

Minutes of the Board of Adjustment held November 10, 2016 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

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

Members Absent: Douglas Dickson, Neal Barker

Staff Present: Rick Grover, Planning Director; Charles Ewert, Principal Planner; Courtlan Erickson, Legal Counsel; Tiffany Bennett, Secretary.

**Pledge of Allegiance*

Regular Agenda Items

1. BOA 2016-06: Consideration and action on a request for ordinance interpretation for Scott Martini regarding Section 104-5-6 (18) to determine whether his desired land use complies with the ordinance (Scott Martini, Applicant).

Director Grover noted that he recommends that the Board of Adjustment not allow any public comment because of the nature of the request; the request is for the Board of Adjustment to give an opinion on the interpretation of the intent of the ordinance. Other interested people will have a chance to comment if this applicant makes a formal application; then at that time, the Planning Commission whom has the Land Use Authority, would be the body that would review the application; and that is when public comment will be taken.

Chair Mumford stated that Mr. Grover is the Planning Director, and thanked him for that introduction and explanation on when public comment will be taken. He then asked Courtlan Erickson if he had any comments from the Weber County's Attorney's Office.

Legal Counsel, Mr. Erickson, stated that he agrees with Director Grover about the nature of this issue and this is not an actual decision on a Land Use Application.

Chair Mumford stated the Board Members will go back on the review of the minutes later after the Land Use interpretation. On behalf of the County's Planning Division, the presentation will be made by Principal Planner, Charles Ewert.

Charles Ewert stated that this is a unique circumstance, because this is not an appeal, or a variance; this is a request for an interpretation of the Land Use Code. Mr. Martini came to the County asking if he can locate a trucking facility at the site that he owns. We have a general allowance in the A-1 Zone that allows the storage of farm equipment and other related

equipment, such as a backhoe, front end loader, or up to a 10-wheel truck to be used by the farm owner, farm employee, and/or contracted farm operator of the bona-fide farm operation consisting of 5 acres or more, for off-farm, non-agricultural related, construction work to supplement farm income. The Planning Staff looked into this more and found out this part of the code was adopted to allow a farm operator to also have contractor type of equipment on site, and use it off site to help supplement the farm. The Planning Staff was not sure of what the intent of this ordinance meant if there is ambiguity in the ordinance. There is a general desire by the court to error in favor of the land owner; so if we cannot define the intent, we need to figure out if it really is as ambiguous as suggested. In the staff report he pulled that paragraph apart into four questions. Mr. Martini is asking for the Board's interpretation before submitting a formal application because the bid for the plans is pricy. He is asking for a bit of certainty if he applies for this, so it will not be denied because of an interpretation. Mr. Ewert asked if there were any questions from the Board.

Deone Ehlers-Rhorer asked if the wheels of the trailer add to the total number of wheels on the truck. Charles Ewert replied by saying that is part of the interpretation. What is a 10-wheel truck; a lot of the dump trucks that are here have 10 wheels with 4 wheels that are lifted up off the ground when they are unloaded. Mr. Martini wanted to know if he comes to and from the site with the 4 wheels lifted up, is that considered a 10-wheel truck or a 14-wheel truck. Another question that needs clarifying is what is considered related equipment?

Chair Mumford asked when was this 104-5-6 written. Charles Ewert replied that he did not know when exactly it was written, but he knew it was within the last 10 years.

Deone Ehlers-Rhorer asked where the trucks are located. Mr. Ewert replied that the trucks are located at 400 North in Ogden City.

Chair Mumford asked about the pictures of the trucks in the staff report; he wanted to know why he has trucks with sleepers in them. They are not normally trucks used for farming. Did the Planning Staff ask the applicant about these trucks? Charles Ewert stated that he did address the trucks with the applicant. The applicant wanted to go more into detail about the trucks when he addresses the board; he may not have the trucks then, but he would like to keep them there as part of his operation if he can.

Chair Mumford asked about item number 2. The 10-wheel trucks are limited to use of a farm owner, farm employees, or contracted farm operators. He also asked if the trucks are used strictly for farm use only. Charles Ewert replied no, because to his understanding the ordinance suggests that the equipment can be used off site for non-agriculture construction work. It depends on the original ordinance intent. If it was intentionally made overly vague, how are we going to apply it to this particular case?

Bryce Froerer asked if Mr. Martini actually farmed. Charles Ewert replied that the questions would be better to ask Mr. Martini directly.

Phil Hancock stated that the code section 104-5-6 states, storage farm equipment as a singular but does the staff interpret that to be multiple? Charles Ewert indicated that his original interpretation was singular but maybe Legal Counsel will speak a little more to other sections of the ordinance where it has said that singular is also plural. Courtlan Erickson replied that he would like to address section 101-1-6 of the County Code; it gives rules for interpretation and how we interpret ordinances and one of those says a singular number includes the plural and vice versa. The way that interpretation section says to interpret the Land Use Code is to not limit it to the singular.

Raymond Rounds, 2630 Washington Blvd, Suite 102 Ogden UT, stated that Scott Martini wants to use part of his property on the corner of 4700 W. and 1800 S. to change part of his field to park his trucks and farm equipment with a small shop to service and wash his equipment. There will be landscaping to provide beautification to help as a buffer for the parking lot.

Mr. Rounds also noted that the trucks that would be used are for farm use or non-agriculture construction work that supplements the Martini Family Trust Farm. Some of the trucks that would be in use have pull up wheels; the trucks will leave not loaded and, will come back not loaded with or without a pup attached.

Mr. Rounds stated that the statute is interpreted by the County. If someone owns land, we have to start with the theory that it is their land and they can do whatever they want to do with their land; that is common law unrestricted use. The Martini Family Trust owns 19.06 acres and the proposed use will only be 3 ½ acres. He stated that zoning should be to not restrict land use, but to allow land use. If the owner complies with Land Use Code Section 104-5-6, it shall be approved if it meets the criteria. He believes that they do meet the criteria if they are not restricted by the interpretation.

Mr. Rounds noted that there is a concern about heavy traffic and noise pollution, but brings up the massive green houses in the area and believes the trucks being parked there will not affect traffic or noise pollution. He also brings up the question about EPA and the Army Corps of Engineers being involved because of the water use for washing trucks; he believes that they would not be involved for this small task. He mentioned that other people use trucks in the area.

Chair Mumford asked Mr. Rounds to stick to the focus of Mr. Martini's property.

Mr. Rounds asked the Board of Adjustment to look at the ordinance so they can proceed to move up to the Planning Commission.

Chair Mumford noted that Charles Ewert listed 4 criteria in the staff report; the Board Members need to address those. Is the applicant limiting the use to 10-wheel trucks? Raymond Rounds replied that he believes Mr. Martini is.

Chair Mumford asked about the semi-truck and the trailers that are attached. Raymond Rounds answered that Mr. Martini will not have the trailers attached to the trucks when they are parked there.

Deone Ehlers-Rhorer asked if there will be trucks with trailers attached coming in and out of the property. Raymond Rounds replied that Mr. Martini will not do that. Ms. Ehlers-Rhorer then asked where the trailers will be kept. Mr. Rounds replied that they will be kept somewhere else. Ms. Ehlers-Rhorer asked about the purpose of moving the trailer to the property instead of keeping the trailers where they are now. Mr. Rounds stated that it would be better for finance, safety, and convenience. Ms. Ehlers-Rhorer asked who owns the trailers, and if the trailers will be attached because that will add more wheels to the truck. Mr. Rounds replied that he believes that attaching the pup trailer will not add wheels to the truck. He thought the ordinance was not clear on that issue.

Chair Mumford asked if the 10-wheel trucks would be limited to use by a farm owner, farm employees, or contracted farm operators. Raymond Rounds replied that Mr. Martini is an owner of the Family Trust which he farms and runs the Martini Company.

Nathan Butters asked if the Board of Adjustment has jurisdiction in this case because this is not an appeal or a variance. Chair Mumford asked Legal Counsel to respond to that question. Courtlan Erickson stated that in the Code section that cover the Board of Adjustment there are provisions that in his view are potentially conflicting, so that is something the board needs to decide. The Planning Staff might have a record of what has been historically done. Section 102-3-5 of the County Land Use Code states that any person wishing to petition the Board for an appeal or interpretation of the Land Use Code or Zoning Maps or for a variance for a requirement of the Land Use Code may come up in such action by completing the required application. It is the Board's decision to decide if you want to proceed, but they can move forward by taking this meeting for an interpretation of the ordinances.

Chair Mumford asked if the Board makes an interpretation and later this is appealed back to the Board of Adjustment where does that put them. Courtlan Erickson replied that he doesn't have a good answer for that right now, but he is willing to give legal advice later if needed. Chair Mumford suggested that the Western Weber Planning Commission would be the better choice to listen to this hearing.

Bryce Froerer stated that if we interpret 104-5-6, that would allow Mr. Martini this specific thing then he would have to submit an application to the Western Weber Planning Commission and then they may say yes or no. He wants to know if this is a request form Mr. Martini to interpret so he can spend money or not to continue his plans. Courtlan Erickson

stated that he believes that is the process. Later he would submit an application to the Western Weber Planning Commission and it is different from what is presented to them tonight and it got appealed back to them, they would have to look at the difference and see if there is new information. Mr. Froerer asked what weight their decision tonight has on the Planning Commission. Courtlan Erickson replied that until they get a Land Use Application and review it, it is impossible to say. The Planning Commission would have the choice to give their decision weight but their decision is not binding.

Deone Ehlers-Rhorer asked if the trucking company is a supplement income to the farming operation, or is this business separate. Raymond Rounds responded by saying that he is not sure, most likely what is most favorable to Mr. Martini.

Bryce Froerer asked if Mr. Martini ever over-hauled other products other than agricultural or non-agricultural construction. Raymond Rounds brought up Scott Martini to the podium to answer. Mr. Martini replied that he only moves stuff for the farm and construction sites, nothing else.

Mr. Froerer asked if Mr. Martini trucks for other farms, and Mr. Martini replied that it is just within the family.

Chair Mumford asked about item number 2 and Scott Martini replied that they are his employees.

Deone Ehlers-Rhorer asked if Mr. Martini uses the trucks for personal use and is this trucking company the main income for the farm. Scott Martini replied by saying that it is the main income but it is used for the farm supplement and is used at the farm.

Chair Mumford asked how big the Martini Farm Operation is. Scott Martini replied that the Martini farm is 20 acres plus 400 acres with everything put together.

Deone Ehlers-Rhorer asked where the trailer needs to be stored. Scott Martini replied that he would need to store them at the parking area on the farm because they are an implement, they go with the truck; without the trailers there is no need for the truck. Ms. Ehlers-Rhorer stated that it would put the trucks over 10 wheels. Mr. Martini stated that code did not include the trailers or other implements. He just wanted to do this the right way; he believes that his property is the right place for the parking of the trucks, where it is safer and where they belong.

Deone Ehlers-Rhorer asked if there are any master plans for rezoning and asked Charles Ewert if he could expand on this question. Mr. Ewert said there is not one yet but the Planning Office is aware there is a need for a new Master Plan. To rezone would be a lot to put on Mr. Martini so he is just trying to get through the administrative process first.

Bryce Froerer asked if Mr. Martini is still planning to go in front of the Planning Commission. Charles Ewert replied that this is just an assessment for some confidence to proceed depending on this interpretation.

Chair Mumford thanked Mr. Martini for his time and asked if there are any more questions.

Chair Mumford stated that the neighbors have addressed the Board with a letter, but the letter is not a part of this interpretation but is for the Western Weber Planning Commission where they have the authority to take in public comment. Courtlan Erickson agrees.

Courtlan Erickson stated that if these conditions are true, then they would see it as an allowed use or not an allowed use. If you keep this meeting in this platform, then it will keep structure and give Mr. Martini some direction.

MOTION: Deone Ehlers-Rhorer stated that in regards to the Board of Adjustment 2016-06 consideration and action on request for an interpretation to determine whether his desired land use complies with the ordinance, Scott Martini applicant, The Board makes the following findings, and suggestions; provided that the applicant uses the property for farm related equipment described in the statute as backhoe, frontend loader, or up to but not to exceed a ten-wheel truck, amount of trucks to be determined, How many trucks are to be used by the farm owner, farm employee, or contracted farm operators only for a bona-fide farm operation. And that operation consists of at least 5 acres or more and that the equipment may be used for non-agricultural construction work only in a supplemental manner to the farm income. The board has considered the comments of the neighbors and surrounding land owners that includes agenda item #3, noting the letter submitted contains their concerns. Nathan Butters seconded the motion.

DISCUSSION ON THE MOTION: The Board had a discussion about including the consideration of the letter. Deone Ehlers-Rhorer wanted to keep it, Bryce Froerer did not. Director Grover stated that the Planning Commission would be the best time for the consideration of the letter.

AMENDMENT: Bryce Froerer moved to amend the motion to remove the consideration of the letter. Nathan Butters seconded the motion. A vote was taken and Chair Mumford stated that the motion carried by a unanimous vote.

MOTION AS AMENDED: Chair Mumford asked the Board if there is a second for the first motion with the amendment. Mr. Butters seconded the amended motion.

DISCUSSION: The Board had a discussion, and clarified that the motion was to ALLOW the use as previously stated. Courtlan Erickson stated that the Board might want to clarify the interpretation, and decide whether or not to include the letter as consideration. Board moves

to amend the motion to state that there is no consideration of the letter. Also, about the 10-wheel truck within the ordinance to give Scott Martini an idea if the trucks he owns fall into the ordinances of the 10-wheel truck. It is up to the Board if they want to input their interpretation. Deone Ehlers-Rhorer stated that she does not have that knowledge to make an interpretation. Bryce Froerer agrees that is part of the issue and maybe the Planning Commission would be more knowledgeable about the issue. Director Grover stated that the Staff could do more research if the applicant makes a formal application to the Planning Commission.

VOTE: A vote was taken and Chair Mumford stated that the motion carried by 3-2 vote, provided previously stated conditions are met.

2. APPROVAL OF MINUTE:

- a. Approval of July 10, 2016 meeting Courtlan Erickson suggested that the corrections that need to be made are; Pg. 2 there is a misspelled word; for rouge instead of rogue. On Pg. 3 in the biggest paragraph 3rd to last line in the last sentence it states "The ordinance does not say public hearing; it says public meeting, so there might be a requirement" instead it should say "The ordinance does not say public hearing; it says public meeting, so there is not a requirement."

MOTION: Chair Mumford moved to approve as amended. Deone Ehlers – Rhorer seconded.

VOTE: A vote was taken and Chair Mumford stated that the motion carried by a unanimous vote.

3. OTHER: Director Grover asked if the Board wanted to amend the ordinance, so that we don't run into this situation again; it puts the Board in an awkward situation with the interpretation and it really should be done by the Planning Commission, then it should come back to The Board of Adjustment as the appeal body. If it is okay with the Board, we will look at going to before the Planning Commission for their review because this is an ordinance amendment then we will go before the Legislative Body for them to review and then it would be adopted. Land Use Code 102- 3-5 gives that ambiguity, and we want to take that ambiguity out so they just review the appeal.

The meeting was adjourned.

Respectfully Submitted

Tiffany Bennett, Secretary