



BOARD OF ADJUSTMENT

MEETING AGENDA Thursday, November 10, 2016 4:30 p.m.

**Pledge of Allegiance*

Regular Agenda Items

1. Minutes Approval of the July 28, 2016 meeting minute.
2. 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)
3. Adjournment

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



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

Minutes of the Board of Adjustment held July 28, 2016 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present: Rex Mumford, Chair; Nathan Buttars, Neal Barker

Members Absent: Deone Ehlers-Rhorer, Douglas Dickson, Bryce Froerer, Phil Hancock

Staff Present: Scott Mendoza, Assistant Planning Director; Ben Hatfield, Planner; Courtlan Erickson, Legal Counsel; Kary Serrano, Secretary; Tiffany Bennett; Office Specialist

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Regular Agenda Items

1. Minutes Approval of the April 28, 2016 meeting minutes

MOTION: Neal Barker moved to approve the minutes with the noted corrections. Nathan Buttars seconded. A vote was taken with Nathan Buttars, Neal Barker, and Chair Mumford voting aye. Motion Carried (3-0)

2. BOA 2016-02: Consideration and action on an appeal of the Planning Commission's (land use authority) decision regarding an access exception to use a private right-of-way (R.O.W.) as the primary access for 6 Lots in the Hidden Oak Subdivision (Donald Fulton and Sharon Clark, Agents; Somerset Land LLC, Owner

Assistant Director Mendoza said that he would give a basic information, then the applicant, and Mr. Hatfield is available with information and clarification. What is being presented is an appeal on a land use decision on May 10, 2016; that was made by the Western Weber Planning Commission in regards to an Access Exception (AE 2016-01). An access exception is a request that can come from a landowner that would prefer to build a driveway, an alternative access in lieu of a county standard public street. The request in this case was to build something less than the county street. It would consist of a 12 foot travel width; this would be contained within a 25 foot Private Right of Way (ROW). This would be the primary access to the proposal up to 6 lots subdivision in the future that would re-subdivide an existing lot. Currently according to the county records, this is Lot 1R of the Hidden Oak Cove Subdivision. In the future if this access exception were approved, and the Board's decision was changed from the decision by the Western Weber Planning Commission, the applicant would be able to come in and propose to further divide this Lot 1.

Assistant Director Mendoza said the property location sits within the Residential Estate Zone, at approximately 6260 S 2125 E, otherwise known as Jared Circle. The overall parcel size is 3.28 acres in the Residential Estate with a minimum of 15,000 sq. ft. per lot. For clarification on Page 2 of their staff report, where it refers Title 102, Chapter 3, within the land use code; it states that one of their duties as a Board of Adjustment is to act as the appeal authority. Either decisions that have been made when making interpretation of the code; in that paragraph it will show them the criteria and guides them on how to review the appeal, and on #5 where it talks about appeals to the Board of Adjustment consisting of review of the record. The Board has been provided with minutes that have captured the outcome of that Western Weber Planning Commission meeting. When an applicant comes to the county to ask for an approval of an access exception or the alternative access; staff has to consider is it feasible to build that road to the property, will that serve as access and frontage to the lot, and is it practical at this time to construct a county standard road. Planning Staff's recommendation that evening was approval that went with along with several conditions; and one of the conditions was to limit it to one lot or not allow a division of that property.

Chair Mumford asked the Western Weber Planning Commission approved for a one Lot 1 subdivision; but wasn't that already approved. Assistant Director Mendoza replied that's correct; previous to that one lot restricted subdivision Lot 1R, and previous to that was a Board of Adjustment decision that enabled the flag lot that exists today. That Lot 1 has succeeded the landowner at that time; went to the Board of Adjustment for consideration to allow for this alternative access.

Chair Mumford asked to clarify in 2005 when the Board of Adjustment approved it to be a two lot subdivision variance; how did it go from that in 2005 back to one lot. Assistant Planning Director Mendoza replied that he did not know the history; but suspected that they got into the finer details when going through the subdivision process, and they may have just simply reduced it back to one lot through the subdivision process.

Chair Mumford asked Mr. Hatfield if he had anything to add. Ben Hatfield clarified the difference between 2004 and 2005 in

referenced to Exhibit A of the 2005 staff report to the Planning Commission; the third paragraph indicated the property was then platted after they did the variance of Lot 1R of Hidden Oaks Subdivision. As a one restrictive lot, the Geologic and Geotechnical Report was submitted and reviewed by the county; and the Utah Geologic Survey citing some concerns as to the slope and the soils. That review of the house plan and property would support one residence, and that is why they came in and platted for only one lot subdivision.

Donald Fulton, 7845 S 266 E, Sandy UT, applicant representative, said they made an application for an access exception, which had nothing to do with subdivision. It was merely recommended by Weber County Planning Staff when they filed for an access exception. Whether that could be a one, two, or three lots; that part is irrelevant and that would be handled during the subdivision process. At that meeting if they noticed in the original staff report; they had established the criteria required for the access exception, and staff had recommended approval of the access exception. That was explained by the County Attorney, Chris Crockett; that the scope of the Planning Commission was very narrow. It was only to determine whether or not they had established the criteria to get that exception; then the Planning Commission made a motion that had nothing to do with what was on the table. Chris Crockett said that it was against the law when they made that motion. In the language, he stated, *"The Planning Commissioner had gone rouge."* That's what happens when the law is set aside and the Planning Commissioner does whatever they feel when they make a motion. What was on the table; whether they had or had not met the criteria to get an access exception. Yes they met the criteria; therefore, they recommend acceptance of the access exception. That was ignored and they made a motion that had nothing to do with the access exception. If they read the motion, it mentions a private right of way which is very different distinct from an access exception. The rules that apply to a ROW are distinct from an access exception. This has nothing to do with the subdivision proposal, it has nothing to do with the future of the land, all that happens during the subdivision proposal.

Chair Mumford asked Courtland Erickson, Legal Counsel if he could elaborate from his prospective; after speaking with Chris Crockett was that the opinion expressed? Mr. Erickson replied that he had look over the minutes in the record; in Board of Adjustment, Exhibit B, on Page 5 halfway through the packet, they have Chris Crockett, who is a Deputy County Attorney, had indicated that the question presented before the Planning Commission was quite narrow. Given the topography of the property, the land would still have to go through the subdivision and the Hillside Review. There were additional comments by Mr. Crockett, where he stated on BOA Exhibit B, on Page 6 of 11, Page 7 of 11, and he believed what Mr. Crockett was saying there, was this is a preliminary question do they have access, if they can't establish that, there is no reason for them to go through the subdivision application process. He made additional comments, on Page 8 of 11, and after the motion was made to recommend approval for the private right-of-way for primary access for a one-lot subdivision and limited to one lot. Then a vote was taken and was passed. From reading the record, he believed that Mr. Crockett intended to make it clear that the subdivision approval process was distinct from what was before the Planning Commission that night.

Chair Mumford asked that he wanted to make sure because he did not read anything in the record that made it sound that the Planning Commission went rouge; as indicated by Mr. Fulton, was that the opinion by Mr. Crockett? Mr. Erickson replied that he didn't recall reading any comment from him about the Planning Commission going rouge. If later there were some conversation about that with Mr. Fulton, it's not on the record.

Nathan Buttars asked in making the motion that the Planning Commission made, was it illegal as indicated by Mr. Fulton. Courtland Erickson replied the Planning Commission was put in a position of deciding whether or not to approve the application that was before them. The application that was before it at that time in the packet on Exhibit A, Page 15; it was a Weber County Access Exception Permit Application. It did describe property information, project name, proposed use of a six lot subdivision, and the project narrative was requesting an access exception to the parcel other than frontage with the intent to provide a private access to residents of a proposed six lot subdivision for their consideration. The details of the subdivision were not before the Planning Commission in that meeting; it was the decision whether or not to grant the access exception.

Nathan Buttars said to his understanding, the Planning Commission can make motions to either approve or disapprove, or add conditions, and that is under their umbrella of authority. Mr. Erickson replied correct, but he would call attention to the argument that Mr. Crockett made during that meeting. This was brought up elsewhere by others during that meeting that making a decision; essentially limiting the subdivision would be allowed or nature of that subdivision. The question was that an appropriate exercise of authority when the only thing before the Planning Commission; was a request for an access exception permit. Had the subdivision application been submitted and was before the Planning Commission; the answer is no. Was the applicant given adequate opportunity to explain or explore the possibility of whether a six lot subdivision could be put on that parcel? That question may need to be asked because if they think about the steps that a developer goes through; this is a very preliminary part of that requesting an access exception to show that there is access before going through the whole subdivision process. He had not seen anything that the applicant had full opportunity or any reason what

so ever to justify six lots. It was stated that was the intent; but whether the Planning Commission's decision was solely based on an access exception permit, or if it was inappropriate to put six lots on that parcel.

Chair Mumford said that the initial request was for an access exception; perhaps because of the project narrative, *"To provide private access to residents of a proposed six lot subdivision."* He believed that is why the Planning Commission went down that path, because it was part of their project narrative. Is this correct what that narrative was that they just needed access exception so they could go to the next step? Mr. Erickson replied that he could only speculate, but what was clear from the discussion during that meeting, that yes there was consideration of that fact.

Assistant Director Mendoza stated that it is necessary to know conceptually what the subdivision may consist of; in terms of area, size of lot, because there are design standards that apply to this type of access. Knowing it is important to have that information early whether it is a two lot subdivision or a ten lot subdivision; requires the travel width of the access, if it's under the travel width of the access, if it's under five or six lots will be 12 feet wide, if it's more than six lots will be 20 feet wide. This information is required as part of the discussion; so staff knows what they are talking about, and the other review agencies know what types of conditions.

Chair Mumford asked they have already established that this lot was already approved; was there a need to have an access exception for that one lot. Assistant Director Mendoza replied because it was an amendment to the subdivision, there was an increase to the number of lots. When it comes to being practical it defines that word as being ideal; so is it ideal to build a road to service frontage. In this case access was denied off of Hwy 89; it was not feasible with some steep slopes there. When staff looks at this, it needs to provide circulation, connectivity between neighborhoods, and transportation is very important. They typically look at the Western Weber parcels that are five acres or greater; and in this case there was no more development potential beyond this, access had been denied off of Hwy 89.

Chair Mumford asked legal counsel, so what the board of variance is considering is whether or not the Planning Commission's decision erred in their ruling, is that his interpretation of what the board is looking at, and the nature of this meeting is it considered a public comment meeting or not. Mr. Erickson replied yes but as far as public comment meeting the answer is no, he did not believe that public comment is required or appropriate in this meeting. The state law states as to the standard review for appeals; the County Ordinance that Weber County has enacted governing the Board of Adjustment, it talks about those criteria. It is important to note that the appellant in this case, Mr. Fulton has the burden of proof that the Planning Commission has erred in its decision. As to the Board's review of that, they are to review the record, and that means they are to review what is in front of them. That does not mean taking new evidence, opinion, or comments, and in addition to that under the procedure ordinance. Public meetings are not necessarily public hearings; a public hearing is a public meeting that requires whatever the body is to allow members of the public to comment. The ordinance does not say public hearing; it says public meeting so there might be a requirement to allow members of the public to comment and addition to that allowing that would take evidence outside of the record that they are supposed to review in making their decision.

Chair Mumford said now that they've heard some legal information; Mr. Fulton should come back and tell this Board his opinion where they erred specifically for them to consider.

Donald Fulton said that the Legal Counsel the night of the meeting demonstrated on the board that the scope of the decision was very narrow and it was only access exception. An access exception being that there are two things to consider. In the staff report Exhibit A, Criteria b, Page 3 of 15, *"Based on substantial property boundary conditions."* And under Conditions a, Page 3 of 15, *"It shall be such right; and"* Condition b, *"The landowner....additional lots."* So what was on the table the night of the Planning Commission meeting was an application for an access exception. Ronda Kippen said that to the Planning Commission this is what's on the table. Chris Crockett said the scope is narrow this is what's on the table. So everything that was discussed that had to do with subdivision that is a separate distinct conversation and process. So the motion that was made of the Planning Commission that night was not a motion that dealt with their application for access exception.

Chair Mumford asked staff on the narrative while they were asking for an access exception; they also show up to six lots, does that play into that decision. If they asked for an access exception for one lot, would that be different for six lots. Assistant Director Mendoza replied technically yes; because some of those design standards will be different depending upon what's developed. That could impact the right-of-way width; the configuration of the subdivision, so conceptually it is important to know. It is important to see how necessary it is to have a county standard road constructed to have access. Ben Hatfield added it is also important to determine what is practical and feasible, what it is that they are looking to review. Depending on the size of the lots, there may be other criteria that need to be established. Knowing what is being requested is critical to the access exception application.

Chair Mumford asked if there was a difference between a one lot and six lot requirement on that access exception. Ben Hatfield replied there can be different standards required; so the width may change and slopes may change. Assistant Director Mendoza added the difference is what triggers the width. The length plays into it because once they exceed a certain length. When constructing a full house; and there is a certain dimension, it's 30 or 40 feet long by 12 feet wide.

Nathan Butters said part of the confusion came with the application; it mentions the six lots, the synopsis includes the consideration and action on an access exception to use a private right-of-way as a primary access for six lots in the Hidden Oaks Subdivision. Mr. Fulton replied that he could not find the spot in the minutes of the meeting, where that was actually handled because someone said that approval of the access exception does not mean that they are approving one, two or even six lots, and that has nothing to do with that. By granting the access exception, they are not giving them permission or any ability to go ahead and develop the six lots.

Chair Mumford said that sounds like it does or could play a factor. In this particular case the width of that road is bound by the restrictive land of that historic right-of-way; is this lot currently under the existing criteria a bono fide agricultural parcel. Assistant Director Mendoza replied that a landowner upfront understands the overall requirements that they build a road. In some circumstances they may be able to build something different, and this is the process that lets the landowner know whether they have to build a county standard road or build something different. That is a dedicated piece that does not have anything historic, but the access has been dedicated as part of Lot 1R of that existing subdivision. Typically they are looking at that land that lies beyond that subdivision, and how necessary it is to build a road to act as access. This property is not defined as agricultural parcel but it does apply to agricultural Lots 1A and 2A; what they are looking at are Lots 1B and 2B.

Nathan Butters asked Mr. Fulton that his appeal is to remove the Condition #2 that the private right-of-way be used for primary access for one lot subdivision. Mr. Fulton replied correct, because if they noticed the request is for access exception, they already have a private right-of-way, and that line has already been established, platted, and recorded. Mr. Butters asked staff if this decision would limit him to one lot in the future; does he still have the ability after going through the reviews for multiple lots. Assistant Director Mendoza replied that the only way that he would be able to proceed is to construct a county standard road. If this Board upholds the Planning Commission's decision, that would be a legal question as to where he goes from here as it relates to the future.

Neal Barker asked on a one lot subdivision condition for Lot 1B, does that one lot language fit into this Criteria B. Mr. Fulton replied that there is a collapse in conversation; in the narrative of the application of the access exception; this created the confusion in the first place by them saying they intended to put in six lots. The Planning Department asked them what they wanted to do, they told staff that they have enough land there, they could construct a road that is required during the subdivision process. All of this has to be conforming as stated in the documents for an access exception. They had to establish the requirements that was recommended and approved by staff. The Planning Commission disregarded all of that and made a motion that had nothing to do with the application on the table. That is why he said they erred.

Neal Barker said it doesn't appear that it would have been granted and any future discussion and approval from the Planning Commission were in favor of six lots. It seems that it was necessary that they spell out and explain their side of it. They could grant them the access, but not necessarily six lots until more information is provided. Donald Fulton replied this is where Chris Crockett had said that by giving the approval of the access exception, it does not automatically say he has the right to get a six lot subdivision, it is merely an access exception. After they get all of the approvals from the reviewing agencies during the subdivision process, it was made clear that this was not that process, but merely an access exception.

Chair Mumford asked so in the summary, did he believe that the Planning Commission erred in their ruling of restricting to a one lot subdivision. Mr. Fulton replied yes, they didn't make a motion on the access exception. They made a motion on something different that dealt with subdivision proposal which had nothing to do with the meeting that night. He understands that the narrative on the application is probably what started the confusion; but that was clarified by Chris Crockett and Ronda Kippen that approving this access exception does not entitle the property owners to further develop or subdivide.

Chair Mumford asked legal counsel if he interpreted anything that Mr. Crockett said in the record that would be contrary to what the Planning Commission ultimately ruled on. He asked staff if the notice for decision that was sent out to the appellant, it actually states, *"You are hereby notified that you access exception application was approved by the Western Weber Planning Commission, subject to the following conditions."* Assistant Director Mendoza replied that Mr. Fulton's concern is that there is no basis for imposing conditions that reduces the number of lots that is otherwise allowed or offered with that zone. The

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Planning Commission has gone beyond the RE15 Zone that includes a condition that exceeds what zoning would allow. They approved the access exception but then imposed a condition that would restrict it at a minimum.

Courtland Erickson said on that point to reiterate what had been stated; the applicant here is entitled when he presents an application, or when he has property that in complies with the zoning requirements. All other requirements through development; he is entitled to have that reviewed under the current zoning requirements, and all the other requirements of the land use code. Approval of what the Planning Commission did here; effectively deprive him of that in the sense that he has not had a chance to present his application and have it considered. If he chooses in the future to apply for a six lot subdivision; if he meets all the requirement aspects, he is precluded from applying for that based on this decision. He believes that is where the applicant is coming from in his assertion that this was an improper decision. As he understood the question, that Mr. Crockett had expressed opposition of the motion that was passed.

Chair Mumford said that he had heard something to that affect, but had not seen it in the minutes, and that is what they have to rely on as to what took place in the meeting. Mr. Erickson replied that after the motion was made to limit it to one lot to put that condition on there. It was seconded; during the discussion the first thing that happened was that Mr. Crockett indicated that he had a question, because Chair Whaley asked legal counsel if he had a question. Chris Crockett said the purpose for the question and for this application, so they could ask the question to subdivide the property to six lots. He interpreted that Mr. Crockett said that they already had access for one lot. He believed it was platted and approved so they wouldn't be approving the subdivision that is already there. Further down he said he asked if the motion is going to allow the applicant to proceed forward and present the subdivision application.

Chair Mumford said Commissioner Borklund clarified her motion and said they would recommend approval for the right-of-way for primary access for a one lot subdivision. Mr. Erickson said there was an approval of an access exception and they put a condition on it that it be limited to one lot. Chair Mumford asked staff wasn't that already established that was approved as a one lot subdivision; and wasn't the access approved prior for Lot 1R. Assistant Director Mendoza replied yes and they had basically approved something that had already been approved, and it results of that motion results in a denial because of what exists today. The Planning Commission did approve but through the imposition of that condition, the future development is denied.

Nathan Buttars asked why was this application made if the access was already granted; did they have to consider the six lot proposal? Assistant Director Mendoza replied because it would be for a new subdivision and it would trigger a new review of the necessary access. Yes, the proposal to divide a property into three to five lots; at this time they didn't really know what that property would net the owner, but that goes beyond access exception process. The subdivision process entails development type, slopes, geology and that will come into play. Through that review it will identify the square footage that is allowed to be calculated, the overall number of lots that may or may not reduce, and that depends on the RE-15 Zone.

Chair Mumford asked legal if it was his feeling that this Board's decision tonight is a ruling on whether or not the Planning Commission erred in their determination. Mr. Erickson replied yes, it is to determine the correctness of the Planning Commission's decision. Again, the applicant here has the burden of proof; essentially that means if they are 50/50 as to the Planning Commission was erroneous or not, and they have to uphold what they did. This Board can only overturn what they did if the applicant has proven more than 50%.

Chair Mumford said that the actual motion was to recommend approval to a private right-of-way for a primary access road of a one lot subdivision. Then there was a clarification to her motion that stated that they would recommend approval of a private right-of-way based on the findings there are typical access requirements that only allows in a unique way and that it's understandable for other access to the property and limited to one lot.

Nathan Buttars asked staff what are the appellant's options if this appeal is denied. Mr. Erickson replied if this decision is upheld then the access exception would be granted but with the condition of one lot is allowed. If he submitted an application any more than one lot, the Planning Division would be bound to say that he didn't have legal access for more than one lot. Without legal access and without an access exception or a county road, that would not allow him to develop into that type of subdivision. It would either require a development of a county road which in this case would be unfeasible, or development of a one lot subdivision.

Chair Mumford said that the access was approved; it has a restriction, as it now stands that is the current ruling unless that has been changed by the Board of Adjustment. In 2005 the Board of Adjustment approved a two lot subdivision; would that not be a recourse that the applicant would still be able to do? Assistant Director Mendoza replied back then the landowner

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submitted an application to the Board of Adjustment; it was for a special exception, back then the Board of Adjustment must have found reason to support the request. There must have been enough information for them to consider and decide that it was reasonable for them to develop the property without constructing a county road. This is a restricted lot that requires a Hillside Review; and the code may require a lot area increase, but that is not known until it goes to the subdivision level. In some cases slopes are so steep that lots are required to increase their area to two lots.

Neal Barker said that on Page 2 it does mention that hillside review, and the report supports one lot and not multiple lots. If Mr. Fulton was able to go get another hillside review; that supported more lots than just one, would that be enough for him to reapply the same application stating the number of lots based upon the hillside review. Mr. Erickson replied that he would not commit to an answer, because it would be wrong for him to say for sure what could happen one way or another. He could speculate what might happen, and he didn't know if that would be a factor in their decision.

Ben Hatfield said this is different compared to a variance in that there are five criteria and standards; and as he did the analysis he identified those by number so they could see those. He referred to Exhibit D, which is the applicant's rendition; he noted that it was Condition (2) and the Planning Commission had erred and had some basis there. In reviewing the request, staff finds that Number (4) the applicant did file within the required 15 days of Notice of Decision. The Planning Commission acting as the Land Use Authority id make a decision (2) on an application for an access exception applying the criteria of the Land Use Code and applicable conditions. Copies of record had been provided to be reviewed as Criteria (5) by the Board of Adjustment consisting of minutes of the meeting, the application, the staff report, and exhibits. The appellant does need to provide the burden of proof as stated before; despite the Planning Commission had erred in the basis of limiting prior to access to one lot. As staff stated in the staff report in 2004, the Board of Adjustment originally approved the access with the limit of two lots. Through the development process of this site in 2005, a concern as to the soils and slopes at the site were raised in Geologic and Geotechnical reports. Resulting in review comments from the Engineering Division and Utah Geologic Survey that with the review of the house plans the property would support one residence. With the appeal request with the Board of Adjustment (1) shall determine the correctness of the decision in the interpretation and application of the Land Use Code. Finally, if the Board of Adjustment finds that the Planning Commission had erred in the decision and chooses to remove the limitation of one lot to use the right-of-way; staff then requests that all other conditions listed below continue to stand as conditions of the Board's approval. He read the conditions of approval listed in the staff report.

Chair Mumford said the Notice of Decision (1 through 7) it seems the #2 is the only one that is in question and that was the restriction of the number of lots. As a Board it is consideration and action on an appeal of the Planning Commission's Land Use Authority decision regarding access exception use by a private right-of-way as the primary access for six lots. That is what he is reading from the Board of Adjustment BOA 2016-02; but for them to determine that, they have to determine that the Planning Commission actually erred. Mr. Erickson replied yes, ultimately their decision is whether or not, Exhibit C that the notice of decision letter includes those seven conditions, and whether or not that Notice of Decision was correct. As to quote the ordinance, "The Board of Adjustment shall determine the correctness of that decision, by the Land Use Authority in its interpretation of the Land Use Code.

Nathan Buttars said that is the question they need to answer is whether they erred, and he is sympatric to the applicants concerns. Chair Mumford said that he could see applicant's desire here, but in their own narrative it listed it as six lots. The Western Planning Commission approved the access exception but with only one lot. . He asked legal counsel in this particular case; do they make a motion only if the Planning Commission erred, otherwise it just stands?

Courtlan Erickson replied there has been an appeal; and he would suggest they make a motion to accept or deny to affirm what the Planning Commission did, or to reverse what they did, or whatever their decision may be. Going back to their question of illegal, even though he didn't see anything that specifically talks about the Planning Commission being illegal, he would point that the legal standard for a courts review. If their decision tonight were to get up to District Court; the District Court would presume the decision made under the authority of this chapter is valid, and determine only whether or not the decision was arbitrary, capricious, or illegal. In quoting state statue and this Section 17-27a-801, "*The determination of illegality requires a determination that the decision, ordinance, or regulation violates the law, statute, or ordinance in effect of the time the decision was made.*" So when he was asked if it was illegal, he has been trying to see if there is an ordinance, statute, or law in effect at the time the decision was made that the decision violates. The District Court if there is an appeal there not only the legality but also whether the decision was arbitrary or capricious. As far as what is illegal, he wanted to be clear that he was not aware of any ordinance or law that he could point to that the decision of the Planning Commission was illegal. Neal Barker said they weren't looking to see if it were illegal. Nathan Buttars said they were seeing if they erred. Chair Mumford said that he didn't know if their decision was arbitrary or capricious.

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MOTION: Neal Barker said that based on the information received; it appears that the Western Weber Planning Commission did take into account, the Hillside Review and slopes, he feels that they were justified in making their decision based on the information that they had. His motion is to accept the decision that the Western Weber Planning Commission and in effect deny this application. Nathan Buttars seconded.

DISCUSSION: Courtlan Erickson said to make sure everything is clear, you stated some reasons right before the motion, are those findings that your motion is based on. Neal Barker replied some of the findings. He felt that they did have the authority, based on the information on the application itself listing the number of lots, and based on the quote and the uniqueness of the lot, they had the ability put those stipulations of one lot. For example, if it was flat ground they wouldn't be having this argument. Based on that the Planning Commission took that into consideration, and were able to determine one lot should be approved for that property. Mr. Erickson said he wanted to make sure that the findings are clear on the record, and make sure that the second is still valid based on those findings. Nathan Buttars seconded on the information that Neal Barker added to that. Chair Mumford said the motion was made to deny the consideration.

VOTE: A vote was taken with Nathan Buttars, Neal Barker, and Chair Mumford voting nay, the motion passes and the appeal is denied. Motion Carried (3-0)

Assistant Director Mendoza asked for the availability of August 11, 2016 and/or August 25, 2016. Chair Mumford said he would be available on the 11th. Assistant Planning Director Mendoza said that Kary would call everyone to see who is available and set up the meeting.

3. **Adjournment:** The meeting was adjourned at 5:50 p.m.

Respectfully Submitted,

**Kary Serrano, Secretary;
Weber County Planning Commission**



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: A request for ordinance interpretation from Scott Martini regarding Section 104-5-6(18) to determine whether his desired land use complies with the ordinance.

Agenda Date: Thursday, November 10, 2016

Staff Report Date: Wednesday, August 17, 2016

Applicant: Scott Martini

File Number: BOA2016-06

Staff Information

Report Presenter: Charlie Ewert
cewert@co.weber.ut.us
(801) 399-8763

Report Reviewer: RG

Applicable Ordinances

- §104-5-6 (18) – A-1 Zone, Conditional Uses

Summary and Background

The applicant is seeking an interpretation of the Weber County Land Use Code Section 104-5-6(18) to determine whether his desired land use complies with this provision.

Early this last spring Scott Martini discussed with the Western Weber Planning Commission his desire to conduct a dump truck storage-yard on the Northwest corner of the family farm at the intersection of 4700 West and 1800 South. The property is zoned A-1. At that time planning staff were struggling to find that the code allows for this request.

In attempt to help Mr. Martini explore the alternatives, and after further evaluation of the A-1 zone, staff has identified a section of the A-1 zone that may allow for this kind of use as a conditional use. It is not a very clear provision, and Mr. Martini would like to save the expense of applying for a conditional use permit and designing a site plan until he knows whether this proposed use would be in compliance with this provision of the ordinance.

A more complete analysis is provided below.

Board of Adjustment Review and Consideration Requirements

The Board of Adjustment's review of this interpretation is governed by Weber County Land Use Code (LUC) Section 102-3-3, which states:

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

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

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

Given that there is no other direction in the Land Use Code on the matter it appears that the Board of Adjustment has broad discretion in their deliberation process.

Staff Review of the Interpretation

Request. Mr. Martini would like a permit to operate a commercial truck storage yard. The proposal includes a building that can be used as a shop for repairs of the trucks (this should be limited to the trucks allowed on the site), and outdoor storage area for the trucks. The concept site plan shows a shop building, clean-off area, 10 paved parking stalls, 10 crushed rotomill parking stalls, and 9 truck parking stalls, drainage facilities, landscaping, and a paved drive approach.

Analysis. Land Use Code (LUC) Section §104-5-6 (18) provides for the following:

The use and storage of farm equipment and other related equipment such as a backhoe, front-end loader or up to a ten-wheel truck, to be used by a farm owner, farm employee and/or a contracted farm operator of a bona-fide farm operation consisting of five acres or more, for off-farm, non-agricultural related, construction work to supplement farm income.

Because this provision does not offer a clear on-its-face interpretation for the unique specificity of Mr. Martini's case – specifically as it relates to housing a commercial truck storage yard at the site – he is leery of investing significant funds into the complete designs for the site and building before having a sense of security that the ordinance can be interpreted in his favor. However, he has invested in a “conceptual” drawing that is intended to communicate the overall intent of the site layout (attached). He knows that there is more work that is needed before this plan is final, but wants to hear from the Board of Adjustment whether their scrutiny of the ordinance will fall in his favor before submitting more formalized plans.

To scrutinize whether this code provision is applicable to the proposed use, the Board of Adjustment should get a strong sense from the applicant that the following are true:

1. Is the applicant limiting the use to 10-wheel trucks (photos of trucks attached)?
2. Will the 10 wheel trucks be limited to use of a farm owner, farm employees, or contracted farm operators?
3. Is the farm owner, farm employees, or contracted farm operators involved in a bona-fide farm operation consisting of five acres or more?
4. Are the 10-wheel trucks being used for non-agriculture construction work in a manner that supplements farm income?

If the Board of Adjustment can find that each of these are facts in this proposal, then the proposal is allowed by Conditional Use Permit, and the applicant should proceed to completing site plan design in anticipation of formal Planning Commission review. During conditional use permit review the applicant will be required to demonstrate that the detrimental effects of the use in this location can be effectively mitigated.

When it comes to the interpretation and application of the Land Use Code, when conflicts or ambiguity are present the County should err in favor of the land owner.¹

Staff Recommendation

Considering the ambiguities of the ordinance, and unless that Board of Adjustment can find that the proposal clearly violates the ordinance, staff recommends interpreting the ordinance in favor of the land owner.

The recommendation is offered with the following findings:

¹ Note from the courts regarding interpretation of Land Use Laws:

“In interpreting the meaning of ... [o]rdinance[s], we are guided by the standard rules of statutory construction.” *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207, 210 (Utah Ct.App.1998) (omission and alterations in original) (quotations and citation omitted).

“ ‘[B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.’ ” *Id.* (quoting *Patterson*, 893 P.2d at 606).⁶ To guide our interpretation *557 on this issue, we first turn to the ordinance's plain language and need not consult legislative history to determine legislative intent unless the ordinance is ambiguous. See *Brown*, 957 P.2d at 210–11.

Rogers v. W. Valley City, 2006 UT App 302, ¶ 15, 142 P.3d 554, 556–57

1. Provided that the support wheels are not in use coming to and from the site, the trucks can be considered 10 wheel trucks.
2. The use of the 10 wheel trucks are being limited to the use of a farm owner and employees for off-site non-agriculture construction work.
3. The vehicles are currently being used for farm work, in conjunction with the off-site non-agriculture construction work.
4. If or when the applicant begins receiving farm income he will be involved in a bona-fide farm operation consisting of five acres or more.
5. The applicant claims that he will receive farm income prior to applying for a conditional use permit from the County.

Exhibits

- A. Application for Interpretation.
- B. Concept site plan and related materials.

Weber County Board of Adjustment Application

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

Date Submitted / Completed

Fees (Office Use)
\$225.00

Receipt Number (Office Use)

File Number (Office Use)

X 8-17-16

70967

Property Owner Contact Information

Name of Property Owner(s)

Mailing Address of Property Owner(s)

Phone

Fax

X 801-430-8031

Email Address

Preferred Method of Written Correspondence

☐ Email ☐ Fax ☐ Mail

X PHONE

X Scott Martin@hotmail.com

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s)

Mailing Address of Authorized Person

Phone

Fax

Email Address

Preferred Method of Written Correspondence

☐ Email ☐ Fax ☐ Mail

Appeal Request

☐ A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance

☐ A variance request:

___ Lot area ___ Yard setback ___ Frontage width ___ Other: _____

☐ A Special Exception to the Zoning Ordinance:

___ Flag Lot ___ Access by Private Right-of-Way ___ Access at a location other than across the front lot line

X ☒ An Interpretation of the Zoning Ordinance

☐ An Interpretation of the Zoning Map

☐ Other: _____

Property Information

Approximate Address

Land Serial Number(s)

Current Zoning

A-1

Existing Measurements

Required Measurements (Office Use)

Lot Area

Lot Frontage/Width

Lot Size (Office Use)

Lot Frontage/Width (Office Use)

Front Yard Setback

Rear Yard Setback

Front Yard Setback (Office Use)

Rear Yard Setback (Office Use)

Side Yard Setback

Side Yard Setback

Side Yard Setback (Office Use)

Side Yard Setback (Office Use)

X 4700 W. 1800 S.

Applicant Narrative

Please explain your request.

Variance Request

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

Variance Request (continued...)

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

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

Variance Request (continued...)

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

Property Owner Affidavit

I (We), _____, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____, 20 _____,

(Notary)

Authorized Representative Affidavit

I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Dated this _____ day of _____, 20 _____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)

August 16, 2016

To Whom It May Concern:

I, Scott Martini, am requesting permission to build a maintenance shop on a portion of farm acreage belonging to Martini Farms.

This shop will be used for the maintaining and storage of dump trucks and a backhoe, in addition to tractors and farm implements used by Martini Farms.

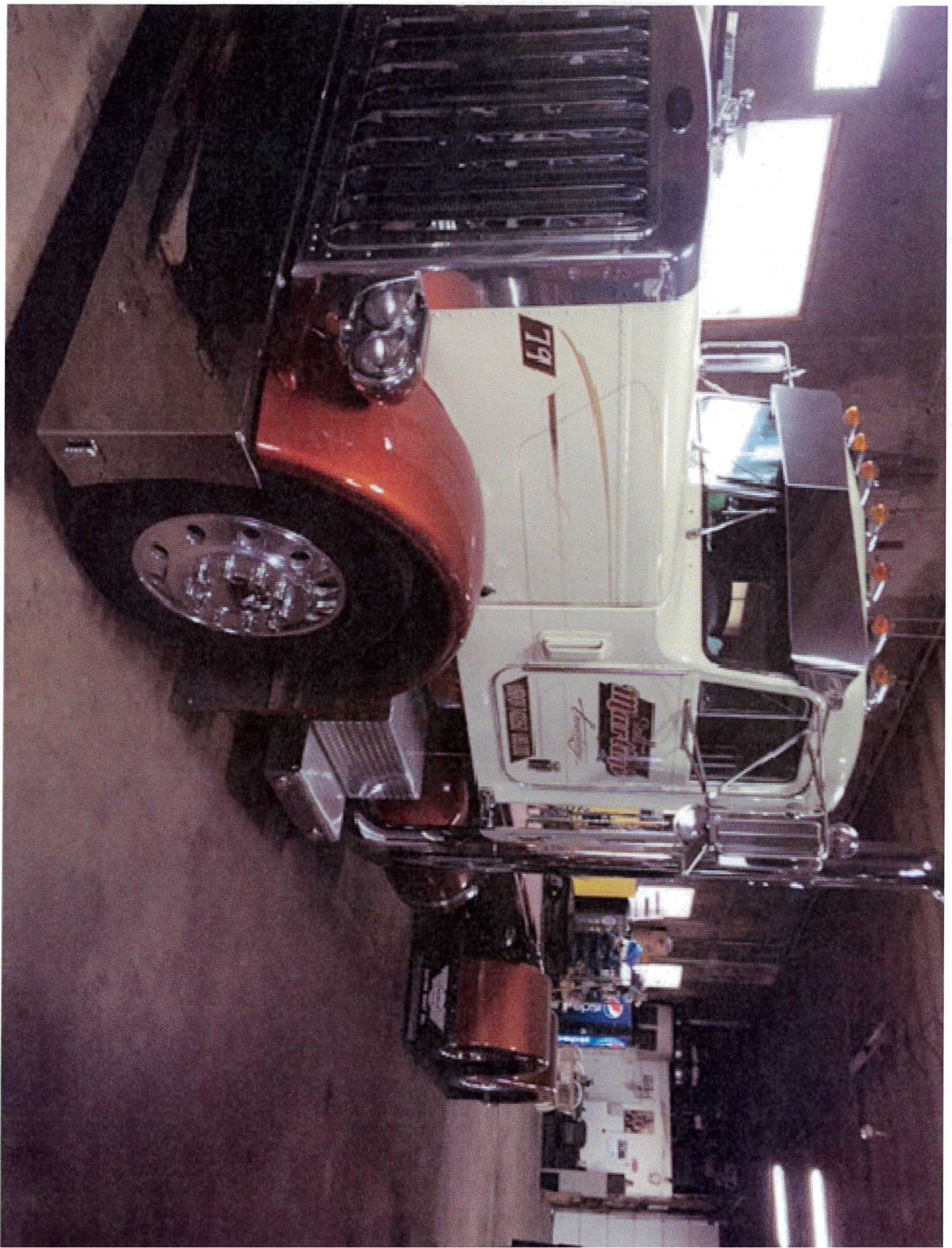
These dump trucks are used by Martini Farms for hauling fertilizer, hay, straw, grain, corn silage, dirt and road base for around the corrals, rotomill tailings for dust control on the unpaved roads, and to transport farm equipment.

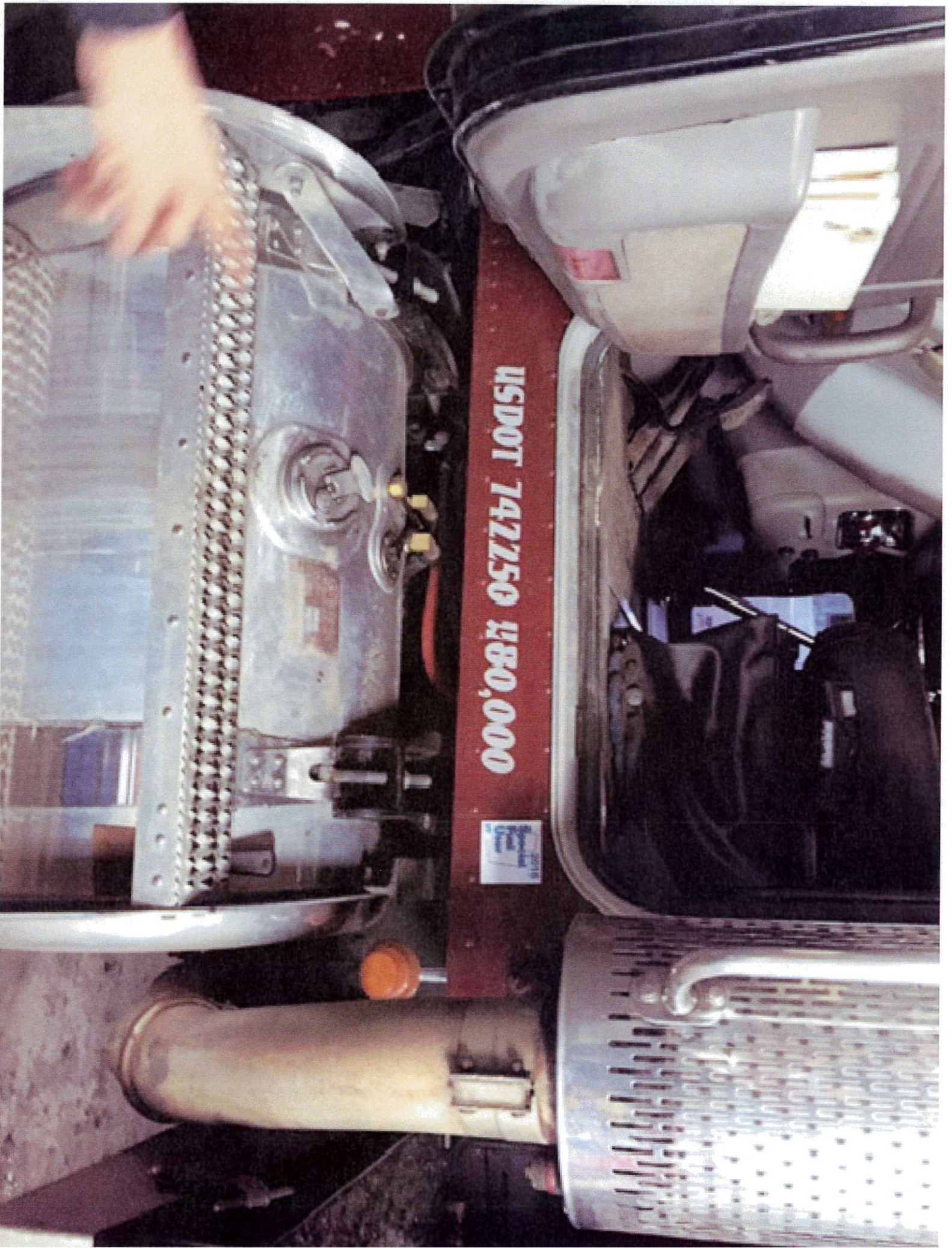
The backhoe is used for the digging and cleaning of our irrigation ditches.

In addition to the above listed uses of the trucks and backhoe, the trucks will be used to supplement the farm income in non-agricultural construction work.

Scott Martini



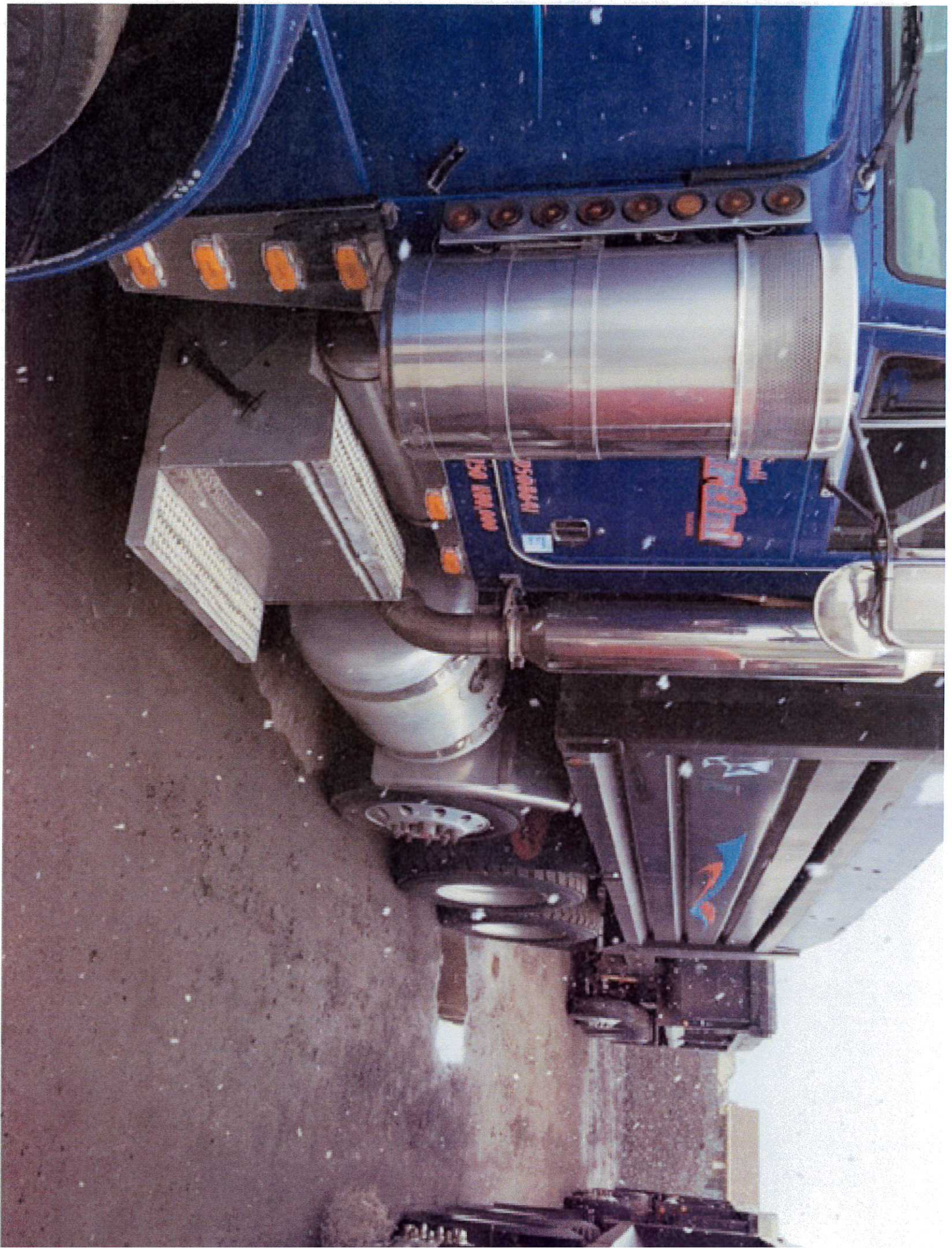




USDOT 742250 480,000



















August 25, 2016

Board of Adjustment
Weber County
c/o Charles Ewert AICP
2380 Washington Blvd. Suite 240
Ogden, Utah 84401

RE: Agenda Item 3.
BOA 2016-06
Thursday, August 25, 2016

To the Members of the Board:

We, as neighbors and abutters, are opposed to Scott Martini's request for a Conditional Use Permit to build a commercial trucking storage and maintenance facility on property zoned Agricultural Zone A-1. We believe the intended use does not comply with zoning ordinance Sec. 104-5-6 (18) Conditional Uses. We respectfully request that the Board of Adjustment at its August 25, 2016 meeting NOT interpret the ordinance as favorable to Mr. Martini's desired land use.

Mr. Martini's request for a permit to build a storage and maintenance facility in an agricultural area zoned A-1 should not be approved since it will cause irreparable damage to the harmony of the area, affect neighbors' rights of enjoyment of their properties, and potentially have an adverse effect on the value of properties in the community. The intended land use does not meet the requirements of the ordinance since it is to be used by a commercial contract truck hauling business, reporting revenues of \$100,000 to \$499,000 according to various business websites, for storage and repair and will be minimally farm related. The desired land use also has potential safety and environmental issues. It is not Mr. Martini's place of residence. The owners of neighboring properties were not given sufficient formal notice of Mr. Martini's desire to build a commercial trucking storage and maintenance facility. Since Mr. Martini already has storage and other facilities for his trucking business, he would not endure unreasonable hardship if the permit is not granted.

NOTE: In his Weber County Board of Adjustment Application, Mr. Martini gave no explanation for why he requires another facility or why the Conditional Use Permit should be approved. He left those areas blank on the application. Did he complete the application correctly? What information in his application would compel the Board of Adjustment to interpret that his desired land use complies with the ordinance?

In the March 08, 2016 minutes Commissioner Borklund states "to her it does not make sense (Martini request) from a planning standpoint, **but she does not know what the owners in that area want.** In trying to find a solution for one landowner, it causes problems for others". Charles Ewert stated that **"they like to look at the ordinances on a community basis."**

NOTE: This is a community of agricultural and residential land use, not a community for commercial development such as a storage yard and mechanics shop for dump trucks and other heavy equipment which may only incidentally store and repair farm equipment.

In the March 08, 2016 minutes, Scott Martini indicated that he has eight dump trucks that he uses to haul salt, asphalt and road base for the State, Staker Parsons, etc. It is for a place to park the trucks and a small shop to work on the trucks all at once and keep it inside.

*NOTE: According to the minutes, Scott Martini made no mention that the equipment was being used on the farm. His Concept Site Plan is labeled Martini Trucking, not Martini Farms. It should be obvious from his own description of use that Scott Martini's business is commercial trucking. **He is not a farmer who resides on the land** and is using some farm equipment for non-agriculture construction work in a manner that supplements farm income.*

*On the Weber County Website, under the heading of Agricultural Zone A-1 Sec. 104-5-6 Conditional uses, item (18) states: The use and storage of farm equipment and other related equipment such as a backhoe, front-end loader **or up to a ten wheel truck** for off-farm, non-agricultural related, construction work to supplement farm income.*

Various business websites for Scott Martini Trucking Inc. describe his company as an active carrier in the contract truck hauling business. Revenues are listed as between \$100,000 and \$499,000 with 4 to 9 employees of Martini Trucking. It is reasonable to conclude that Martini Trucking is a business unto itself, and not an occasional source of supplemental farm income.

What percentage of Mr. Martini's income is derived from Martini Trucking vs. farm income? Is his trucking business truly supplementing his farm income, or is it his primary source of income? Also the ordinance appears to limit the number of ten-wheel trucks to one. Mr. Martini has indicated in his application and elsewhere that he intends to store at least eight trucks on the property.

In the March 08, 2016 minutes Commissioner Heslop brought up the nursery and the large trucks that use 1800 South several times a day. He also stated "In looking at the facility that Scott Martini currently has his vehicles at, he doesn't see where it would distract from the neighborhood. To look at a major zone change, we would need to involve the neighbors."

NOTE: 1800 South is a narrow country road with two very sharp bends in the road. It is unlikely that it was designed and/or engineered to support the volume of traffic, particularly large heavy-duty cargo trucks, constantly traveling to the nursery business below. The nursery did not exist when the road was built. Scott Martini wants to build a commercial truck storage and maintenance yard with proposed entrance and exit on 1800 South, thereby adding to the traffic volume and number of semi-trucks using a small county road. Should a Traffic Impact Analysis be performed to assure the community there are no safety issues? Also has UDOT been involved regarding the impact the storage and maintenance yard will have on the State Route 134 (4700 West) at its intersection with 1800 South?

Commissioner Heslop's comment "he doesn't see where it (the storage yard) would distract from the neighborhood" does not represent the opinion of other neighbors. A commercial truck yard of the size and scope of Mr. Martini's proposal would have a detrimental effect on the harmony of the community and would not facilitate the maintenance of "an agricultural and orderly low-density residential development in a continuing rural environment" as described in Sec. 104-5-1 - Purpose and intent of Agricultural Zone A-1. The noise and air pollution generated by diesel semi-trucks, safety issues, and potential financial hardship caused by declining values of properties near a commercial operation are not conducive to maintaining a continuing rural environment.

In Mr. Ewert's memorandum to the Western Weber Planning Commission dated August 2, 2016, he stated "staff has identified a section of the A-1 zone that may allow for this kind of use. **It is not a very clear** provision, so finding that the proposal is in compliance with it will take some **level of scrutiny** by the Planning Commission." He also went on to reiterate Mr. Martini's request for "a permit to operate a commercial truck storage yard. The concept site plan shows a shop building, clean off area, 10 paved parking stalls, 10 crushed rotomill parking stalls, and 9 truck parking stalls, drainage facilities, landscaping and paved drive approach."

NOTE: By Mr. Martini's own admission per his request there is no mention of the farm. It is a permit for a commercial truck storage yard. Doesn't the request for 29 parking stalls indicate the number of trucks he intends to park in his storage yard? He stated during the March meeting to having eight dump trucks that will be parked in the area. The photos provided by Scott Martini show that the dump trucks also have "pups" trailer dumps attached to the trucks. Section 104-5-6 (18) states "or up to a ten wheel truck" With respect to Mr. Ewert's opinion regarding the phrase "up to a ten-wheel truck" (see August 2, 2016 Memorandum), he states that it "is not intended to limit the number of trucks to one 10-wheel truck." We would like to know Mr. Ewert's explanation of this interpretation of the ordinance.

How will Mr. Martini's clean off area and drainage facilities (part of his concept site plan) impact the area? Mr. Martini's commercial truck storage yard is in close proximity to and uphill from a waterway, the Walker Slough. Has consideration be given to what environmental agencies, (i.e., EPA, Army Corps of Engineers, etc.) should be involved before a permit is granted? Does Walker Slough fall under the federal Wetlands Protection Act? What will become of his waste water, spilled diesel fuel and discarded oil? Mr. Martini stated in the March 08 meeting that salt, asphalt, and road base would be hauled in his trucks. How toxic are these materials?

Mr. Ewert's Staff Report to the Weber County Board of Adjustment states "To scrutinize whether the code provision is applicable the Board should get a strong sense from the applicant that the following are true:

1. Is the applicant limiting the use to 10-wheel trucks (photos of trucks attached)?"

NOTE: The photos show that he is not. He will be pulling "pups" with his trucks, and he has a semi-truck that hauls a trailer.

2. Will the 10 wheel trucks be limited to use of the farm owner, farm employees, or contracted farm operators?"

NOTE: The property owner of record, according to the Weber County Assessor's Office, is the Martini Family Living Trust March 23, 2001 Parcel No. 150560026. What is Scott Martini's ownership position in the family trust? Does he qualify as the "farm owner"? As noted previously, the trucks are identified as Martini Trucking, a separate line of business, and presumably not limited to farm use.

3. Are the farm owner, farm employees, or contracted farm operators involved in a bona-fide farm operation consisting of five acres or more?

NOTE: Will Mr. Martini provide proof he personally is involved in a bona-fide farm operation?

4. Are the 10 wheel trucks being used for non-agriculture construction work in a manner that supplements farm income?

NOTE: Will Mr. Martini prove that his trucking business is only to supplement his farm income and is not his major means of livelihood? Also as noted previously, business websites report Mr. Martini's trucking business with revenues between \$100,000 and \$499,000.

Another relevant question is whether Mr. Martini intends to operate this storage and maintenance yard as an independent business for maintenance, repair and storage of trucking and equipment for others, in addition to storing and maintaining his own company equipment. Will this become another commercial profit-center for Martini Trucking under the guise of supplementing farm income?

Mr. Ewert also stated that "During Conditional Use Permit review, the applicant will be required to demonstrate that the detrimental effects of the use in this location can be effectively mitigated."

NOTE: How will he mitigate the damage to the harmony of the area, damage to the right of enjoyment of a noise- and pollution-free environment for neighboring property owners, damage to the value of nearby properties, and damage to the continuation of a rural environment?

We implore you not to interpret Conditional Uses under Zone A-1 so broadly that Mr. Martini's desired land use would comply with the requirements of a Conditional Use Permit. Mr. Martini is from a farming family that has been in the area for a long time. Our farming family has owned/resided on the original pioneer homestead for an even longer time. Our Great, Great Grandfather homesteaded the land in the 1800s, and it has continued to be Jardine farm property through five generations. Please do not allow a commercial operation to make in-roads to our rural heritage.

Respectfully,

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Providence, Utah 84332
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Cc: K. Serrano