

# 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<br>4/11/14 | Fees (Office Use)<br>\$225.00 | Receipt Number (Office Use) | File Number (Office Use) |
|---------------------------------------|-------------------------------|-----------------------------|--------------------------|

## Property Owner Contact Information

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

## Authorized Representative Contact Information

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

## 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<br>Pas De Calais Development<br>2900 and 2927 East Melanie Lane<br>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 signer(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





WEBER COUNTY CMS RECEIPTING SYSTEM

OFFICIAL RECEIPT

\*\*\* Save this receipt for your records \*\*\*

Date: 16-APR-2014

Receipt Nbr: 2957

ID# 19753

Employee / Department: KARY - 4181 - PLANNING

Monies Received From: RICHARD REEVE

Template: PUBLIC WORKS

Description: BOA APPEAL

The following amount of money has been received and allocated to the various accounts listed below:

|                         |    |       |        |
|-------------------------|----|-------|--------|
| Total Currency          | \$ | _____ | .00    |
| Total Coin              | \$ | _____ | .00    |
| Total Debit/Credit Card | \$ | _____ | .00    |
| Pre-deposit             | \$ | _____ | .00    |
| Total Checks            | \$ | _____ | 225.00 |
| Grand Total             | \$ | ===== | 225.00 |

| Account Number             | Account Name | Comments | Total  |
|----------------------------|--------------|----------|--------|
| 2014-08-4181-3419-0550-000 | ZONING FEES  |          | 225.00 |

TOTAL \$ 225.00

Check Amounts

225.00

Total Checks: 1

Total Check Amounts: \$ 225.00

\*\*\* SAVE THIS RECEIPT FOR YOUR RECORDS \*\*\*