Minutes of the Board of Adjustment held August 25, 2016 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present: Rex Mumford, Chair; Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer

Staff Present: Rick Grover, Planning Director; Scott Mendoza, Assistant Planning Director; Charles Ewert, Principal Planner; Courtlan Erickson, Legal Counsel; Clark Crockett, Legal Counsel; Tiffany Bennett, Office Specialist; Kary Serrano, Secretary

*\*Pledge of Allegiance*

**Regular Agenda Items**

Courtlan Erickson, Legal Counsel said that he normally represents the Board of Adjustment; but they have determined internally that for purposes of Item #2 BOA 2016-05 on the agenda, he would be sitting in the audience, taking some role but probably not assisting the Planning Division. It would be Christopher Crockett, another Deputy Attorney that would be acting as the legal advisor during the discussion of that particular application. Chair Mumford said just a note for those in attendance; on an appeal they are considering information that had already been presented, and no new information can be presented. Mr. Erickson replied that is correct; the Board of Adjustment typically considers only the record that came to the board that was presented as the land use authority.

**1. BOA 2016-03: Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, to grant an approval of an Access Exception (AE#2013-03) for two building lots in a proposed subdivision, (6050 South and 2900 East in the Uintah Highlands area) owned by Matthew and Laura Rasmussen. The allegation is that the Planning Division erred in its decision to approve the access exception. (Carol C. Browning, represented by Richard Reeve)**

Assistant Director Mendoza said this is an appeal that was presented back on May 22, 2016; and he would like to have Mr. Froerer who is representing the appellant Carol Browning to come up and spend as much time needed to explain his appeal. This is an appeal to a decision to an access exception. It is an alternative access in lieu of building a full public standard street and sometimes there are landowners that would request an access exception. For example, they might request an access easement or a granted right-of-way from a private landowner. That access easement will serve as the primary access, such as a driveway rather than a road. The role of the Board of Adjustment is to review the record of the Land Use Code Section 108-731; this section titled Access to Lots/Parcel using Right-of-Way or Access Easements that guides them when they look at these types of requests. The highlighted text that is applicable states, *“Lots which do not have frontage on a street but which have access by a Private Right-of-Way or an access easement may under certain circumstances use those types of things as the primary access.”* In Subsection C, it talks about the criteria that states, *“Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend the street to serve as access to the subject property.”*

Assistant Director Mendoza said when they are looking to approve or deny a request; it talks about unusual soil, topographic, or boundary conditions. Those things are examples that may render some type of decision. In this case on May 22, 2016, they were presented with information to consider what was available to them and they made a decision for approval. Under the duties and the power of the board, they are the appeal authority that take decisions made by the Land Use Authority, and determine the correctness of the appeals from those decisions. The Board of Adjustment shall interpret the land use code and determine the practice, then apply the land use code when they interpret the zoning maps. There are two things that he would like for the Board to consider; the appellant in this case has the burden of proof to show that the staff did alter or did make an error in making this determination for approval. Any appeals to the Board of Adjustment consist of a review of that record; this is not only expressed in the information provided, but the code is included in their packet. The site map is included that he prepared for the Board; with the subject parcel located at approximately 6050 S 2900 E in the Uintah area.

Deone Ehlers-Rhorer asked if staff could show them on the map how they were accessing on the lot. Assistant Director Mendoza indicated the road where Melanie Lane is located and the parcel that is owned by Weber County. In the staff report is a table that explains a series of events; one event was when Mr. Rasmussen went to the County Commission to request an access across this lot on the ground that is a detention pond. The County Commission did agree to grant an access easement, and they may have made a final decision, as far as granting an egress of that access.

Deone Ehlers-Rhorer asked if that was a permanent easement, and did that carry forward with any owner of the land. Assistant Director Mendoza replied yes, and that would depend on the language in the easement. That was something that was approved by the County Commission level, and he was unaware if it was actually executed but it had been approved. The assumption the way that easement would be written; that it would amend the perpetual unlimited access to that property. There were two accesses that were discussed; one that was located in this tree line, and the other one is an existing driveway that Uintah Highland Improvement District uses to get to a water tank site. This parcel was a subject for the Board of Adjustment that was approved by the board due to steepness, was granted an alternative access. Mr. Rasmussen could use this access through the subject property; or access across county property to access subject property. This becomes more complicated because the Improvement District owns that parcel and would require cooperation of the Improvement District.

Chair Mumford said in their packet that shows the proposed easement location; but it also shows the 20 foot right-of-way easement, and that would seem the easement could be the other one. Assistant Director Mendoza replied yes; that would be one through the tree line, and that location is not preferred by that neighbor to the south and west that is located in this area. He believed that they left it opened enough, that if it were designed with more specific challenges that came with that location, that a different location could be considered. There was quite a lot of dialogue back and forth between the best location, and Mr. Rasmussen has to work out with the County Engineer on the best possible area to place that access road.

Chair Mumford said when the county grants an access exception, that isn’t defined absolutely in terms of where it’s located. Assistant Director Mendoza replied it’s that easement that would define the location; that granted easement is between two private landowners, the developers, and another private landowner and not Weber County. In this case, Weber County is a land owner and does have that right to that easement.

Deone Ehlers-Rhorer asked what is the structure over on the Melanie Lane side and is this part of this subject site. Assistant Director Mendoza replied that is an existing home; which is the result of the access exception that was approved, and the easement was granted by the County Commission. The next step would be to subdivide the subject property; where there is a restricted one lot that would become three lots. Currently this is a one lot subdivision, and if Mr. Rasmussen is successful, then he would be coming in to convert that into three lots. This home would continue to front off of Melanie, and the two other home sites would be serviced by a driveway rather than a full blown public street. The important decision with notice of decision that they faced with were: unusual soils, topography, or other source of boundary conditions. In this notice of decision they have referred to steep slopes, topography boundary condition bound by other properties, condition where it has frontage, and on Melanie Lane it goes into a reverse curb. They approached the County Engineers and talked about how safe an access for a street would be, concerns with the steep hills, location of the curb, and the configuration of the existing road that is not an ideal location.

Chair Mumford said on Exhibit A it appears that there is also a drainage ditch or an easement for a drainage ditch going through that upper lot. Assistant Director Mendoza replied that access with this parcel has frontage, the location of the existing home there has drainage. In Western Weber there are standards and setbacks for these drainages to preserve the natural habitat along those areas. There is an easement and it could get complicated to locate a street; not only due to topography and steep slopes, but the location of the existing home and drainage is already there. In their packet they will find a UGS Map that shows that there’s alternative that goes through the property; it just seemed impractical to have Mr. Rasmussen build a full blown public street in an area that has those boundary conditions and potential faulting.

Richard Reeve, Legal Counsel for the Carol Browning, 5160 S 1500 W, said Ms. Browning resides next to this proposed subdivision, so she is directly affected specifically by this access exception that was granted. For the record, this discussion of various alternatives; an alternative across the Uintah Highland property or an alternative exception for access, that was not part of the record before this board. When the Board of Adjustment previously granted this access exception; they appealed to the District Court, and they prevailed on the motion that the judge set for judgment. The court remanded the decision back to the Planning Department. The Director considered again and made more precise findings to the notice of decision, bringing this back again to the Board of Adjustment.

Richard Reeve said in looking at the code section in the County Code; they need to look at this section as a guide to the board’s decision. He reference that there are Supreme Court cases from Utah that states that municipality must strictly comply with their own code provisions. There is a strict compliance standard and specifically the court case states that substantial compliance is not enough, and must be strictly complied with. The code referenced here Subsection C, Code 108-7-31 states, *“based on substantial evidence,”* so that’s the standard. The Planning Director needed to judge the application and his decision needed to be based on substantial evidence. It shall be shown that it wasn’t feasible or impractical to extend a strip of turf, or walk, or parcel. This next part is important*, “Financial adversity shall not be considered.”* Then it lists a number of circumstances, *“That should be non-exclusive conditions that must be or should be considered; which is unusual soil, topographic, or property boundary conditions.”* It goes on later on Subsection a, *“It shall be demonstrated that the agricultural parcel or other lot/parcel has the appropriate and legal access with historic use, court decree, or the execution of an easement.”* So substantial evidence cannot consider financial adversity and must consider things like soil, topography, property conditions, or boundary conditions. Financial adversity is very important to the developer who knowingly purchased a landlocked piece of property. The developer purchased this property; knowing the topography, the steep slopes, and knowing that he did not have access. So essentially he asked the county to bail him out when he knowingly purchased a landlocked property, and he knew that he couldn’t access it, and it was not primed for a subdivision. He asked the county not only for an access exception but for grants of easement across public land to be able to make his business decision a profitable one.

Assistant Director Mendoza said when he talked about access off of the frontage, that the lot was not an ideal standard to bring to a road from there. The standard must show substantial evidence that it is impractical or infeasible; not from a financial adversity to bring a road off of Melanie Lane down to serve that property. That topography and steepness of slope was there when this developer purchased that property. That is not the public’s burden to bear.

Richard Reeve said their primary jest of Ms. Browning’s concern was the complete lack of data or engineering reports, or any type of objective materials that showed the access exception was appropriate, and that it would not harm the property or surrounding property owners. This subdivision and the access road where this is proposed would cross the bed of this historic manmade pond. In the application and staff’s decision there were no Geotechnical Analysis and no soil reports that had been done; without that no one knows if building an access across a pond bed would affect that property or the other property owners. This access exception is going to run along the bottom of a 50 year old retention basin. He has not seen any studies showing how that private access road running along that 50 year old retention basin berm; or how that is going to influence the structural stability of that retention basin. This is at the bottom of a very steep area where that water gathers in that retention basin. If the structural integrity off that retention basin is affected by this access across that berm; how does that effect and what is the impact on those lower property owners? Is that going to cause the retention basin to fail? These are questions that they think are very important and they have not been addressed. Where is the data, the objective analysis, the engineering reports, and where are the professionals that can come in and give them reassurance that this access in this proposed location is not going to cause problems? This is not a safe area, there is a lot of water runoff, a lot of soil issues, and those things need to be considered.

Richard Reeve said the application is completely deficient; and they need to look at the application to base their decision on. In reviewing the application in their packet where it asks the applicant to describe all the supporting data that supports his access exception. From Ms. Browning’s perspective; this applicant has not undertaken any soil analysis, any engineering reports, and there has been no reference to that. He has been involved through the process from beginning and knows that the applicant has made reference to some data and studies that had been done as part of the subdivision approval process. Where is that data and why hasn’t it been made available; why wasn’t it sited in the notice of decision? If it is there than Ms. Browning’s concern are resolved and things can move forward. What Ms. Browning is asking for is not unreasonable; she just wants assurances through objective professional data that this access exception and the location proposed would not cause problems. Such as erosion of the retention basin, exasperate the unstable soil conditions, and worsen the drainage situation of that steep topography.

Richard Reeve said in the application and the notice of decision, there was no discussion of alternatives. In the code section there must be discussion of alternatives. If the county and the applicant are going to say that it is impractical and infeasible to access this property in any other way, then the alternatives considered need to be determined by either impractical or infeasible, and be judged under financial adversity standard. There are other places that this could be accessed from the intersection of Melanie Lane; one of these lots that are undeveloped that is currently on the market. It may be a steep price for a developer to come in a buy a lot, but that is not the county’s job to decide if that is financially impractical. Those alternatives were not addressed, have never been the subject of any studies or data, and there was no discussion in the application of the issues of the 50 year retention basin, the history of mud or landslide. There was reference to steep topography, fault lines, multiple fault lines across the parcel, and the fault lines that cross other public roads in this area. They find that the credibility that there’s a fault line; and the standard for judging to build a public road, there would be fewer public roads in the Wasatch Front area.

Richard Reeve said that the application is very basic and provides little to no explanation as to why an access exception should be granted. It does focus on land swap, and that’s really the underline story here. This developer went to Weber County and said he would give the county some property; in exchange they would give some back. He focused on the berm on this retention basin, as part of it had been there for almost 50 years on this developer’s property. He challenged this Board to look at the applicable code section and tell him where a land swap is something that the county can consider in determining whether or not an access exception is appropriate. He could not see anything in the code that the county could consider that; in fact the code would not allow the Planning Director to receive a conveyance or to convey property. This application asks the Planning Director to focus on that land swap to be involved in that conveyance and acceptance property.

Richard Reeve said in summary he would focus on the important points: The lack of data here. The applicant has come in with an access exception and provided no engineering reports, surveys, or data for the Planning Department to be able to make a decision. That lack of evidence and that lack of data failed to make that standard anywhere in substantial evidence. What the code talked about is there needs to be a showing that there needs to be a showing that there was a historical or legal access to this property. That is property has been historically landlocked, and without legal access that is an important point.

Phil Hancock asked that he had brought up several times that the motivation for Mr. Rasmussen purchasing this property. Is he contending that the motivation should have been considered as part of the decision for the Planning Director? Mr. Reeve replied in a way it does because the public policy behind this code section; that it’s not the county’s job to come in and dedicate or convey public property to a private land owner seeking to develop and create a profitable subdivision. That is the reason why financial adversity is something that the county could not consider in granting an access exception.

Phil Hancock asked isn’t there any developer that came in trying to make a profit. Did he believe that in the Weber County Code that a developer making a profit is one of the criteria that should not be considered for approvable? Would it make a difference if it wasn’t a developer but a private citizen? If the context of that something the county should consider, if the developer bought himself into a difficult situation, and now he is looking for public help to turn that bad piece of property into a profit. Mr. Reeve replied that is correct, he didn’t think that any citizen should look to the county to bail themselves out of a business decision.

Phil Hancock said that he has gone over the requirement for soil data; he never found a requirement to provide that kind of detailed information until Civil Engineer was completed. Does Mr. Reeve think that the requirement should be considered as part of this approval, that it final reviews from all of the county reviewing departments? Mr. Reeve replied it does; in the code section it directs the county to consider unusual soil, topographic, or property boundary condition. There is a strict compliance standard, and there is a county code provision that governs access exception. They can’t say they will take care of that in the subdivision application; that would render all the language and all the requirements for this land use action completely irrelevant.

Phil Hancock asked so his contingent is that the subsequent view by engineering with the several drawings isn’t required?

Mr. Reeve replied no it is required; what he is saying in this situation that it’s going to happen later. The code requires a consideration of any unusual and unusual soil conditions. There is a two step review process of soil and engineering data; that is how the county code is set up, and this board has to strictly comply with the language of the code.

Phil Hancock said normally when there is a project it is reviewed by several civil engineers; it must be reviewed by a certified qualified engineer. The Board of Adjustment or the Planning Division are not qualified to do that kind of review; to his understanding that’s asked for at that time because it has to be done by qualified engineer. Mr. Reeve replied that he agreed and that is why the applicant asked to bring in that information to present to the Planning Staff. There is a second page of the application where they can fill in substantial supporting evidence. That was left blank by the applicant; so the applicant is shifting its burden of hiring a professional engineer, and shifting it to the county’s public resources, and that is the problem.

Deone Ehlers-Rhorer asked did the county own the pond and did that extend all the way up to the road where the berm is located? Did they currently have access on that entire one parcel? Mr. Reeve replied no, it was the private landowner and he did not know if that was one parcel. This access is going to cross here in this corner where that pond is historically sat.

Deone Ehlers-Rhorer asked did Mr. Rasmussen owned that at one time, or did they swap it for the right-of-way with the county? Mr. Reeve replied on the application that was proposed as a land swap in exchange for half of that berm retention basin that sits across the boundary line onto Rasmussen’s property.

Deone Ehlers-Rhorer asked with this one plat; did he already own and reside at the home, or did he acquire the pond at a later date. The reason she is asking is because she wanted to understand why Ms. Browning has objections to this. Is it because there is a proposed subdivision; or is it because they do have access to that land from the house? Mr. Reeve replied he was unaware of the history, but that is incorrect. Ms. Browning has no use for that land and all she wants is that doesn’t reasonably and faithfully burden her property. If he builds a road along the downside berm of a 50 year old retention basin, without the engineer information; one could reasonably conclude that when the retention basin fills with water, the unstable berm would collapse and it would quickly run into Ms. Brown’s property who has experienced that before.

Deone Ehlers-Rhorer said and it’s ambiguous because when the easement was granted, it wasn’t specified as to where it was and there was not legal description. Mr. Reeve replied that was the first time he heard of this; and when Assistant Director Mendoza explained that this was a potential alternative, and it was not part of the notice of decision. Since this was not part of the record, this board should not properly consider this. All the discussions from the maps that were attached to the application, all focused on an access through lower part of the berm for detention basin. He did know that the Uintah Highland District were not interested in granting an easement.

Chair Mumford referenced Exhibit A, Page 15, and asked Assistant Director Mendoza represent the county on this. He noticed 4,555 sq. ft. that the property owner was willing to convey to Weber County; he noticed 3,767 sq. ft. of an easement, but he didn’t see an actual land swap. It looked like the landowner was willing to issue part of that retention basin on his property or at least where the berm is on his property. He gave that to the county as a part of receiving an easement; that is not a land swap that is an easement. The county is not giving up land and they would still have access. On that map he looked at the elevation lines, and each of these is in ten feet increments. Mr. Reeve replied that an easement is a property right; he is swapping land for property right.

Chair Mumford said that he had referenced the severity of the retention basin since it’s been there 50 years that it could collapse. According to the elevation lines; that was by the historic Bybee Pond was at least 30 or 40 feet lower than the Browning property. He was not sure but maybe it’s going downhill, or it could be 40 feet down. Is there still a berm around this old Bybee Pond? Mr. Reeve replied this is incorrect; the Browning Property the pond is clearly above, and is a steep walk to the Bybee Pond. Yes, part of the berm is around the old Bybee Pond, and they did commission it but there is still a lot of the berm that remains.

Chair Mumford said that he had also made reference to the onsite land stability. That takes place during the subdivision process prior to the landowner ever taking that step. He hadn’t even subdivided or proposed it, and it seemed to him that the only thing that the county has done was grant the access exception which would be a very early step of the subdivision process. This would ultimately result in a survey of the land from the stability standpoint. He is confused by Mr. Reeve’s feeling that they erred and seemed like putting the cart in front of the horse. Did the developer just want to put a road in just to access his own land? Deone Ehlers-Rhorer replied said that he could already access his own land through the house, he didn’t need the back access.

Richard Reeve said he was not the creator or drafter of the Weber County Code, and in the code this board has to strictly comply with the code. The code was setup a separate land use process for granting an access exception. That code required substantial evidence where the Planning Director could grant an access exception; to take things into account like unusual soil conditions and topography. He agreed with the Board as to what comes later from a practical standpoint; whether doing it twice makes any sense.

Doug Dickson asked for clarification from the District Court on January 27, 2015; was the intent to send this back to the Planning Staff to work out details with Mr. Rasmussen. Mr. Reeve replied a lot went into parts of the decision; and Mr. Crockett could comment for the county. Primarily there was a notice issue that the court decided that there was a failure of notice after the initial decision. It was sent back to the Planning Division to correct the notice issue; and give Ms Browning an opportunity to be heard and then render a decision.

Doug Dickson said for clarity it seemed that Ms Brown didn’t want this property to be developed, even though the county is property they owner. Mr. Reeve replied that is not correct, Ms. Browning didn’t care who developed, just how it was developed. Her concern had to do with any downhill property owner that would have a history of landslides and water issues. She wanted to make sure that the development is done in a reasonable professional manner; with supporting engineering reports and objective data that showed that it is safe and not going to impact her property. Once that data was provided with all the requirements of the Geotechnical Analysis, and whatever else the county determined that the access exception is appropriately supported by substantial evidence. She is not trying to stop development; she just wants it to be done right.

In response to Doug Dickson question about the natural water flow and the location of the property damage; Mr. Reeve replied that he is not an engineer, or even knows the property. He assumed if the county invested in resources by putting a retention basin is a low spot where water would flows to where there is a stream that runs down toward the back part of the property. Ms. Browning didn’t want to leave that and have water flowing down and damaging her property; or leave that up to her attorney, the developer, or the property owner. Let’s leave it up to an expert, who understands retention basin, who understands the flow of water, and can interpret the slope lines. Ms. Browning has asked if her property was going to be safe, and she wants an expert whose profession is focused on whether or not that is safe. If that expert says its fine, then all

Ms. Browning wants is some assurance with objective data.

Phil Hancock said he wanted to read a few things out of the minutes from the commission meeting. *“Commissioner Zogmaister asked if all of the studies from the road had to be completed in order to grant this easement. Mr. Anderson, County Engineer, replied that in his opinion the access is needed first in order to know if they could move forward; to start the process of where the road would be located, its design, grading, geotechnical report, and water impact etc.”* Further it says, *“Mr. Wilson says that if the road cannot be extended, the county can look at granting another easement, and look at stated criteria to see if that is a better location.”* He contented earlier that there were alternate location that was mentioned previously or in the record and it didn’t specify or was mentioned. Mr. Reeve replied the record is the notice of decision and he didn’t believe there was any reference in the notice of decision or in the application.

Phil Hancock asked so any of this wasn’t submitted as part of that meeting. Mr. Reeve replied that he didn’t know but the point was that the Board of Adjustment was to strictly comply with the language of the code. Their job was to enforce it and that’s what the court that their job is. In the code section it states that if there is substantial evidence; they are look at soil conditions and other things.

Chair Mumford said as a clarification for Mr. Dickson, when this went to District Court; this was sent back to the county because of the notification part. The judge didn’t make any ruling with regards to the actual access being granted; he sent it back to make sure the notifications were done right. This also had to do with the Board of Adjustment, and the timing issue that the date hadn’t been met. Mr. Reeve replied the notice hadn’t been provided; it was remanded from the notice to be provided specifically as Ms. Browning didn’t have the opportunity to present concerns prior and was given the opportunity to do so. So it went back and a new decision was made.

Deone Ehlers-Rhorer said so what Mr. Rasmussen proposed is the property, and the easement exchange with Weber County would take place when recording the subdivision. They even proposed that if this would only take place upon the approval of that subdivision. Mr. Reeve replied there are three different parts, there’s the access exception. Then there’s two parts, the easement and the granting of the easement is a separate legal action from the granting of the access exception. The County Commission grants the easement and then was recorded when they decide to record it. The granting of the access exception is a land use step; that is under this board’s purview that they need to focus on. The applicant was seeking an access exception and approval of it when they submitted their application. The code requires certain things from the Planning Commission and the County Commission for that to be granted, and that’s the focus of their appeal.

In response to Doug Dickson’s question, Mr. Erickson replied that he may have misunderstood that the Board of Adjustment was supposed to rule in favor of the landowner, because that would not be true. The role of the Board of Adjustment in this particular situation where there is an appeal from the land use authority decision; is to determine whether the land use authority made the correct decision.

Assistant Director Mendoza said he wanted clarify that Mr. Reeve’s point of having the remand that the first decision came back to the Planning Division; that was based on noticing, and had nothing to do with the substance of that decision. The Planning Staff considers things like unusual soils, topography, and boundary conditions. He wanted to emphasis as a land use authority; the Planning Staff recommended to the land use authority approval based on one of those conditions, but that notice of decision referred to more. Mr. Reeve is correct and staff had not received anything from a soil scientist that talked about soil classes. He agreed that those things would be looked at by the County Engineer’s office; they will be required to come in from a professional level, and would be addressed in a subdivision level.

Deone Ehlers-Rhorer said they have a problem with a chicken and egg scenario; they don’t want to spend money if there is not access to the property, and they don’t know if the property would be complete safe. Assistant Director Mendoza replied when they meet with someone; they inform the applicant that they can’t get an access exception until they actually have access. The applicant must provide an access exception and they have appropriate legal access, and history has nothing to do with this. It does say in the code, access due to historical use, court decree, or execution of an easement, and in this case by the Planning Commission minutes, an access easement had been approved. Planning Staff didn’t feel that Mr. Rasmussen was trying to get out of building something due to financial concerns. In this case staff thinks it is not practical for all the reasons referred to earlier and are listed in the notice of decision.

Assistant Director Mendoza said that Mr. Reeve said that he hadn’t seen any studies on how the driveway would affect the area or a road to that existing retention basin. In the code that is not the requirement; that is something that would be studied in depth during the subdivision level. What they look at is something that’s infeasible and impractical; granting to hire a professional at this level is perfectly acceptable, but in this case it wasn’t provided. What they did find was substantial evidence that there’s an existing lot in a subdivision and it’s an R Lot. It is or exceeds 25% slopes so that is substantial and they use a UGS Map that can be relied on. These maps are not surveyed grade, but there is potential to build a public street to provide access through two homes and have the public responsible for that street. Mr. Reeve point out that the application had blocks that were left blank and that is true. When the Planning Staff sees a situation where the application lacks information, the Planning Staff will call the applicant and acquire that information. The Planning Staff prior to his involvement with this; reached out to Mr. Atkinson and have had discussion that provided enough information that staff felt comfortable with moving forward.

Assistant Director Mendoza said that Mr. Reeve said that alternatives were not considered but they were. Earlier they had spoke about this access off of Melanie Lane with the steep slopes, location of existing homes, the drainage easement, and they looked at that vacant lot. They are not talking about locating the easement; they are talking about whether or not a public street should be built to provide access for this subdivision. If a street were to be constructed; those two lots would be turned into corner lots that have a higher setback standard on that side of that street. The two homes may create a situation where the existing building would hardly be legal according to the necessary setbacks. He disagrees with Mr. Reeves in that they did look at other alternatives and they rendered the decision. There was no land swap; it was a separate decision as to whether or not Mr. Rasmussen had an easement. He approached the County Commission and the commissioners encouraged the proposal either way. Mr. Rasmussen was successful in getting the easement; so as far as meeting the requirements associated with getting the approval he had succeeded there. He disagrees with Mr. Reeve when he says that the landowner has to analyze the soils, topography, and the boundary conditions because they can be looked at separately.

Deone Ehlers-Rhorer said even though there is an easement, it was granted, but now there is an appeal. If this moved forward, he would still have to do certain tests; and to put in a driveway is probably not feasible. Assistant Director Mendoza replied as part of the subdivision approvals; more specifically that driveway. They will go more in depth about what is going to be needed to build it, where it will be constructed, the location, and the way it will be built. The county will protect everyone around and there is a responsibility associated with that detention pond to make sure that the berm that forms that structure is safe.

Mr. Rasmussen would be required to provide professional information requested by Ms. Browning. Director Grover said as part of the conditions of approval; they are required for that access easement exception, any requirements from engineering and they would have to satisfy that before they could they subdivide.

Deone Ehlers-Rhorer asked what about the exact location of the easement. Assistant Director Mendoza replied the fact that Mr. Rasmussen has secured that easement has satisfied the requirements here. The location if it needed to move further south that would be something that staff would have to address.

Chair Mumford said the approximate location of the easement had been decided upon it’s just the exact location. Assistant Director Mendoza replied that he looked at those minutes and tried to pinpoint a location. All the paperwork that they had been given did show that access easement was on the southern side of that basin. The neighbors that live right next door to that access are concerned with the driveway being constructed there. He believed that Mr. Rasmussen had talked to these lot owners and since has considered locating that somewhere else. The final detail once they get into the subdivision process from preliminary to final; they would be required to have the construction documents, improvement plans, profiles that show depths of engineering road type details, and those types of things.

Chair Mumford said this is an appeal for an administrative decision, and moved to deliberate on that decision. The board members and legal counsel returned from deliberation and proceeded with a motion.

**MOTION:** Bryce Froerer moved that BOA 2016-03 that the appeal be denied; based on the criteria in Section 108-7-31 of the record, showing that the requirements had been met that the potential evidence of compliance with the ordinance.

Phil Hancock seconded. A vote was taken with Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer, and Chair Mumford voting aye to deny the appeal. Motion Carried (5-0).

**2. BOA 2016-05: Consideration and action on an appeal of The Sanctuary Recreational Lodge Conditional Use Permit to operate a recreation lodge on Lot 6 of The Sanctuary Subdivision, which is a 44.6 acre lot in the F-40 Zone, at approximately 9803 E. Maple Ridge Road. (Green Hill HOA, Applicant)**

Bryce Froerer said that he had to recues himself due to conflict of interest as he has represented Greenhill’s Association.

Charles Ewert said that he appellant is appealing a decision for a Recreational Lodge on Lot 6 of the Sanctuary Subdivision. The Sanctuary Subdivision is located in this area of the Ogden Valley as they go through Green Hill Country Estates Subdivision. This Lot 6 has about 44 acres and this was presented to the Planning Commission for their review. This subdivision lot which gives a series of private drives through private streets; it comes back all the way down until they get to a public road infrastructure, which culminated to this turnaround. This picks up to a private driveway that would go up Maple Drive, which is a private drive through Green Hill Country Estates Subdivision. From there it picks up a private platted driveway that extends up to the Sanctuary Subdivision, and provides access to those lots. At that time those subdivisions were installed that access was provided to those lots. The primary claim that the appellant is making; that the county had an obligation to defer the focus of that private access agreement between the Greenhills HOA and the permittee. Basically they are saying that the Planning Commission had the responsibility of reviewing that easement agreement based on the language; determine whether or not the applicant had access, and the appellant is asserting that access didn’t exist. When the permittee petitioned the county for a permit and petitioned the Planning Commission for permission; he did affirm that he had access. As part of the record there was an individual from the Greenhills HOA who read into the record the excerpt from that agreement that discussed what types of uses were allowed in the Sanctuary Subdivision; in order for that access across the Home Owner Association road to be granted.

Charles Ewert said one of the things that staff encouraged the Planning Commission, was not to attempt to interpret, enforce, or administer that private agreement between the HOA and the developer in this particular case. What their responsibility as a county reviewer was to verify access in accordance with the law; with the Land Use Code or the state’s County Land Use Development and Management Act (CLUDMA) which they did by virtue of the existence and the platting of those subdivision plats. The assumption that a county could permit a use that validates a private agreement and further restricts that use; that was something that was presented in the appellant’s case, and staff did not agree with that position. Just because the county might offer a land use permit doesn’t mean that it clouds, encumbers, or removes any other agreements or private obligations that the two parties have with each other. Whether or not there is legal access granted by this agreement is not something that the Planning Commission has the authority to offer an opinion on. Whether or not the developer of the Sanctuary Recreational Lodge had provided enough information in accordance with the land use code; he had access to his property and detrimental effects or impacts could be substantially mitigated, and all that was provided to them. The appellants provided a brief and he reviewed that brief, but it didn’t appear to present new information different from what the staff report provided. This Board read through that staff report, and got through the different points as to why staff felt that the Planning Commission made the correct decision in this particular case.

Charles Ewert said any allegation that the county erred in its decision; based on a deposition that they were supposed to strictly apply standards of the code. All that would be tied back to an idea that the county had an obligation to interpret the limited scope of the private agreement, which they fundamentally reject. As they get through the codes that the appellants indicated that the county violated in order to grant the permit; they will find in the Conditional Use Permit Chapter grants the Planning Commission discretion for standards to review the conditional use permit. It states that the Planning Commission may apply conditions relevant to each of those standards; such as access circulation, traffic demand, and those kinds of things. They will find in the decision letter and in the Planning Commission minutes that they did provide conditions related to access, to road infrastructure related to parking and vehicle circulation, to emergency egress and ingress, and access for fire trucks are all in there. In order for the Planning Commission to apply conditions to those particular standards to a particular case; the code also sets up a test that they have to administer. They have to determine whether or not credible evidence exists that those standards are relevant; that those conditions are being applied to a particular case, which the Planning Commission did. The appellants stated that they are not arguing physical access, but more about legal access. That legal access was blocked by some legal case, whatever that legal agreement may be, and that’s a private action between the two parties involved. The county has no part in that so the Planning Commission’s decision was correct in rejecting consideration of that private agreement.

Chair Mumford asked if this appeal of the Sanctuary Recreational Lodge Conditional Use Permit is to operate a lodge on Lot 6; and is this lodge pictured already constructed or is this conceptual. Mr. Ewert replied it was the applicant’s intent to give the county as much information as needed to provide for the esthetic treatment of the site and provide for vegetation. There is a conditional use permit process that granted the design review; where additional questions like access, esthetics, vegetation, and other stuff which they did do. The next step would be to apply for a building permit.

Zane Froerer, Green Hills HOA Representative, 2510 Washington Blvd Ogden, said that the county really stacks the deck against the appellant but he will do his best to overcome those hurdles. This boils down to one thing; this is not a case where the Home Owners Association is concerned about the lodge. They have one concern; that is the use, the maintenance, and congestion of traffic flow on that road on Maple Drive that they own. Their property interest is to maintain it, to limit the scope of the right-of-way, and for the use by Sanctuary. In his brief it is very clear that a conditional use is one where the county should consider detrimental impacts upon, for use by Sanctuary. The statuary laid out in his brief is very clear; a conditional use is one where the county should consider detrimental impacts upon other land owner’s property interest. The problem here is the Planning Commission decided to ignore Green Hills’ property interests with the agreement. They are not asking for the county to decide whether or not there is legal access, physical access, or if they are taking a mule train up there. What they are asking is for the county to respect their property interest; and the right to charge Sanctuary a fee to contribute to the maintenance.

Zane Froerer said that by changing the use from a single family dwelling detrimentally impacts his client’s property. The agreement between these parties defines their property interest; this is not a situation where the county is in the position of interpreting property interest. They are being placed in the position of doing exactly the job of the statute requires them to do; which is to define property interest, and then determine whether any detrimental impact upon that property interest should be mitigated. When the county roads are involved the county requires all kinds of considerations to make sure this proposed conditional use does not cause problems with their roads. When it comes to his client’s road with the impacts; due to an increase of traffic that causes an increase in road damage, and an increase in cost for maintenance. The county did recognize that there could be a problem here, so if Green Hills is going to sue this guy and get an order that states that this will impact their road, then this permit is void.

Zane Froerer said that the county should have looked at the agreement; and should have looked at the right-of-way that is the basis for granting a conditional use permit, because that would define his client’s property rights, property interests, and they went to the county asking them to protect this. Prior to granting a conditional use permit, they needed to look at whether or not changing from a single family dwelling to a ten room lodge, on top of the mountain; with guest services, food services, rental shops, and repair shops was enough to demonstrate that maybe they should look to see if there would be a detrimental impact upon Green Hill’s property interest in protecting their right-of-way. The county didn’t see it that way and that’s where they erred.

Zane Froerer said that staff and the applicant had as much time as needed to things; but anybody who protests has a matter of days after receiving a notice of a Planning Commission meeting, and come in and present their case. That is what the Planning Commission should require of the applicant when the issue was raised; whether or not there’s the property interest. In the agreement it states that they are only going to build a single family dwelling on that lot; and now they are asking to do a 10 room lodge, a repair shop, and a rental service. Those are all accessory uses of the conditional use permit that they were granted with no mitigation to limit anything other than the number of rooms. Once the 10 room lodge was allowed, what would prevent the applicant to come back and ask for six more rooms?

Deone Ehlers-Rhorer said that to her understanding they were granted the conditional use permit to build it, but they didn’t necessarily have permission to cross that road, and they would have to work that out with him. Mr. Reeve replied if that were the case but the reality is that conditional use was granted based upon this road being the only access to that lodge. That access dealt with a recorded plat, and that plat give legal access, and since then the physical access has been improved. That plat refers to the right-of-way and Maple Drive. It also refers to an agreement called the Right-of-Way and Loop Trail Agreement that was created by the same easement agreement and declaration covenance. When the plat was recorded; legal access and physical access were granted to the Sanctuary under the terms and conditions of the agreement that vested Green Hill the right to claim a contribution from the Sanctuary owners to maintain that road because of their access. That also granted to Green Hill the right to seek a construction bond, anytime there is construction going on at the Sanctuary because they are using that road. It also granted a limit on that use; the traffic flow of that right-of- way, and it would be the development what is currently the Sanctuary, limited to 13 single family dwellings.

Deone Ehlers-Rhorer asked if that creates breach by not complying with the agreement, then they could take away their access to that road under those rules. Mr. Froerer replied that he agreed but the county’s decision impacted Green Hill’s property interest. Under the conditional use permit process, his client Green Hill are entitled to a request that the county impose a mitigation condition upon the conditional use permit. The county approved this without considering if it would mitigate any detrimental effects upon the private section of Maple Drive; and this created precedence to his client who only had 15 days to appeal to the board. If this board rejects their appeal, they have 30 days to appeal that to the court of law. He is not willing to have his client take the risk if they sue the developer of Sanctuary; as they do not get to challenge the decision ever. By the county getting involved, without first asking if they have access through this private right-of-way. Green Hill said they do have access, but they can’t use it for anything other than single family dwelling because that’s going to have a negative impact on their lot. The Planning Commission could have required them to work that out first and then they would get that conditional use permit. The problem is that the county gave the developer the conditional use permit, and didn’t worry about if it impacted this road.

Zane Froerer said he noticed a problem in the staff report that it’s tweaked enough to allow the county to rubber stamp this without looking at the detrimental impacts on his client’s property interest. This includes not having anything else other than the single family dwelling and the use of their right-of-way. In the statute and in the ordinance, they weren’t asking the county to decide whether the Sanctuary had legal access or physical access. They were asking the county to look at the agreement; because under the agreement they didn’t have this access. If the county says that they could use it that would impact their ability to maintain the roads and the declaratory judgment would relieve Sanctuary any obligation beyond the contribution to maintain that road. What the county has done is increase the burden of that road without mitigating it, and the Planning Commission’s decision didn’t look at whether that would burden his client’s property. They basically said that’s a private agreement, and let them work that out and see if they are detrimentally impacted. The statute and the ordinance required them to look at traffic, it states “shall” look at traffic congestion, traffic safety, and they shall impose conditions to mitigate. The Home Owners Association’s concern is that they have a duty to maintain the road and the county needs to take that into consideration in granting this.

Chair Mumford said for clarification in the staff report; this was during the Ogden Valley Planning Commission meeting, an individual stated that he had 84 signatures of people that were opposed to this application because of water, sewer, well head protection, DWR’s, water sheds, etc., and yet the HOA said that it’s just the road. So the HOA is not opposed to anything other than wanting the mitigation on the road. Mr. Froerer replied he was only speaking on behalf of the HOA; those people spoke on behalf of themselves. His client had three primary concerns; contribution to the maintenance of the road, the construction bond, and the ten room recreational lodge. He believed they could work out the first two, but having the recreational lodge is a permitted use and under the agreement they needed to sit down and resolve that. If they work to a compromise on this, his clients would draw a line if they plan to put a recreational lodge on every single lot. This is a private agreement and a private dispute that the county should not get involved. The county allowed the developer to build 13 residential lodges rather than 13 single family dwellings; and that is something that the parties needed to work out. What they asked the county to do before they approve that conditional use permit was to look at the detrimental impact. They asked that they mitigate that by negotiating with the rate of contribution and the bond for the construction. As far as the people that he works with the HOA, they want this to be successful; but they want those agreements defined, they want to protect their rights, and that’s their biggest concern here.

Chair Mumford said that this concern came up during the meeting and the decision of the approval of the CUP was based upon legal access existing by Maple Drive. In the event that it was proven that this access was not legal or valid; then the CUP became invalid. He also read that as an attorney for the HOA, that he was okay with that. Mr. Froerer replied that he was okay with that as a condition precedent, if they could establish this access and this worked out then yes. If there were no detrimental impacts, they have access, or the agreement allowed them to build a recreational lodge within the scope of the agreement then yes. Sanctuary could use the right-of-way up to and to the extent of what is allowed under that agreement. This would depend on if the court says that it’s allowed, and whether the parties could work together on an agreement. If there were any misunderstanding; if the parties or court can define what this scope is, and that mitigates the damages that would be imposed to his client.

Phil Hancock asked how the HOA would enforce that right. By what authority, power, statute, State or Local County, does the HOA able to enforce their requirements. Mr. Froerer replied that it is a private agreement, so it can be litigated though the court system, and then the judge would issue an order indicating if they are right or wrong.

Phil Hancock said that there is no state law that says that they have to comply with the HOA requirements as part of the nature.

Mr. Froerer replied there is but Sanctuary is separate from the HOA, it is the neighbor. If the neighbor uses their driveway to get to his house, and the neighbor decided to build a 10 room hotel and still use their driveway; he would have some concerns that it’s his driveway and that would have some impact. That is what the Planning Commission should have said, that there is a detrimental impact on the road for changing the use.

Deone Ehlers-Rhorer said that’s when he could say, they can’t use his driveway anymore. Mr. Froerer replied true, but the county can’t subvert that right, and come in and say this is particular to conditional uses. The county shall consider traffic, traffic congestion, and other detrimental impacts on a case by case basis. The problem here is that this creates a land use right, that could end up affecting Green Hill’s right and the ability to close that off; because Sanctuary would say that they have a legal access.

Deone Ehlers-Rhorer said as long as they follow the agreement, if they didn’t then they would have to go to court or come up with another agreement. Mr. Froerer replied in this case it couldn’t because if he sued the owner of Sanctuary to have him stop using the road; the owner of Sanctuary could come back and say it’s on the plat and he has a conditional use permit. He could say that we had the chance before the county, and now they couldn’t go back and challenge it. He agreed the problem is that the judge could to either way but he wouldn’t advice his client to take that risk.

Deone Ehlers-Rhorer said it seemed like they have the same thing like the last item with the chicken and the egg; so why go through all that if the owner couldn’t do his project. Mr. Froerer replied because this is different, the situation is different, they know he has access. The question they are asking; what kind of access, and based on that, does he need to mitigate the impact on his client’s property interests. He is being told that the Planning Commission can’t help him because this a private agreement here, even though the statute says that they can mitigate. He knows that they can mitigate the problem, but the Planning Commission didn’t even consider whether they were impacted by this decision. The statute and the ordinance required the Planning Commission to consider it; whether or not they ended up imposing the mitigation was up to them. The problem with the Planning Commission’s decision was they didn’t do the first part; the mandatory consideration and review and if there were any detrimental effect.

Chair Mumford asked if the Sanctuary contributed to the HOA for maintenance of the road. Mr. Froerer replied yes he does, but the issues are; their rate of contribution, the amount of the bond they would have to post for construction use and the burden of repairing the road is being directly affected by the conditional use. One of the mitigations would be to work out with Green Hill and figure out what the rate would be, and it has to be more than a single family dwelling. Currently the lots in Sanctuary are assessed for repair and maintenance of the road at the same rate as each of the residential lots in Green Hill. What they are doing is changing those lots into a commercial enterprise; so the detrimental impact should increase the cost of maintaining the road based on the use of that recreational lodge.

Phil Hancock asked if the HOA doesn’t address that potential, do they have the ability to adjust the rate since they don’t have a vote, and could they choose their requirements. Mr. Froerer replied that it does through the agreement that the county refused to consider. The agreement says that Sanctuary has to pay so much towards that rate which is the same as the residential rate charged by the HOA. They can’t adjust the rate because Sanctuary isn’t part of the HOA. That agreement binds the HOA hands and prevents them from assessing a higher rate than from their own members. A single family dwelling is a permitted use whereas the recreational lodge is a conditional use; that is because they recognize that there is going to be a bigger impact on infrastructure, utilities, neighborhood of a commercial enterprise such as a recreational lodge versus a family living in their home.

Chair Mumford asked if somebody in one of these 13 lots were building a 7,400 sq. ft. house; which is the same size as a lodge, would they have to pay into the HOA for a bond or maintenance up and above. Mr. Froerer replied they would be allowed to build under the terms of the agreement. The agreement talks about square footage, so those things have already been anticipated by the parties. What is not anticipated is that one of the lots in the Sanctuary can go from a single family dwelling; to a 10 room lodge with rental service, guests, room services, repair services, and these things are all included. This has a big detrimental impact on Greenhill’s ability to maintain that road; that is the primary trust of the objection. They went to the Planning Commission and asked them that they needed to look at the agreement. That this would have an impact on them; they couldn’t approve this without looking at the scope of the agreement.

Chair Mumford said that they are not opposed to the lodge; just a concern about the road. Mr. Froerer replied yes, and he was confident that the parties would negotiate and work this out, as Mr. Charlwood is a businessman that wants to be sensible about it. He could take the risk and not challenge the county, but if he lets this window close and there is a chance that it could impact his client in the future, he was not willing to take this risk. That is the primary reason why they challenged this decision; essentially they could end up in court with the Sanctuary owners over the scope of the agreement; but the county should at least consider the way this use impacts that right-of-way, it’s simple and straight forward, and to at least consider the detrimental impacts this would have.

Chair Mumford said that it appeared that staff put in many conditions to protect a multitude of things. Mr. Froerer said they did for the most part; the problem is when it came to that one stretch of road, the county basically got out by saying the use is defined by this agreement, because it is a private agreement they are not going to consider it. In reality that agreement would have informed the Planning Commission that there is a huge difference between a single family dwelling and a 10 room lodge. Maybe there is some detrimental impact on Green Hill’s rights, and that should be looked at to mitigate it. By not considering the agreement and refusing to even look at the agreement; he noted this in his notice of appeal, by not having the agreement as part of the application the application was incomplete. When the Planning Staff and the county saw that there was a private right-of-way here; their position is that before the design review ever took place, that agreement should have been provided to the county, so they could have looked at it and made that determination.

Clark Crockett, Legal Counsel asked to interject a few comments. He just wanted to address a couple of items that were brought up and to reference some statutes and ordinances for the Board to consider. State Code under CLUDMA 17-27a506 addresses conditional use, Subsection 1, *“A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.”* So under that, *“State Statute gives county the authority to establish what standards are going to be applied for a conditional use permit.”* Subsection 2a, *“Conditional Use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.”* Those standards are identified in Weber County Code Section 108-4-5.

Clark Crockett said another issue he wanted to address, as far as potential litigation in court and taking the requirement that an applicant exhaust administrative remedy that is a requirement imposed by CLUDMA. If the court is presented with a question that doesn’t fall under CLUDMA, they are not barred from that rule. For example; if a court is presented with a private agreement between two parties and there is an allegation of breach of contract, the court has adequate remedies and resources to address that independent of CLUDMA. Another issue is the definition of a conditional use in zones where there is permitted uses; a conditional use is a permitted use with conditions. Finally he wanted to address a statement that was made at the beginning; stating that the county has stacked the deck against the applicant. In discussing with the county attorney about assignments for deputy attorneys within an office; it had been determined the deputy attorney assigned over Western Weber Planning Commission level would handle Board of Adjustment appeals assigned for Ogden Valley. The deputy attorney assigned over Ogden Valley Planning level would handle the Board of Adjustment appeals assigned for Western Weber. This effort is to promote all fairness to all that are involved, to adhere to party’s procedural due process.

Phil Hancock asked if the county had any way to enforce HOA rules and requirements. Mr. Crocket replied under the conditional use, they are limited by the standards that are set forth in Weber County Code 108-4-5; there are also standards in the Design Review Chapter that they do look at under conditional uses. In order for them to enforce a provision or impose a condition it has to be rooted in one of those, there has to be authority under county ordinance to allow them to do that. Mr. Hancock asked so they can tell an HOA or a member of an HOA through an agency they must comply with this. Mr. Crockett replied if the HOA or a member of an HOA that submitted the land use application; and wants to have a specific permit for a use, the land use authority could impose a condition that are allowed under the code on that applicant.

Charlie Ewert said he wanted to address a couple of things that it’s possible that the private agreement is inadequate to address all of the uses that are allowed in the zone. That seemed to be the case here that the private agreement didn’t contemplate the possibility of the detrimental effects of all the uses of the F-40 Zone specifically the conditional uses in that zone. To his knowledge that hadn’t been added in since the existence of the agreement of those standards. The other part is he doesn’t disagree that the county should have considered the detrimental effects of the use on the right-of-way when a conditional use permit is submitted. They do consider traffic circulation, traffic flow, mitigation of potential congestion, etc. When they reviewed the addition of the 10 room lodge; they provided in Paragraph 11 of the BOA Staff Report, the review they did for the County and the Planning Commission in their consideration of the permit. This is where a number of the conditions to the permit came up, with the analysis of traffic circulation, access, right-of-way conflicts, etc. When they looked at private right-of-way or public right-of-way; they did a fair analysis where there was a little more emphasis on public right-of-way, due to the public nature of the financial resources with maintenance and operation. It doesn’t mean they didn’t provide efficient and adequate review of the private right-of-way.

Charlie Ewert said that the information and Planning Commission had for their review he read through subsection Access and Circulation. The staff report goes on to provide an analysis of the different views to determine what the additional effects of that would be, and if they go on to do a full analysis. They talked about the traffic as it relates to the road infrastructure. They talked about the right-of-way and how the conditional use chapter allowed for some of these provisions to be applied to private right-of-way and about access rights. It was considered by the Planning Commission, that access from 900 East all the way up through Green Hill Subdivision, and the detrimental effect of the conditional use permit in terms of additional traffic demands it was determined and conditions related to it. They don’t disagree that it should have been considered.

Deone Ehlers-Rhorer asked if the HOA Agreement presented was verified, or just the applicant’s word that there was an agreement? Mr. Ewert replied on the portion of the agreement where it talked about 13 units or limiting to 13 dwelling units that was read into the record. A portion of that was given to the Planning Commission Chair, and he didn’t know if it was disseminated to the Planning Commission. For that reason staff didn’t oppose entering it into the record for the Board of Adjustment if they chose to do so. They encouraged the board not to consider the same way they encouraged the Planning Commission not to consider; because it was a private agreement. The difference here it sets up alternative restrictions or rights, or even additional rights that wouldn’t otherwise be regulated or governed by the land use code. These other agreements are creating new or amended rights; for the private interest of Weber County. They did an analysis of traffic and there were problems as a result of the 13 unit lodge. Staff determined in the analysis that it didn’t merit traffic analysis demand for a 10 unit lodge.

Clark Crockett reviewed the Rules of Order, on Page 3 Section 4, on Consideration of Application for the board members. Chair Mumford said that the board doesn’t take public comment on an appeal. Clark Crockett replied with that he would leave it in the discretion of the chair. But with the comment that since the underlying application was discussed, to have this conditional use permit was submitted by this individual; he has an interest in this application, and adhere to fairness and due process to all parties, it would be appropriate to hear.

Tim Charlwood, 9000 E Maple Drive, Sanctuary in Huntsville, said that was quite relevant that he has gone through this process; he has been close with the President of the HOA, and attempted to do all the right things. They did a couple of large $100,000 bonds when they were doing the road construction, which is ten times what they do with homes. When they did all that damage it was put back right and remedied by rock and post construction. Recognizing that the recreational lodge may have some additional traffic; he went to the President of the HOA and suggested that they should be paying an additional doubling of the fees, for the road contribution, which he thought was very fair. He went to his board and came back saying the he couldn’t accept it because many of the homeowners were doing nightly rentals and it would be a conflict. In subsequent discussions with Zane Froerer; he brought the attention that they wanted three things. The first was for using that road; they wanted an increase by doubling the fees, which he thought was fair. The second was they wanted to increase the bond, from $10,000 to $15,000 for every construction, which he didn’t have a problem with it. The last was they wanted for me to restrict the development to six recreational lodges; and his response was that six recreational lodges is effectively 16 rooms and he never has any intention of doing 16 rooms. He would restrict the number of bedrooms in any dwelling to ten, and that was very fair. This whole lack of communication that has been going on could have all been resolved had he been allowed to attend the HOA Meeting. The lack of communication between certain members of the HOA; he has tried to put right but he couldn’t do more than what he has done. He did sign an agreement with all ten members of the board back in 2004, saying that they would not oppose any entity or use under the F-40 Zone. He would stand by his word and what he offered to pay them, irrespective of whatever it is. The HOA President had said he may have bid if there was a bond treaty arrangement; and that’s how they left it.

At this time the Board Members left to discuss and deliberate.

**MOTION:** Phil Hancock said that he moved that the Board of Adjustment upholds the decision of the Ogden Valley Planning Commission based upon the fact that the Item #14 addresses the appellant concerns at the Board of Adjustment 2016-05. Doug Dickson seconded. A vote was taken with Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, and Chair Mumford voting aye to deny the appeal. Motion Carried (4-0).

At this time Bryce Froerer returned to his position at the meeting.

**3. BOA 2016-06: Consideration and action on a request for ordinance interpretation fro Scott Martini regarding**

**Section 104-5-6 (18) to determine whether his desired land use complies with the ordinance. (Scott Martini, Applicant)**

Chair Mumford said that he didn’t see the applicant and asked if he need to be at the meeting. Mr. Ewert replied that he didn’t think so but he had just forwarded him a text reminding him; but if he would prefer to postpone this, they could talk about this later.

Chair Mumford asked legal counsel what his opinion on an applicant that is not present; do they have a due diligence to act without hearing from him, especially in this case where it’s an interpretation request. Courtlan Erickson, Legal Counsel replied that interpretation requests are not well defined in their ordinance, there are not standards clearly explained on what to do in this situation. He would say that if they feel there is a need to have the applicant present for purposes of making a correct decision, then they could entertain a motion to table the discussion until the applicant could be here. Or if they feel they can move forward then they could choose to move forward.   
  
Director Grover said just to give them a history on this, they have been working with the applicant for quite some time and it surprised Mr. Ewert that he was not here. One thing that he is concerned about is that they did receive a letter from an individual in the area that has some concerns about this. The applicant has not seen this letter, or had any opportunity to possibly address that, which may or may not affect their decision. He does not want the Board’s decision to change without the applicant being aware of that; but he knew that the applicant was in an extreme panic mode, as it is affecting his livelihood because he needed to relocate his facility to this location.

**MOTION:** Deone Ehlers-Rhorer moved to table this item in all fairness to Mr. Martini so they can have all of the facts that they table this until the next meeting. Phil Hancock seconded. A vote was taken with Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer, and Chair Mumford voting aye to table this item until the next meeting for September 8, 2016.

Motion Carried (5-0).

**4. Adjournment:** The meeting was adjourned at 7:50 p.m.

**Respectfully Submitted,**

**Kary Serrano, Secretary**

**Weber County Planning Commission**