weber County. Prior to submitting the subdivision application, the applicant, Matthew Rasmussen, contacted Nate Pierce, Weber County Operations Director to ask about the possibility of receiving a ROW from Weber County. Mr. Pierce informed Mr. Rasmussen through e-mail that the County would be willing to work with him and review the request, but a more comprehensive plan of the proposal was necessary. Based on this information, Mr. Rasmussen also submitted an Access Exception Application with more detailed plans for the private ROW. This application was approved on August 9, 2013 by Weber County Planning Director Robert Scott, thus allowing the subdivision application to move forward.

On December 27, 2013 the Planning Division held an administrative hearing for the subdivision after noticing residents within 500 feet of the subdivision boundary. Several of the residents attended this meeting and expressed concerns with the subdivision and the proposed private ROW. Based on these concerns, no decision was made at the meeting and the subdivision was sent to the Western Weber Planning Commission (WWPC) for review. Prior to the WWPC meeting on January 14<sup>th</sup>, representatives from the Planning and Engineering Divisions, and Commissioner Matthew Bell met with the residents and Mr. Rasmussen. No decisions were made, but it appeared that progress was being made. The WWPC was

held later that day after again noticing residents within 500 feet of the subdivision boundary. Residents again attended and expressed their concerns, but the WWPC unanimously recommended approval of the subdivision to the County Commission subject to the requirements of all review agencies and the County Commission granting a ROW.

With the recommendation for subdivision approval in place, Mr. Rasmussen approached the Weber County Commission about granting the ROW on March 25, 2014. The Commission opted to receive additional information prior to making a decision and held the item for the April 1<sup>st</sup> meeting. At this meeting the County Commission voted 2-1 in favor of granting a private ROW for Pas De Calais Subdivision. The appellant, Carol Browning, filed an appeal of the County Commission's decision on April 16, 2014.

### Summary of Board of Adjustment Considerations

The appellant's basis of appeal states "the County Commission erred in its decision approving the easement requested by the owner/developer of the Pas De Calais Subdivision. The Commission erred as a matter of law by failing to identify the "substantial evidence" that its decision was based upon, consider other practical and feasible alternatives for access, and to consider unusual soil, topographic, or property boundary conditions) See §108-7-31." This statement is followed by an analysis of how and why the appellant feels that the County Commission's decision was incorrect (see Exhibit A).

In reviewing the appeal and consulting with legal counsel, the Planning Division does not believe that the County Commission's decision constitutes an administrative land use decision that can be appealed to the Board of Adjustment. Rather, the Commission's decision constitutes an agreement between Weber County and Mr. Rasmussen regarding his ability to use a ROW across County property, regardless of how the ROW is to be used. The decision regarding how the Weber County Land Use Code §108-7-31 applies was made by Robert Scott, acting as the "land use authority," on August 9, 2013. The County Commission was not acting as the land use authority and is not required to consider anything contained in the Land Use Code in order to make its decision. Therefore, the Board of Adjustment does not have the authority to consider this appeal because the County Commission was not acting as the Land Use Authority in administering or interpreting a land use ordinance as required by Utah Code §17-27a-703(1), contrary to the appellant's statement and references to Utah Code §17-27a-701(1) and Weber County Land Use Code §102-3-3.

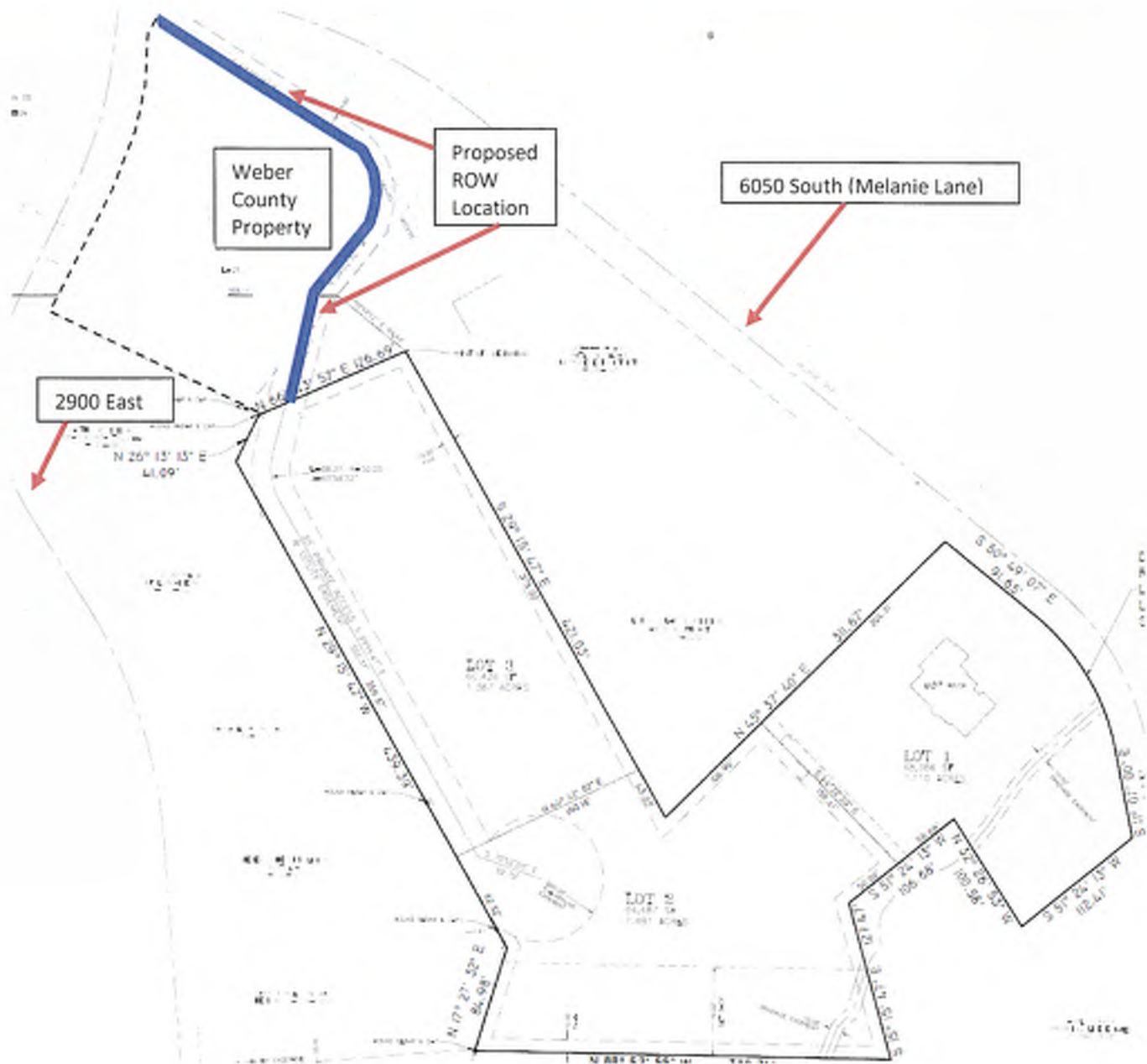
The administrative land use decisions made by the land use authority pertaining to the ROW are the access exception application approved by Planning Director Robert Scott under §102-1-2, and the recommendation for subdivision approval by the WWPC. Neither of these decisions were appealed within the 15 day time period allowed by §102-1-7.

### Staff Recommendation

The Board of Adjustment does not have authority or jurisdiction to consider this appeal because the County Commission was not acting as the land use authority in administering or interpreting a land use ordinance as required by Utah Code §17-27a-703(1), nor is it an administrative decision as required by §102-1-7. Therefore, the appeal should be denied.

### Exhibits

- A. Appellant's application and appeal information
- B. Access exception approval
- C. Staff report and minutes from WWPC subdivision approval
- D. County Commission minutes
- E. Utah Code and Weber County Land Use Code references





## Map 2



# Exhibit A

## Weber County Board of Adjustment Application

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

Date Submitted / Completed 4/11/14	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)
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### Property Owner Contact Information

Name of Property Owner(s) Carol C. Browning		Mailing Address of Property Owner(s) 6182 South 2855 East Ogden, Utah 84403	
Phone 801-742-2352	Fax	Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail	
Email Address			

### Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Richard H. Reeve, Attorney at Law		Mailing Address of Authorized Person Van Cott, Bagley, Cornwall & McCarthy, P.C. 372 24th Street, Ste. 400 Ogden, Utah 84401	
Phone 801-394-5783 or 801-528-5277	Fax 801-627-2522	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address rreeve@vancott.com			

### Appeal Request

- A variance request:  
     \_\_ Lot area    \_\_ Yard setback    \_\_ Frontage width    \_\_ Other: \_\_\_\_\_
- A Special Exception to the Zoning Ordinance:  
     \_\_ Flag Lot    \_\_ Access by Private Right-of-Way    \_\_ Access at a location other than across the front lot line
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance
- Other: See attached for explanation of the appeal

### Property Information

Approximate Address Pas De Calais Development 2900 and 2927 East Melanie Lane Ogden, UT 84403		Land Serial Number(s)	
Current Zoning			
<b>Existing Measurements</b>		<b>Required Measurements (Office Use)</b>	
Lot Area	Lot Frontage/Width	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback	Rear Yard Setback	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

**Applicant Narrative**

Please explain your request.

SEE ATTACHED FOR EXPLANATION OF APPEAL.

**Variance Request**

Explain how the variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

**Variance Request (continued...)**

List the special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

Based upon the previously stated special circumstances, clearly describe how the property covered by this application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.

Variance Request (continued...)

Explain how the previously listed special circumstances are not considered to be economic or self-imposed hardships.

Property Owner Affidavit

I (We) Carol Browning 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.

Carol Browning  
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 16th day of April, 2014

Stacey Braithwaite  
(Notary)



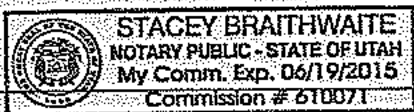
Authorized Representative Affidavit

I (We) Carol Browning 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.

Carol Browning  
(Property Owner)

(Property Owner)

Dated this 16th day of April, 2014 personally appeared before me Carol Browning the signor(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.



Stacey Braithwaite  
(Notary)

**APPEAL TO THE WEBER COUNTY BOARD OF ADJUSTMENT  
OF  
COUNTY COMMISSION APPROVAL  
OF  
THE REQUEST FOR AN ACCESS EASEMENT ACROSS PUBLIC  
LAND PURSUANT TO COUNTY CODE SECTION 108-7-31**

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**I. DECISION BEING APPEALED**

This is an appeal to the Weber County Board of Adjustment of the Weber County Commission's approval to grant an easement across public property for the Pas De Calais Subdivision, which approval was given on April 1, 2014.

**II. IDENTITY OF APPELLANT**

The appellant herein is owner of real property immediately adjacent to the Pas De Calais Subdivision and the public land on which the easement will run. The appellant is:

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

**III. RELEVANT CODE SECTION**

The request for an access easement was made under Weber County Code § 108-7-31. A copy of §108-7-31 is attached for reference. The Code, in relevant part, reads as follows:

*(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.

**IV. BASIS OF APPEAL**

As more specifically set forth below, the County Commission erred in its decision approving the easement requested by the owner/developer of the Pas De Calais Subdivision. The Commission erred as a matter of law by failing to identify the "substantial evidence" that its decision was based upon, consider other practical and feasible alternatives for access, and to consider "unusual soil, topographic, or property boundary conditions." See § 108-7-31.

**V. THE COMMISSION FAILED TO CORRECTLY APPLY THE CODE.**

Appellant asserts that the County Commission erred in its interpretation and application of Weber County Code § 108-7-31(1)(b) when it failed to find substantial evidence to support its decision and failed to consider any other alternative points of access available to the owner/developer of the Pas De Calais Subdivision.

This Board has jurisdiction and authority over this appeal pursuant to *Utah Code* § 17-27a-701(1) and Weber County Code § 102-3-3. This Board must overturn the Commission's decision if the Commission's decision is not supported by substantial evidence in the record and is arbitrary, capricious, or illegal. See *Harmon City, Inc. v. Draper City*, 997 P.2d 321 (Ut. Ct. App. 2000). The Utah Supreme Court has held that government municipalities must comply with mandatory provisions of its own ordinance, substantial compliance is not sufficient. See *Springville Citizens for a Better Community v. City of Springville*, 979 P.2d 332 (Utah 1999).

As indicated above, the Code requires the Commission to determine whether there is substantial evidence to show that there is no other practical or feasible way to extend a street to serve the property at issue. See § 108-7-31(1)(b). To emphasize, the Commission's decision must be "based on substantial evidence." *Id.* While this standard

is less than the clear and convincing standard of proof, it is higher than the proof required by most of the County's land use provisions.

The Code specifically provides what the Commission CANNOT consider when determining whether or not there is another practical or feasible way to service the property. See § 108-7-31(1)(b). The Commission cannot consider financial adversity. *Id.* In other words, the fact that another alternative may be expensive and potentially cost-prohibitive to the owner/developer is not relevant and may not be considered. The public policy behind this requirement makes perfect sense. The County should not be in the business of bailing property owners out of a bad investment in land-locked property and access across public land is almost always going to be the most cost-effective approach for an owner/developer.

The Code goes on to provide a number of non-exclusive factors that the Commission may consider in making its determination. These factors are listed as "soil conditions, topographic, or property boundary conditions."

In this case, the owner/developer of the Pas De Calais Subdivision, an unrecorded and unapproved subdivision, requested that the County grant him a non-exclusive and permanent easement across public land so that he could access his otherwise land-locked property. In exchange, the developer offered to give the County a piece of property on which was located a berm of a County-retention pond. The record before the Commission indicated that this berm had been in place and on the developer's land for more than 40 years.

Jared Anderson presented this issue to the Commission on March 25, 2014, and recommended approval. Mr. Anderson's presentation focused on the piece of property that was being offered by the developer and only parenthetically addressed the issue of whether there was some other practical or feasible way to access the planned subdivision. After public comments, there was some discussion about the language of the Code and Attorney Dave Wilson instructed the Commission about the "substantial evidence" language in the Code. During the public comments, neighbors presented two key pieces of information to the Commission: first, that there was a vacant residential lot, with sufficient frontage, on the market that could be purchased by the developer and used to extend a road to the planned subdivision. A copy of an area map with the highlighted vacant lot that is currently on the market is attached hereto as Exhibit "B." Second, that the area of the proposed easement was a historic pond bed and that the area had a history of, and high-risk for, landslides. Neighboring landowners implored the Commission to make the developer and County staff evaluate the vacant lot that was on the market and to allow the neighbors to have a soil analysis of the road site conducted so the Commission could evaluate soil conditions.

The developer responded by indicating that purchasing the vacant lot would make his subdivision financially impractical. The developer did not want any soil analysis done on his property, but indicated that soil work would be done as part of the



subdivision approval process. The County ultimately voted to table the item so more discussion could take place.

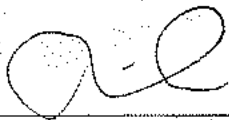
The issue was continued one week, until April 1, 2014. At the meeting, the Commission seemed anxious to make a decision on the issue. Even though they were warned by Appellant's counsel about the requirement of a finding of substantial evidence, the Commission did not have any discussion of such evidence. The Commission approved the easement request by a vote of 2 to 1.

The County Commission erred. It did not follow the Code and did not enter any discussion of substantial evidence into the record. In fact, there was no discussion by the Commission of any evidence showing that there was no other practical or feasible way for the developer to access his property. The Commission did not discuss the vacant lot and seemed to accept the developer's representation that it would be financially difficult for him to purchase the lot for the purpose of obtaining access. Finally, the Commission erred in considering the special soil conditions and topography of the area. In sum, it appeared that the Commission essentially ignored the County Code in making its decision.

#### X. CONCLUSION

The decision of the Commission approving the easement across public land should be overturned. At a minimum, the matter should be remanded to County staff with instructions that they consider other feasible and practical ways to access the property. In the event that there is no other practical or feasible way to access the property, a record outlining the substantial evidence in support of such a determination should be provided. For all the foregoing reasons, the Board of Adjustment must reverse the decision of the Commission and deny Easement Application.

Respectfully submitted this 16th day of April, 2014.



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Richard Reeve  
Attorney for Appellants

4834-3772-7770, v. 1

## Weber County Land Use Code § 108-7-31

108-7-31. 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.



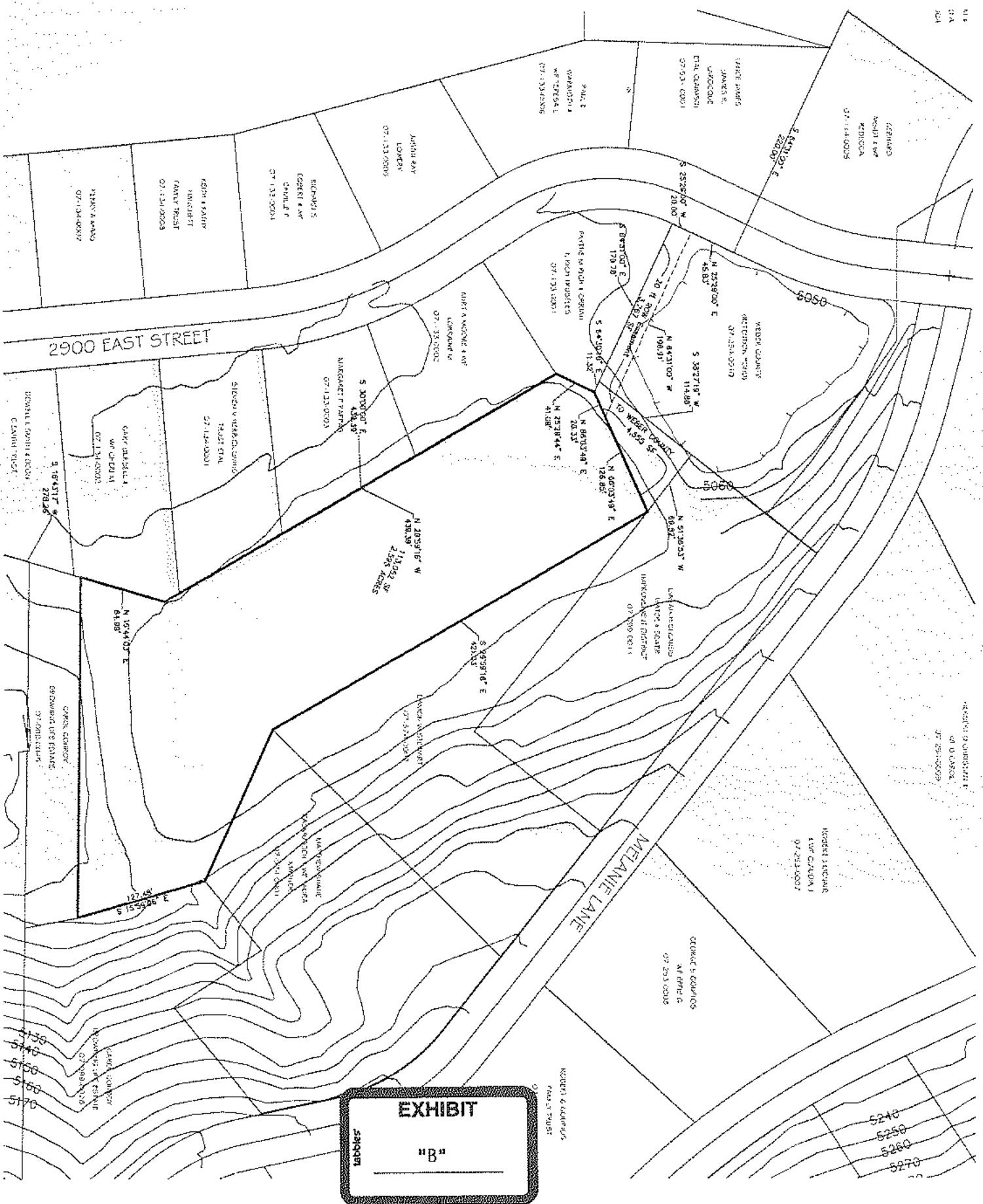


EXHIBIT  
"B"

5240  
5250  
5260  
5270

# Exhibit B



## Staff Report for Administrative Approval Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on a request to use a private right-of-way (ROW) as the primary access for two lots without frontage on a street.

**Agenda Date:** Friday, August 09, 2013

**Applicant:** Matthew and Laura Rasmussen

**File Number:** Access Exception (AE 2013-03)

#### Property Information

**Approximate Address:** 6050 South 2900 East (Approximate)

**Project Area:** 2.58 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 (ROW Location)

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

#### Adjacent Land Use

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

#### Staff Information

**Report Presenter:** Sean Wilkinson  
swilkinson@co.weber.ut.us  
801-399-8765

**Report Reviewer:** JG

### 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

The applicants are requesting administrative approval to use a ROW as the primary access for two lots without street frontage. The proposed lots are located at approximately 6050 South 2900 East in the Uintah Highlands area and contain a total of 2.59 acres. The proposed ROW is located on the southern boundary of property owned by Weber County (Lot 36, Eastwood Subdivision No. 10, Parcel # 07-254-0010) and formerly used as a retention pond (Bybee Pond). It connects the proposed lots to 2900 East Street (approximately 180 feet) where the ROW entrance is located. Once the ROW leaves County property it continues along the western boundary of Lot 3 approximately 440 feet and terminates in a turn-around area on Lot 2.

The applicants have provided an e-mail from Nate Pierce, Weber County Operations Director, which states that the County is willing to help them get where they want to be on the access exception approval, subject to more comprehensive plans being submitted. Updated plans were submitted on July 31, 2013 and are currently under review. Weber County has not yet approved a ROW agreement and this administrative approval is subject to future approval from the Weber County Commission. A separate document establishing the ROW on Lots 2 and 3 is also required in addition to showing the ROW on the subdivision plat.

The ROW is required to meet the design, safety, and lot/parcel standards listed in Title 108 Chapter 7 Section 29 of the Weber County Land Use Code. In addition to these standards, the ROW is required to comply with the criteria and conditions listed in Section 31 which is specific to access by a private ROW. These standards are listed below under "Summary of Planning Division Considerations." Approval of the private ROW as the primary access does not act as approval of the subsequent subdivision plat.

## Summary of Planning Division Considerations

108-7-31. 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.

Staff has reviewed and analyzed the request for access by a private ROW using the criteria in Section 31. Based on review and analysis of staff's research and the information provided, staff has made the following determinations:

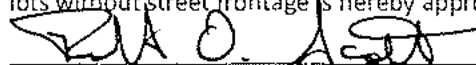
- Property boundary conditions are such that the lots to be subdivided do not have access from a street. Although the applicants do own adjacent property with frontage on Melanie Lane, access to the proposed lots at this location would not be practical or feasible due to steep slopes (the property is a restricted lot), an existing dwelling, and a stream. A road located in this area would 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 impractical for a road serving only two lots to be constructed in this area.
- The applicants have provided an e-mail from Nate Pierce, Weber County Operations Director which infers that the County's intent is to provide a ROW once adequate plans have been submitted and approved. The ROW is shown on preliminary subdivision plats that have been submitted to the Planning Division. Both portions of the ROW must be in place prior to final subdivision approval.
- Prior to approval of a subdivision application, 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 ROW with a street that would serve as a required access to additional lots.

## Conditions of Approval

- A ROW for Lots 2 and 3 must be obtained from Weber County and this ROW as well as the ROW on Lot 3 for Lot 2 must be recorded 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 ROW with a street that would serve as a required access to additional lots.

## Staff Administrative Approval

Based upon the findings listed above, administrative approval for use of a private right-of-way as the primary access for two lots without street frontage is hereby approved this 9<sup>th</sup> day of August, 2013.

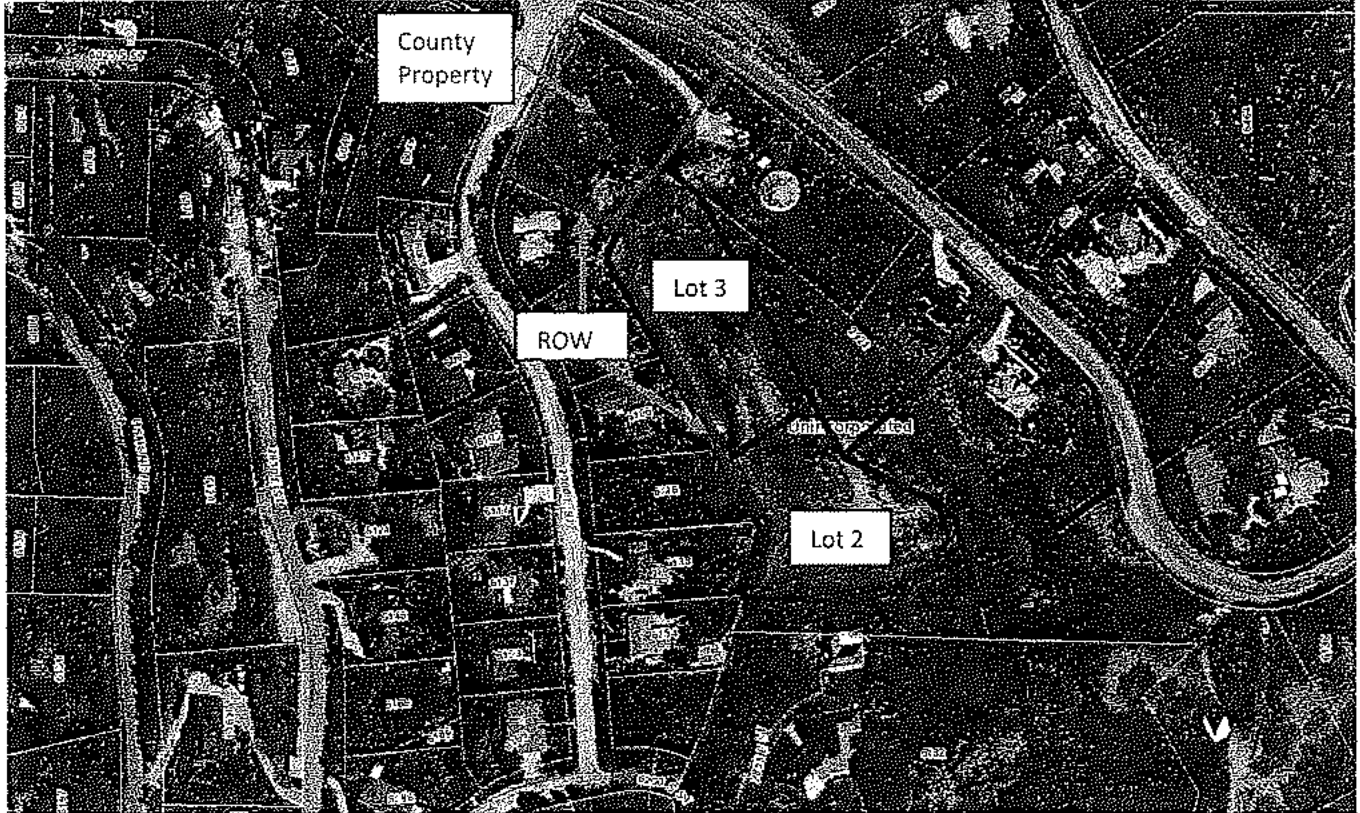


Robert O. Scott  
Weber County Planning Director

## Exhibits

- A. Applicant narrative
- B. Site plan showing the right-of-way and future lot boundaries
- C. E mail from Nate Pierce, Weber County Operations Director

## Map



# Exhibit C



## Staff Report for Western Weber Planning Commission Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on final approval of Pas de Calais Subdivision (3 lots) in conjunction with the vacation of Lot 1R Calais Subdivision including a recommendation for a deferral of curb, gutter, and sidewalk on Melanie Lane.

**Agenda Date:** Tuesday, January 14, 2014

**Applicant:** Matt Rasmussen

**File Number:** LVP 061413

#### Property Information

**Approximate Address:** 2927 E. Melanie Lane

**Project Area:** 2.594 acres

**Zoning:** Residential Estates (RE-20)

**Existing Land Use:** Residential

**Proposed Land Use:** Residential

**Parcel ID:** 07-574-0001

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

#### Adjacent Land Use

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

#### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766

**Report Reviewer:** SW

### Applicable Ordinances

- Weber County Land Use Code Title 106 (Subdivisions)
- Weber County Land Use Code Title 104 (Zones) Chapter 3 (RE-20 Zone)

### Type of Decision

- **Administrative Decisions:** When the Planning Commission is acting as the land use authority, it is acting in an administrative capacity and has much less discretion. Examples of administrative applications are design reviews, flag lots, and subdivisions. Administrative applications must be approved by the Planning Commission if the application demonstrates compliance with the approval criteria.

### Background

The applicant is requesting final approval of Pas de Calais Subdivision consisting of three lots located at approximately 2927 E. Melanie Lane in the RE-20 Zone. The subdivision meets the area and lot width requirements of this zone. The 2.594 acre parcel was previously divided into Lot 1R of Calais Subdivision. One home has been built on the lot which has access on Melanie Lane. The owner is requesting to further divide the property for two additional lots. These two new lots are proposed to have access from 2900 East by a private right of way (see AE 2013-03).

Part of this property was formerly the location of Bybee Pond. In 2002 the berm that held water for the pond was determined to be a dam that could no longer meet the requirements for dam safety from the Utah Division of Water Rights. The pond was drained and the area has been vacant since. Adjacent to the property on Melanie Lane and 2900 East are two parcels owned by Weber County and the Uintah Highlands Improvement District (U.H.I.D.). An area on the Weber County property is used as a retention pond for storm water runoff. A water storage tank and facilities are on the U.H.I.D. property. As access from Melanie Lane is difficult due to steep slopes, U.H.I.D. has a small access to the water tank from the intersection and across the Weber County property. As this access creates a 5th point of access at the intersection, an unsafe condition has occurred. Therefore a different access location with a safe distance from the intersection is preferred.

A separate issue is that some of the retention pond structure is located on Lot 1R. Weber County would like to have these public structures completely on Weber County property. As a result of the proposed subdivision and vacation of Lot 1R, Weber County would receive approximately 4,555 square feet of additional area.

The 30 foot wide access for the two new lots runs along the southwest portion of the retention pond (see Exhibit C). An area appropriate for emergency vehicles to turn around will be located at the end of the access. The Land Use Code allows for lots that do not front on a roadway to have an access exception with access by a private right of way. The applicant has applied and been approved for access at this location by file AE 2013-03 which was approved administratively by the Planning Director (Aug. 9, 2013). This approval is subject to the applicant receiving this right of way from Weber County. The granting of the right of way by the County Commission has not yet occurred. The applicant has been working with the Operations Director and the County Engineer on this issue.

Culinary water and sewer service will be provided by Uintah Highlands Improvement District. All review agency requirements must be addressed and completed prior to this subdivision being recorded.

### Summary of Planning Commission Considerations

- Does this subdivision meet the requirements of the Weber County Subdivision and Zoning Ordinances?

The Weber County Land Use Code Title 106 (Subdivisions) defines "small subdivision" as "A subdivision consisting of three (3) or fewer lots and for which no streets will be created or realigned." This subdivision consists of three lots and no streets are being created or realigned. The Land Use Code (Subdivisions) also states "With the exception of small subdivisions, the preliminary plan/plat including the phasing plan shall be presented to the Land Use Authority, in this section Planning Commission, for their determination, based upon compliance with applicable ordinances." Based on these requirements, this subdivision qualifies for administrative approval as a small subdivision.

In accordance with this process notice was sent out for a public meeting held December 27, 2013 in the Planning Division conference room. Many from the public were able to discuss with the owner and with staff some concerns with the proposed subdivision. No decisions were made at that meeting. Due to the number of questions and concerns from surrounding neighbors, the Planning Director has determined that the proposed subdivision should be reviewed by the Planning Commission.

### Conformance to the General Plan

Subdivisions that meet the requirements of applicable County Ordinances conform to the General Plan. This subdivision addresses water, wastewater, roads, and other issues which are discussed in the General Plan.

### Conditions of Approval

- Requirements of the Weber County Engineering Division
- Requirements of the Weber County Survey Department
- Requirements of the Weber-Morgan Health Department
- Requirements of the Weber Fire District
- An ordinance vacating Lot 1R of Calais Subdivision
- County approval of the ROW in AE 2013-03

### Staff Recommendations

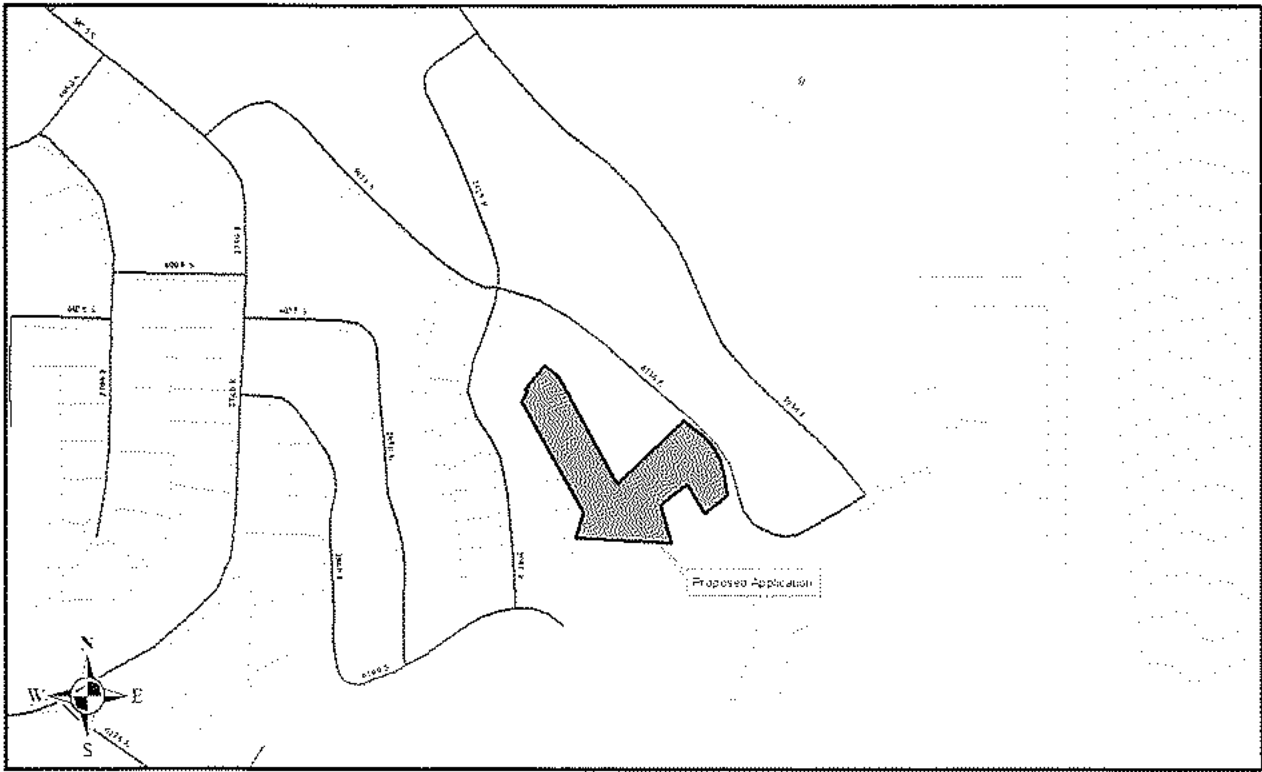
Staff recommends final approval of Pas De Calais Subdivision subject to staff and other agency requirements and recommendations based upon its compliance with the Weber County Land Use Code. Staff also recommends the vacation of Lot 1R of Calais Subdivision.

### Exhibits

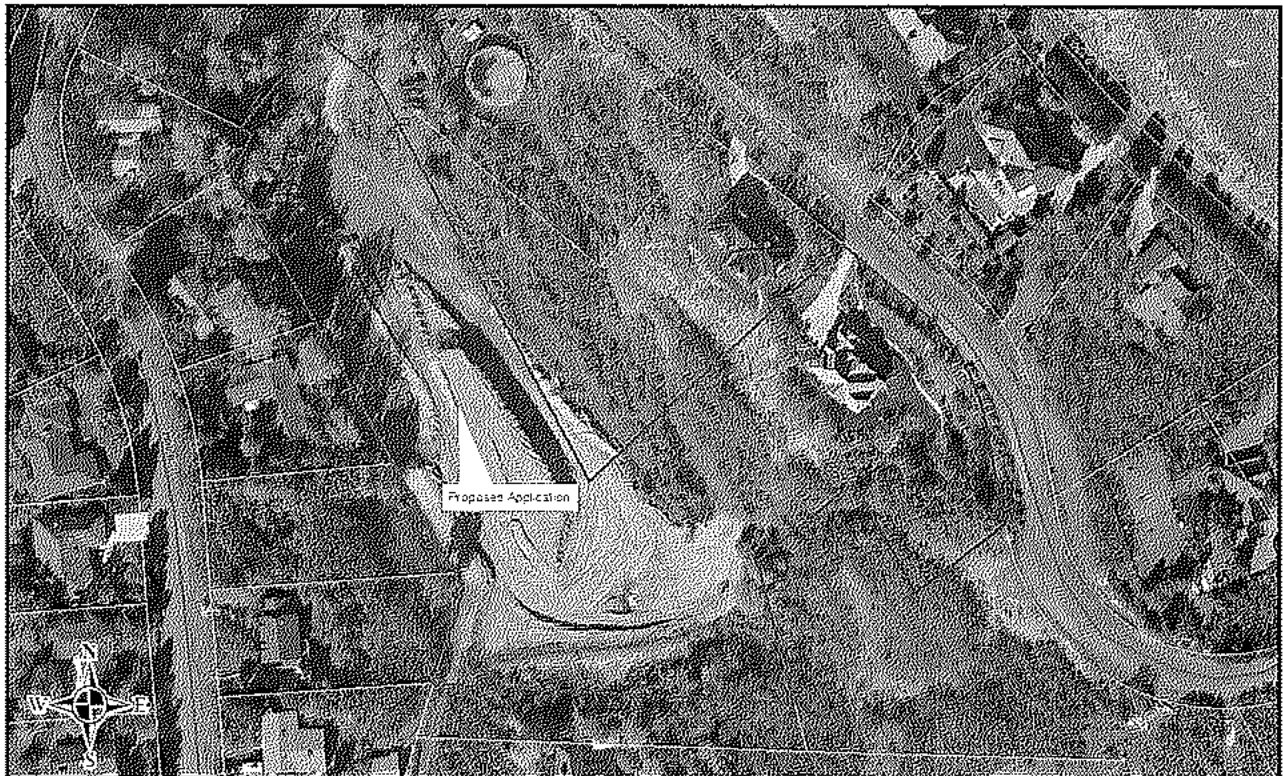
- A. Plat of Lot 1R Calais Subdivision to be vacated
- B. Plat of Pas de Calais Subdivision
- C. Improvement Plan for Pas de Calais Subdivision



**Location Map**



**Location Map 2**



Minutes of the January 14, 2014 Western Weber County Township Planning Commission, held in the Weber County Commission Chambers, 2380 Washington Blvd., 1<sup>st</sup> Floor, Ogden, UT

Members Present: Andrew Favero  
Doug Hansen  
Ryan Judkins  
Mark Whaley  
Wayne Andreotti  
John Parke  
Jannette Borklund

Staff: Sean Wilkinson, Planning Director; Ben Hatfield, Planner; Sean Scott Mendoza, Planner; Monette Hurtado, Legal Counsel; Sherri Sillitoe, Secretary

- Pledge
- Roll Call

Chair Favero called the meeting to order; he led those in attendance with the pledge of allegiance and conducted the roll call.

1. Minutes

1.1. Approval of the December 10, 2013 minutes

Chair Favero declared the December 10, 2013 meeting minutes approved as written.

Director Wilkinson read the Opening Meeting Statement.

Chair Favero asked if the members had any conflicts of interest or ex parte communications they wished to declare for any items on today's agenda and no conflicts of interest or ex parte communications were reported.

Petitions, Applications and Public Hearings

2. Administrative Items

2.1. New Business

- a. Discussion and or action on Final approval of Pas De' Calais Subdivision, 3 lots in conjunction with the vacation of Lot 1R Calais Subdivision including a recommendation for a deferral of curb, gutter, and sidewalk on Melanie Lane

Ben Hatfield presented a report and indicated that the applicant is requesting final approval of Pas de Calais Subdivision consisting of three lots located at approximately 2927 E Melanie Lane in the RE-20 Zone. The subdivision meets the area and lot width requirements of this zone. The 2.594 acre parcel was previously divided into Lot 1R of Calais Subdivision. One home has been built on the lot which has access on Melanie Lane. The owner is requesting to divide the property for two additional lots. These two new lots are proposed to have access from 2900 East by a private right of way.

Part of this property was formerly the location of Bybee Pond. In 2002, the berm that held water for the pond was determined to be a dam that could no longer meet the requirements for dam safety from the Utah Division of Water Rights. The pond was drained and the area has been vacant since. Adjacent to the property on Melanie Lane and 2900 East are two parcels owned by Weber County and the Uintah Highlands Improvement District. An area on the Weber County property is used as a retention pond for storm water runoff. A water storage tank and facilities are on the Uintah Highlands Improvement District (U.H.I.D.) property. As access from Melanie Lane is difficult due to steep slopes, U.H.I.D. has a small access to the water tank from the intersection and across the Weber County property. As this access creates a 5<sup>th</sup> point of access at the intersection, an unsafe condition has occurred. Therefore, a different access location with a safe distance from the intersection is preferred.

A separate issue is that some of the retention pond structure is located on Lot 1R. Weber County would like to have these public structures completely on Weber County property. As a result of the proposed subdivision and vacation of Lot 1R, Weber County would receive approximately 4,555 square feet of additional area.

The 30 foot wide access for the two new lots runs along the southwest portion of the retention pond. An area appropriate for emergency vehicles to turn around will be located at the end of the access. The applicant has applied and been approved for access at this location which was approved administratively by the Planning Director on August 9, 2013. An administrative approval hearing was held on December 27, 2013 and due to the amount of public comment received, the Planning Director determined this issue should be heard by the Planning Commission.

Staff recommends final approval of Pas De Calais Subdivision subject to staff and other agency requirements and recommendations based upon its compliance with the Weber County Land Use Code. Staff recommends that a deferral is given for curb, gutter and sidewalk. Staff also recommends the vacation of Lot 1R of Calais Subdivision.

Commissioner Borklund asked who approves the access, and Ben Hatfield stated that the County Commission would approve granting of the easement. As far as the zoning requirement and granting access, that has been approved by staff. Commissioner Borklund asked if it would be perpetually deeded as their access, and Mr. Hatfield indicated that it would be a private lane owned by the property owners. Sean Wilkinson stated that it would be recorded as an easement but the county would retain ownership of the property. There would be a right to access that property granted.

Commissioner Hansen asked if it is common that the county would allow access across their property for private access, and Ben Hatfield replied that the County granted access to U.H.I.D. for their tank at a different location; however, the County would like to look for another location for that access. The applicant is proposing to have an asphalt access. Mr. Hatfield indicated that he believed the U.H.I.D. no longer uses that water tank.

Matt Rasmussen, applicant, indicated that he has spent many years as a carpenter and is a quasi-land developer. He believes this is a garden variety development and he has tried to develop this subdivision with all parties in mind. One lot will be set aside for his daughter who is not of age at this time. On the southwesterly edge he has preserved a 70 ft. green space upon which nothing can be built. The utility companies have agreed to serve him all utilities needed for the single family dwellings. He has given the County between 4-5,000 sq. ft. which will allow them to maintain the integrity of their dyke and the overall retention pond. He is sensitive to his neighbor's concerns and did not want to increase the density and opted rather to have larger parcels. He acquired the property in 1976.

Chair Favero asked the County Engineer to give a clear explanation of the engineering requirements to give an overall picture for the audience. Jared Andersen explained that Mr. Rasmussen asked for access to his property. It was relayed to Mr. Rasmussen that Weber County won't grant access across their property. Mr. Rasmussen indicated that he would build that access in another location approximately 30 ft. outside of the grove of trees. Mr. Rasmussen understands that the pond would have to maintain the same area that exists today to retain the water. The property would need to have a geotechnical report and Mr. Rasmussen would need to follow any geotechnical report recommendations.

Commissioner Borklund expressed the project would need to ensure that the any new homes built would be safe but it would also have to ensure that safety of the existing homes. Jared Andersen indicated that they could see if the geotechnical report could address existing home safety but usually it is just for the study area involved.

Dr. Carol Browning, 6182 S 2885 E, stated that she is very concerned about the geotechnical issues. In the late 1960's they had a mudslide and it was several feet from her house. They had geologists come and make a report. She would like to look at that report and would like the Planning Commissioners to also consider that

report. The geologist stated that the entire upper area was filled with honeycomb springs. She has a video of the mudslide. She believes it is apparent that the survey done is incorrect. After that survey was done, her husband made an agreement that her neighbor share their water supply, She requests that a private company do a survey and a water report.

Kent Rich, 6068 S 2900 E, presented some photographs and stated that those in their neighborhood purchased their lots with the understanding that they would be on Bybee Pond; however, as a neighborhood they lost that expectation. Regarding the easement, it appears that this is an easement of convenience, not necessity. The developer has other options to access his property that wouldn't rely on the County giving access across their property. The property that is adjacent to that easement shown was bought by the land owner 40 plus years ago. As a land owner the property went to the county and asked if the county would sell him that slice of property, but at that time the county was not inclined to do so to a private owner but told him that he could beautify and maintain that slice of property for the community's benefit. On the County property there is a grove of Oak and Maple trees that is a defining feature of their neighborhood. He recommends that the Planning Commission doesn't grant approval of the easement of convenience across the county land that would benefit one property owner at the expense of the neighboring properties. If approved he would ask that the easement be approved on the north side of the existing retention basin where the existing roadway already exists.

Sean Wilkinson indicated that the Planning Commission's recommendation is a recommendation to the County Commission. Chair Favero stated that the Planning Commission will also not make a decision on the easement; it will be a separate County Commission decision.

O.C. Hope, 5925 Spring Canyon Rd., stated that this property used to be the bottom of the pond. It is the lowest point of the area. He asked the County Engineer what studies were done as to potential flooding or drainage of this property. He indicated that the drawings shown was not accurate. The developer has stated he would build the homes on the east side of the properties but the access would be on the west side of the properties which does not make sense to him. They now have a beautiful green space instead of the pond. He would hate to lose that space. More water would be used due to this development. How will garbage be collected? Dr. Browning brought up the issue of the springs in the neighborhood. He has seen these springs pop up all over the neighborhood. He urged the Planning Commission not to recommend approval of this proposal.

Gary Bursell, 6138 S. 2900 E, concurred with Mr. Hope's comments. He cannot understand why Mr. Rasmussen wants to develop his property and place an access behind his home. He believes Mr. Rasmussen has been reckless in his prior development in the area. Mr. Rasmussen put a 20 ft. berm on the back of Mr. Bursell's property and another neighbor's property. He believes the access needs to be relooked at.

Faith Rich, 6068 S. 2900 E, stated that the property proposed for development was purchased by Mr. Rasmussen knowing that it was landlocked. There are two lots for sale right now. This is a matter of convenience for Mr. Rasmussen not a necessity as there is other property that could be purchased for the access. Approximately 20 years ago the property was built up and another property owner had to put in an underground pipeline going down to eliminate some of the water. She is against this proposal even though she knows Mr. Rasmussen has property rights. If the county approves the easement it would be for one property owner's benefit at the expense of other taxpayers.

John Reeve, 6172 S 2025 E, is the Chairman of Uintah Highland Water and Sewer District. He indicated that the Water District surplussed the water tank property approximately five years ago and it is presently for sale.

George Pappas, 6106 S 2900 E, asked staff where the utilities would run. Ben Hatfield indicated that Mr. Rasmussen is currently working on a location for the utilities. Mr. Pappas stated his concern about further subdividing property after an initial subdivision was recorded.

Ruth Kendricks, 6169 S. 2900 E, stated that granting a right of way across public property is a concern because it is only benefitting one property owner and no other taxpayers. She would be concerned about losing any retention there as she has seen the pond full. There is other property for sale that is a straight shot to his property where the applicant could run utilities.

Ralph Vanderheide, 2873 E 6200 S., indicated that he doesn't believe this has been studied appropriately. He is also concerned about water in the area from the many springs.

Reed Browning, 6182 S. 2125 E., indicated that he has no issues with Mr. Rasmussen. As an Engineer, the dyke behind their property, engineers deemed it unsafe so they drained the pond. There is a clay layer and a fault line that goes directly through the property. When you build a structure on top of something unstable, it changes the dynamics of the geophysics. He believes there have not been enough geotechnical studies done on the property to determine the stability of the hillside. He would like to see the impact across both properties studied before any further approvals are granted.

Commissioner Borklund asked if they should table this issue until they know the location of any access granted.

Matt Rasmussen stated that the largest concern from the residents is the geotechnical report. The dykes and pond was manmade and condemned. The homes built above went through several geotechnical studies. The soil down below has had fill come in. He allowed the fill to come in although it did not benefit him. Any home built there would have to be built on native soils. The County gave approval to access the demolition of the reservoir and a building lot. No building was done, but the access is still there. He just finished a geotechnical report and they found that the soil is good and any building would have to follow the geologist's conclusions. The survey is correct; this will be the third survey done and will ensure everyone that the property corners are correct. He wants to retain the green space for the Rich's. The likelihood of a flood is near impossible. He believes it is a good project that is good for the County.

Commissioner Borklund indicated that he has access on the east side. Mr. Rasmussen indicated that he has looked at that and believes it makes a bad traffic situation. He will have a gate.

John Reeve stated that Mr. Rasmussen came to the Uintah Highlands Water Improvement District to ask for easement across their property and at that time they replied no. They went through the proper channels to get easement there. Mr. Rasmussen is welcome to purchase the property now to obtain the needed access.

**MOTION:** Commissioner Judkins moved to recommend approval of 2.1.a subject to staff and agency comments and the deferral of curb and gutter. Commissioner Andreotti seconded the motion.

**DISCUSSION:** Commissioner Hansen indicated that if the County Commission does not recommend approval of the access and what they do tonight would be invalid. Any approvals tonight would be contingent upon all agency review recommendations. He wonders whether it would be better to have the information before they recommend approval. Commissioner Borklund agreed.

Commissioner Parke indicated that all comments made tonight are all covered under the conditions of approval that have been recommended by the Planning Department. Commissioner Andreotti agreed with Commissioner Parke. Chair Favero indicated that he agrees with Commissioner Parke's comments that the conditions are covered under the conditions of approval.

**AMENDMENT:** Commissioner Hansen indicated that they need to add the vacating of Lot 1R in the motion. Commissioner Andreotti seconded the amendment. The motion carried by a unanimous vote.

# Exhibit D

## 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 unreported 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 Fernelius, 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 possible 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.

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.

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.

# Exhibit E

## Weber County Land Use Code References

### **Sec. 102-1-2. Administrative authority.**

(a) The planning director, or his designee, is authorized to deny, approve, or approve with conditions an application for an administrative approval. Administrative approval can be given for the following applications: site plans with buildings under 10,000 square feet located on a parcel less than one acre in size, home occupations with or without visiting clientele, combining of lots within an approved subdivision which meet ordinance requirements, minor subdivisions as defined by the subdivision definition, flag lots, access to a lot/parcel using a private right-of-way or access easement, and access to a lot/parcel at a location other than across the front lot line. The planning director may deny an application for an administrative approval if the use fails to comply with specific standards set forth in this chapter or if any of the required findings are not supported by evidence in the record as determined by the director. At the discretion of the planning director, the planning commission can hear the request for an administrative approval.

(b) The administrative approval process includes public notice and comment from adjacent property owners, as required by state code.

### **Sec. 102-1-7. Appeals.**

Appeals from administrative decisions shall be submitted to the planning division not more than 15 calendar days after the date of the written notice of decision in accordance with section 102-3-5. Appeals from administrative decisions shall be heard by the board of adjustment.

### **Sec. 102-3-3. Duties and powers of the board.**

The board of adjustment shall have the following duties and powers:

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

### **Sec. 108-7-31. Access to a lot/parcel using a private right-of-way or access easement.**

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. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use and is the subject parcel of an approved agri-tourism operation; or

c. 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.

**17-27a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.**

(1) Each county adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

- (a) requests for variances from the terms of the land use ordinances;
- (b) appeals from decisions applying the land use ordinances; and
- (c) appeals from a fee charged in accordance with Section 17-27a-509.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a county may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the county establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

(b) provide each of its members with the same information and access to municipal resources as any other member;

(c) convene only if a quorum of its members is present; and

(d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

**17-27a-703. Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions.**

(1) The applicant, a board or officer of the county, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2) (a) An applicant who has appealed a decision of the land use authority administering or interpreting the county's geologic hazard ordinance may request the county to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(b) If an applicant makes a request under Subsection (2)(a), the county shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and county:

- (i) one expert designated by the county;
- (ii) one expert designated by the applicant; and
- (iii) one expert chosen jointly by the county's designated expert and the applicant's designated expert.

(c) A member of the panel assembled by the county under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.

(d) The applicant shall pay:

- (i) 1/2 of the cost of the panel; and
- (ii) the county's published appeal fee.

Amended by Chapter 356, 2009 General Session





## Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on a variance request for a reduction of lot width for two (2) lots with existing homes within the Agricultural (A-1) Zone.

**Agenda Date:** Thursday, May 22, 2014

**Applicant:** Dan Musgrave

**File Number:** BOA 2014-05

#### Property Information

**Approximate Addresses:** 706 South 4100 West and 708 South 4100 West; Ogden UT

**Project Areas:** 43,558 square feet and 43,560 square feet; respectively

**Zoning:** Agricultural Zone (A-1)

**Existing Land Uses:** Residential

**Proposed Land Uses:** Remain as existing

**Parcel ID's:** 15-046-0060 and 15-046-0062

**Township, Range, Section:** T6N, R2W, Section 16

#### Adjacent Land Use

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

#### Staff Information

**Report Presenter:** Steve Parkinson  
sparkinson@co.weber.ut.us  
801-399-8768

**Report Reviewer:** JG

### Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 5 (Agricultural Zone, A-1)

### Background

The applicant is requesting a variance to reduce the lot width by 50 feet (150 feet to 100 feet), for two (2) parcels in the A-1 zone (ID 15-046-0060 & 15-046-0062) to allow two (2) existing homes to be on individual lots, in the A-1 Zone. Each of the existing homes would be within a parcel that has the required lot area (40,000 square feet) and will meet the required setbacks.

The home on the south (708 So. [15-046-0062]) originally was a small dwelling built around 1856. According to county records it was torn down and a new home was built around 1910. This is the home that exists today. In 1953 the dwelling to the north was built (706 So. [15-046-0060]). Both dwellings were built on one tract of land prior to any zoning requirements.

Over the years two (2) additional dwellings have been built south of the 1910 dwelling, the first in 1981 and the second in 1983. Both of these dwellings were built on separate parcels, both in accordance to the Land Use Code requirements.

Under the current Land Use Code, two (2) dwellings on one parcel are not allowed. However the existing homes qualify as a non-conforming use, but in order to sell either one of these two (2) historic homes, they need to be on separate parcels.

The issue that comes into play is the fact that between the dwelling that was built in 1983, and the northern property line of the dwelling built in 1953, there is only 200 feet and today's zoning code requires each lot to have a minimum width of 150 feet.

## Summary of Board of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code states that 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 Code. In order for a variance to be granted it must be shown that all of the following criteria have been 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 literal enforcement of the land use code 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 literal 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 "A". Staff's analysis and findings are discussed below:

- a. Literal enforcement of the Land Use Code would deem one (1) of these two (2) dwellings unusable as a dwelling. Granting the variance will not change the character of the neighborhood, nor increase the number of dwelling units due to the fact that two (2) dwelling units already exist. Staff feels that this is not a "self-imposed hardship" because of the history of these two homes, being built prior to zoning, being built where they are located, and being built on one parcel, both legal at the time they were each constructed.
- b. The special circumstance attached to this property is the history of the area, along with how the neighborhood has developed over the past 150 years. If someone, 150 years ago, would have placed the older home 50 feet farther south than it currently is located, then this would not be an issue today. These two (2) homes are a non-conforming use, with rights to continue as two (2) dwelling units on one parcel, based on that the two (2) homes existed prior to zoning.
- c. Zoning gives the property owner rights to construct dwelling units under certain requirements. When dwelling units were constructed prior to zoning they still legal, but they weren't reviewed as to placement on property.
- d. The General Plan indicates this area should allow and be preserved for single-family dwellings; nothing within the request is to change this desire.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. Approval of the variance would allow the two (2) dwelling units to continue, but be on separate parcels under separate ownership.

## Conformance to the General Plan

No additional dwellings will be constructed, allowing the area to remain as it is currently constituted. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Western Weber General Plan.

## Conditions of Approval

- Meet all other applicable review agency requirements.
- Obtaining subdivision approval for the two (2) lots.

## Staff Recommendation

Staff recommends *approval* of the variances for a reduction of lot width of 50 feet for parcels 15-046-0060 and 15-046-0062, in the A-1 Zone, subject to its compliance with the applicable variance criteria discussed in this staff report.

## Exhibits

- A. Applicant's Narrative
- B. Pictures of Neighborhood

## Location Map



**Exhibit A**

**Applicant Narrative**

Please explain your request

My great, great grandfather and grandmother traveled from Liverpool England in the Martin Handcart company and homesteaded this existing property. In 1856 they built a log cabin and in 1890 they built the existing home on the parcel ## 15-046-0062, In 1954 my grandparents built the home on parcel #15-046-0060. Both these homes were built before any zoning ordinances. I would request there be an equal division of these two homes, which would give both 100 foot frontage, and therefore request a variance on the frontage width of each. Each home would still meet the one acre zoning ordinance.

Explain how the variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

The variance would not affect the comprehensive plan as both homes were built prior to any zoning ordinances. A hardship would exist if these two homes could not be divided as legal lots, as far as loans, Insurance, and legal habitation. The pioneer house has very significant historical value.

List the special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

The zoning ordinance today's request 150' frontage these two homes would still have 100' frontage and exist on 1-acre lots and would meet all side and rear setbacks.

Based upon the previously stated special circumstances, clearly describe how the property covered by this application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.

There are other homes in our area that were built pre-zoning ordinances that have been granted frontage variances. Granting of this variance is essential to preserve the historic significance of this property, similar to other properties in the zone.

Explain how the previously listed special circumstances are not considered to be economic or self-imposed hardships.

Both these homes were built pre-zoning ordinance and are not self-imposed. All other requirements have been met.

Exhibit "B"



Picture #1 – this is looking from the northern dwelling (circa 1953) and heading south.



Picture #2 – this is looking at the property line between the two (2) dwellings and their relationship to each other and the dwellings surrounding.



Picture #3 – this is looking from the southern dwelling (circa 1910) and heading north.



## Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on a variance for a reduction to the required 30 foot front yard setback up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates.

**Agenda Date:** Thursday, May 22, 2014

**Applicant:** Jerry and Kathy Burgess

**File Number:** BOA 2014-07

#### Property Information

**Approximate Address:** 673 Ogden Canyon; Ogden UT

**Project Area:** 9,243 square feet

**Zoning:** Forest Residential Zone (FR-1)

**Existing Land Use:** Residential

**Proposed Land Use:** Remain as existing

**Parcel ID:** 20-047-0014

**Township, Range, Section:** T6N, R1E, Section 17

#### Adjacent Land Use

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

#### Staff Information

**Report Presenter:** Steve Parkinson  
sparkinson@co.weber.ut.us  
801-399-8768

**Report Reviewer:** SM

### Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 13 (Forest Residential Zone FR-1)

### Background

The applicant is requesting a variance for a reduction to the required 30 foot front yard setback of up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates. The yard setback requirements for this zone are as follows:

- Setbacks      Front – 30 ft, sides – 10/14 ft, rear – 30 ft.

This subdivision was originally part of a Power Utility encampment, used by the employees of the company as a temporary residence. When the power company was done with their project many of those employees stayed, divided up the area amongst themselves and built more permanent structures. Although none of the lots meet current zoning requirements such as lot area, lot width, etc., it was approved and recorded as a subdivision in 1976, making legal all of the non-conformities that existed.

In 2001, the Burgess family tore down the original summer home on Lot 14, which consisted of two (2) sheds placed side-by-side, and applied for and received approval to construct a new single-family dwelling. The front setback requirement was 30 feet and a Land Use Permit was issued stating that requirement. Typically the setbacks are measured by the Building Department during the footing inspection. In this case staff is unsure how the setbacks were measured but according to the notes written by the inspector (see Exhibit "B") the "Front yard setback was 33", as determined from an explanation of property lines by contractor". This error was not discovered until recently when the applicant applied for a building permit to construct an attached garage to the south of the existing home.

### Submittal on Basis of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code states that 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 Code. In order for a variance to be granted it must be shown that all of the following criteria have been 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 literal enforcement of the land use code 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 literal 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 "A". Staff's analysis and findings are discussed below:

- a. Literal enforcement of the Land Use Code would require the removal of 2' 6" of the home from the front door to the northern end. The home was constructed 13 years ago and until recently was believed to have been built in accordance to the front yard setback requirements. The intent was to build the home at the required setback as is evident to the permit. This request is not self-imposed but rather a correction to an error made 13 years ago.
- b. The special circumstances attached to this property are based on the fact that the inspection that determined the setbacks was not accurate, or only measured a point on the southern half of the footing, the intent was to meet the required 30 foot setback.
- c. Zoning gives the property owner rights to construct a dwelling unit. The county verifies that the dwelling unit was constructed correctly and in accordance to applicable building codes. The property owner then receives a Certificate of Occupancy (C of O) as the final step of the process.
- d. The General Plan indicates this area should allow and be preserved for single-family dwellings, no changes are proposed.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to correct a mistake that occurred several years ago, and render the reduced setback legal. Granting the request would serve as substantial justice to allow the current dwelling unit to remain as is without further issues.

### Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the FR-1 Zone and granting this request will not increase the number of dwelling units in the area. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

### Conditions of Approval

- Meet all other applicable review agency requirements.
- Obtaining a land use permit and a building permit prior to construction of the garage

### Staff Recommendation

Staff recommends *approval* of the variance for a reduction to the required 30 foot front yard setback of up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates Subdivision, based on it's compliance with the applicable variance criteria discussed in this staff report.

## Exhibits

- A. Applicant's Narrative
- B. Inspection Report
- C. Pictures of Neighborhood

## Location Map





## Exhibit A

### Applicant Narrative

Please explain your request

The property at 763 was originally occupied by 2 sheds, converted to a summer home located about 10 ft from the roadway, violating the existing 30 ft setback.

In 2001 the summer home was torn down and plans were submitted and approved for the construction of the current home an improvement in the type of home. The current home was approved and inspected by the County of Weber as being in compliance with all laws and rules. Certificates of Occupancy were given and the home was occupied.

In 2014 plans were submitted to add a much needed garage to be located within the defined setbacks. Plans were denied due to the original home violating the 30 ft front setback rule.

This was news since the County of Weber in 2001 accepted, approved, inspected, and made no comment on the location of the home and nothing has changed relative to the location of the boundary lines or home since that date. It is not practical to have either the home or the property lines moved.

It now appears the center of the front of the home is at 30 ft and appeared to be the intent to build the home parallel to the lane / front set back line. However, the contractor laid the foundation and rotated it a couple degrees on its front center causing the north corner of the home to violate into the setback by 2 ft while the other (south) end of the home went 2 ft away from the setback.

As property owner, I need to add a garage for my vehicle and equipment necessary to accommodate the home.

I am asking for the Board to grant a variance to allow the front of the existing home to legally exist in the front setback by approximately 2 ft to allow the legal construction of the garage.

### Variance Request

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.

a. In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

b. In determining whether or not literal 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.

1. The literal enforcement of the zoning and setback rules have caused a complete work stoppage on the garage addition which has no issues. I have been of the belief that my home that was built and inspected in 2001 by the County of Weber, and had no issues because it was approved. Now, due to a plan review 13 years after the original home was approved, there is an enforcement action being taken for violation of the setback by the existing home. This violation is preventing my much needed garage from being built. The reason given is understandable, but is also unreasonable due to the process that was afforded to and taken by the County of Weber in 2001. To permanently halt all legal additions to the home is an incredible hardship for me financially as well as preventing me from enjoying the functional use of a garage.

a: The location of my current home is located entirely on my property. The older summer home that was built in the early 1900's was in violation of the newer front setback requirements, similar to some of other older homes still in the grove. The new home was an improvement home and met the newer setback standards by being built farther back on the lot. The Weber County officials approved the construction of the newer home in 2001 with on-site inspections, and, following their inspections, they approved the home and deemed it as being legal.

Now, it seems unreasonable to enforce the standards in 2014 when the home was built in 2001 under the same guidelines and nothing was said or done in 2001 relative to the enforcement of the front setback standards.

So, the peculiar problem lies with the inspection, review and approval process that was supposed to catch this error in 2001 by the County of Weber. This makes my problem unique to my property today.

b: The current violation in the setback is neither self-imposed nor economic, but a result of, or failure of, the actions of the County of Weber in 2001 to act on the error through review or inspections. Now, in 2014 they acted by noting the error.

**Variance Request (continued...)**

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

a. In determining whether or not there are special circumstances attached to the property, the appgal 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.

a: The special circumstances attached to this property that don't apply to other properties in the area would be the approval of the home by the County of Weber in 2001, now being reviewed and being claimed as non-compliant. The current plan review is preventing me from adding a very much needed garage to store materials and a vehicle. I have no other means to store tools and materials except in the living quarters of my home. Since the home was approved in 2001, it would be assumed that I was legally situated and like other homes in the grove, would be able to have a garage. The home can't move, and since it is now noted to violate the setback, I can't build the garage.

Whereas, other residents living in homes in the grove are able to utilize garages, sheds and even live in their homes which are currently in gross violation of the current setback rules. The garage being added in this request is not the violation, and complies with all the building standards and setback requirements, the focus of this variance deals with the house built 13 years ago.

To deny the garage addition based entirely on the location of the existing home, approved in 2001 by the County of Weber would not be reasonable in light of the fact that had the garage been built in 2001 with the home, I would not be here today trying to obtain a variance, still believing the home was legally built and placed.

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

As mentioned above, other residents living in homes in the grove are able to utilize garages, sheds and even live in their homes which are currently in gross violation of the current setback rules. The garage being added in this request is not the violation and complies with all the building standards and setback requirements currently in place.

I am in great need of a location to store materials, yard tools, and bring equipment to work on the property without fear of theft and to provide security of my personal equipment. I currently have to borrow tools and large picces of equipment from neighbors because I have no place to store them at home. When I do have equipment, I have to chain and cable lock the equipment to trees in lieu of placing them inside my home. I am in need of a garage.

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

The structure complies with the type of structure allowed in this zone. The structure is of the type allowed and was approved to be located on this lot. The only concern is the placement of the original home on the lot, that is, we discovered 13 years after being built, that it is skewed by 2 feet from what was expected and accepted. This mal-alignment is not perceptible until measured. This request for variance will not affect the general plan and will not be in conflict with public interest.

**Variance Request (continued...)**

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

The home was built under the supervision of the County of Weber officials in 2001. The officials reviewed and approved the plans, the building of the home, and gave their approval for compliance and occupancy. All building was done in good faith and with compliance of known regulations according to the land use. The building of this home in 2001 required a movement of the home from the original 1900s position near the roadway back onto the lot to comply with a 30 ft setback herefore making the lot 'more in compliance' than it was before.

The funding for a garage in 2001 was not possible. Therefore, the placement of the home was made on the lot so as to leave sufficient space for the future garage at a later date. The current plans of 2014 were presented for the purpose of adding the garage for completion of the home.



The only objection to completing the garage portion is that the home was found to be built inside the front setback. To allow the completion of the garage, I can't proceed through the Planning Department unless a variance is given for the home that was built and approved as-built in 2001.

Since the County of Weber approved the home in 2001, it would only seem logical to accept the current (but incorrect) placement today. The justice should have been appropriately administered in 2001 as the officials had an opportunity to observe and inspect the home at different phases. However, they made no effort to stop or enforce an incorrect placement during their inspections. Therefore, justice would be served in 2014 by accepting the same approvals that were given in 2001 by the same entity, and, to do so would be accomplished with the granting of a variance to forgive the error that was not caught in 2001. There was no malice in building the home into the setback as it can be seen that it was centered at 30 ft on the plans.



ENGINEERING DEPARTMENT  
 Inspection Division  
 Ogden, Utah 84401 • (801) 399-8374

BUILDING COMPLIANCE  
 INSPECTION REPORT

<b>BLDG. USE</b> <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Garage/Carport <input type="checkbox"/> Addition/Remodel <input type="checkbox"/> Other	JOB ADDRESS <u>673 Ogden Canyon</u> BLDG. PERMIT NO. <u>1F148</u> CONTRACTOR/OWNER <u>MURGESS</u> DATE <u>7-19-01</u> TIME <u>9:15</u> REASON FOR INSPECTION: <input checked="" type="checkbox"/> Called <input type="checkbox"/> Routine <input type="checkbox"/> Complaint <u>PHONE</u>
<b>INSP. CATEGORY</b> <input checked="" type="checkbox"/> Building <input type="checkbox"/> P <input type="checkbox"/> F <input type="checkbox"/> Plumbing <input type="checkbox"/> <input type="checkbox"/> Mechanical <input type="checkbox"/> <input type="checkbox"/> Electrical <input type="checkbox"/> <input type="checkbox"/> Demolition Moving <input type="checkbox"/> Zoning <input type="checkbox"/> Sign <input type="checkbox"/> Housing (existing) <input type="checkbox"/> Business License <input type="checkbox"/> Mobile Homes <input type="checkbox"/> Other	<b>COMMENTS</b> <del>(1) Remove all fill boulders bricks block etc from footings - footings must be placed on "undisturbed" soil.</del> <del>(2) Plans call for 10x24" footings, footings are 10x20".</del> <u>(3) SET BACKS FRONT 33" BACK 30+ - Sides 17' each side determined from explanation of property lines by contractor.</u>
<b>INSP. LEVEL</b> <input checked="" type="checkbox"/> Set Backs <input checked="" type="checkbox"/> Footings <input type="checkbox"/> Foundations <input type="checkbox"/> Underground <input type="checkbox"/> Rough <input type="checkbox"/> Other <input type="checkbox"/> Roof Covering <input type="checkbox"/> Frame <input type="checkbox"/> Drywall Lath <input type="checkbox"/> Power to Panel <input type="checkbox"/> Insulation <input type="checkbox"/> Bond Beam <input type="checkbox"/> Progress <input type="checkbox"/> Final <input type="checkbox"/> Pipe	<u>10/10</u> <del>(1) Reinspected #1 has been completed, material removed to undisturbed soil.</del> <del>(2) Plans have been amended to 10x20 footings.</del> <u>OK TO POUR.</u> Next Required Inspection: <u>found.</u>
<b>STATUS</b> <input type="checkbox"/> Partial <input checked="" type="checkbox"/> Complete	<b>WORK APPROVED</b> <input type="checkbox"/> Work Passes - authorized to proceed <input type="checkbox"/> Prior violations corrected <input type="checkbox"/> Items listed in comments will be reinspected at the next regular inspection <b>UNABLE TO MAKE INSP.</b> <input type="checkbox"/> Cannot Locate Property <input type="checkbox"/> Building locked <input type="checkbox"/> Admittance Refused <input type="checkbox"/> Reinspection fee <input type="checkbox"/> Approved plans not available as required <b>WORK IN VIOLATION</b> <input checked="" type="checkbox"/> Make necessary corrections <input type="checkbox"/> Do not proceed with work <input checked="" type="checkbox"/> Prior violations uncorrected <input type="checkbox"/> Reinspection fee <input checked="" type="checkbox"/> Work must be completed with a call for inspection
<b>ASSIGNED INSPECTOR</b> <u>RSS</u>	 



Picture # 1 – This is looking north along the private road. Applicant's dwelling the on the right.

Approximate location of property lines



Picture # 2 – This is looking south along the private road. The applicant's dwelling is on the left