Minutes of the Board of Adjustments meeting of September 17, 2020, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1. Ogden UT at 4:30 pm & Via Zoom Conferencing

Members Present: **Rex Mumford-Acting Chair**
Neil Barker
Jannette Borklund

Staff Present: **Rick Grover, Planning Director; Steve Burton, Principle Planner; Chris Crockett, Legal Counsel; Marta Borchert, Secretary**

Both Chair Warburton and Vice-Chair Froerer are not present, an acting chair will need to be elected.

MOTION: Neil Barker nominates Rex Mumford as acting chair**.** Jannette Borklund seconds. Motion carries (3-0)

- **Pledge of Allegiance**
- **Roll Call**

1. **Minutes: Approval of the July 9, 2020 meeting minutes.**

MOTION: Neal Barker moves to approve the minutes. Jannette Borklund Seconds. Motion carries (3-0) Minutes are approved as presented.

2. **BOA 2020-06: Consideration and action on a request to appeal the approval of Schildhauer Subdivision, and the associated private access easement, located at 3946 N 3175**

Zane Froerer 2661 Washington Blvd Ogden, States that he is the attorney for Kelly Kristen Zaugg who are the appellants in this case, and they are appealing the approval of the subdivision and the alternate access. This property is an approximately five-acre parcel in Northern Weber County, close to Box Elder County and it's in an interesting kind of neighborhood, there is a Community Association. He notes that some private roads are implicated and there are some infrastructure issues related to all development that goes into this area.

In 2018, the property owner of this parcel submitted from what we can tell submitted two applications. One application was for alternate access, and the other application was for a subdivision to divide the two and half-acre parcel into two lots. There would be a front and a backlot with the backlot being accessed via a private easement, alternate access it wouldn't have frontage as is normally required. Otherwise, this was the only way that they could subdivide this parcel front, and back they wouldn't have the frontage required.

In the memorandum attached to the packet that was sent over to the County, it highlights some of the issues concerning the notices that were sent out. When the County issued the notices regarding application for alternative access and subdivision It referenced the wrong parcel number, it referenced the wrong address. The notice to his client was not sent to a residence. It was sent to a different address for an easement that Mrs. Zaugg owns in Clearfield. Weber County has her residential address, they sent her taxes to it. He states that they don't know why the County ended up sending her notice for this land-use decision to a non-deliverable address. When the notices went out, the first problem is they didn't get to his client because the County sent it to the wrong address. Second, even if it had gotten to his client, it referenced an address that appeared to be in Box Elder County. It didn't even appear based on the address that this was a property that was anywhere in Weber County. Under the law, there is a requirement to give actual notice. Notice can be gained constructively. Constructive notice can happen if a person a neighbor or an interested party

sees something occurring that notifies them that a land-use decision has occurred and then that puts upon them the duty to go out and find out if a land-use decision such has enabled the property owner to act. In this case, because the notices were not mailed to the correct address and they had the wrong property address and parcel numbers his client never had a meaningful opportunity to go to the meeting and put anything on the record. What they are asking is for the Board of Adjustments to reverse the decision, hold the meeting again, and allow his client to present her evidence on the merits and the substance of the decision and have a proper opportunity object.

The question of whether or not the appeal is timely is something that will come up because under County ordinances and she had 15 days to file an appeal. He states that the County is running those 15 days, back when the notices went out and back when the decision was made, but if their notices were defective, and if they didn't give a meaningful opportunity for any of the neighbors that there was a land-use decision that would potentially impact their neighborhood, the County shouldn't be allowed to rely upon those notices that led to that decision. The timeline would start with the constructive notice this would be May 6, 2018, when his client noticed the construction of a home. The Counties staff report does not present any evidence that contradicts that the property owner began construction and began building which would impart construct notice any earlier than May 6th. Mrs. Zaugg would have 15 days to file her appeal. She went in on May 20th and because the County is operating off their understanding of that this initial decision took place months prior. This is a decision that happened on paper several months ago. Mr. Zaugg's position is that she went in she attempted to file or appeal. Staff would not accept the application the next day Mr. Froerer sent his paralegal over twice before it was accepted because he did not want the 15 days constructive notice period to expire. Had the County accepted her application the first time she would have been ready to pay. He notes that in the hurry to get the application over there, there was a miscommunication between himself and his client, and the fee did not get paid when the application was submitted. He notes that it is their position that is the fault of the County who refused to accept the application in the first place. The court ruled that the Board of Adjustments are the ones who have to decide whether an application is timely. He states that what happened was that County staff who are not the Board of Adjustments, were rejecting applications when the rejection of an application of an appeal is solely within the discretion of the Board of Adjustments. This was a mistake and that's what led to the further delay in getting the fee. Ultimately, the fee was paid. The fee was cashed by the County and then it was returned when the County attorney determined that the appeal was untimely and denied it. The appeal was then taken to the District Court. The court ruled that even the County Attorney's office is not permitted to decide whether or not an appeal is timely it is sole that the discretion of the Board of Adjustments. The primary issue of whether or not Mrs. Zaugg's appeal was timely and then the corollary issue that flows from that is, did she did not have notice that would have allowed voice her objections on the record and have a meaningful appeal to the Board of Adjustments. She did not and so the decision to grant the alternate access and the decision to do the subdivision are at this point is invalid. There's a home, built on the backlot. There is not a home built on the front lot. He states that he doesn't want the Board of Adjustments to get into speculating on the outcome. If they uphold the appeal and determine that the notices were inadequate and Mrs. Zaugg did not have a meaningful opportunity to present her objections to the subdivision application and the application for alternate access there's a temptation to speculate that if the Board of Adjustments does duty and looks at whether or not the County acted properly, somehow they're setting up the owner of this house for some kind of calamitous or disastrous result. That the County would go in and require that the home be torn down, and there will be all kinds of costs incurred. He states that this is not the case. He notes that he has a lot of faith in Director Grover and his team, he has an intelligent staff people working for him and they can figure out a way to comply with the decision, and the law complies with the County ordinances, and not cause The house will be torn down. He states that one possibility is that the home sits on a subdivided 2.5 acre if the Board of Adjustments voids the subdivision and, the alternate access, then the home still complies with all County requirements because it's sitting on a lot that has frontage. There'll be no need to tear down the house. This is just one possible outcome of this. He states that he wants to make sure the Board stays focused. The Board's job is not to resolve all the possible issues and problems that arise from this. That's something that the Planning Department of the County can put their heads together and figure out. He states that the Board should stay focused on the adequacy of the notice and the timeliness of the appeal. The County is completely capable of figuring out the repercussions and how to deal with that going forward.

He states from the beginning, there have been some clerical errors and clerical problems with the County's records concerning this case. The notice of decision was dated November 22, 2018, it was uploaded on Frontier on March 13, 2019. In a public meeting held on November 21, 2018. The date of this letter is the next day November 22nd, 2018. The next item in the packet provided was the administrative review meeting agenda for November 21, 2018. This is the day that the notice of decision says that the Schildhauer Subdivision application was approved. The notice of decision for the property states that its located 4186, this does not line up with the notice the decision issued. The notice of decision for property cites 3938 north. And this, this goes directly to the problem the County had with its notices at several stages throughout this process, the County was mixing up and confusing the addresses.

He states that the next item he wants to bring to this Board's attention is a staff report for administrative approval. In the staff report for the November 21, 2018 lists the 4186 North address, this is the wrong address, and this address is in Box Elder County. This is so far away that it can't give any of the neighbor's meaningful notice. It is an approximate address of 4186 North 3175 W Ogden A-1 zone and then it gives a parcel ID 190100086. The parcel number is wrong and the addresses are wrong and for the subdivision. It states that June 28, 2018, the administrative approval granted for alternative access for future two lot subdivision. Looking at their staff report they believe that this alternate access was already approved clear back on June 28. This application is on the agenda for November 21. He notes his client has looked through the records and has not been able to find a staff report or a final decision issued, approving the alternate access on June 28, 2018. They did not do their due diligence in providing accurate information to surrounding property owners and they didn't do a good job at documenting what decisions were being made with relation to what property in the County.

The alternate access had the wrong parcel number, but it's only referenced In the staff report for the subdivision, he notes that they could not find a staff report for approval or recommendation of approval of the alternate access. It is possible that it was overlooked but it cannot be found. He notes that from what they can tell the alternate access referred to a completely different parcel.

There is a notice of decision, dated August 30, 2018. addressed to Kevin Schildhauer it says "You are hereby notified that you're application for final approval of alternate access for a future 2 lot of subdivision located approximately 3938 North 3175 W was heard and approved by Weber County Planning Division in a public meeting held on November 21, 2018. Final approval was granted, conditioned upon meeting all requirements for county review agency. Mr. Froerer states that the official notice of decision from Weber County was issued on August 30, 2019, for a decision that was made in November 2018. Looking back to the agenda for November 21, 2018, nowhere on this agenda is there reference to the alternate access. The problem with relation to this land-use decision is there are several inconsistencies, that lead to clear confusion on the part of many of the neighbors. It leads to confusion on Mrs. Zaugg's part she had no meaningful notice that her neighbors were applying for a subdivision. She feels this would affect the value usability and interest in her property. It would potentially affect the community organization, the community owners. She had no notice that they're also putting in alternate access that would go right by her house and then have the home located within 30 feet of her home, despite there being that easement. Had she been given that notice she could have attended the meetings presented her arguments, evidence, and issues? Perhaps at that time, they could have been dealt with. There is no reason for the Board to essentially gloss over these defects in the notice process that denied his client the opportunity to have her voice heard on this issue.

He asks if there are any questions.

Chair Mumford asks for a couple of clarifications. He asks if there is an exhibit to presenting the failure to notice. Did she eventually get it, did it never show up? Mr. Froerer states that she never received it the address that it was mailed to an address that does not receive mail, it is an easement it is not a deliverable address. She received a constructive notice when they started building there on May 6, 2019. The County has a record of that but they did not attach it to the staff report. Chair Mumford asks what is the address of the applicant. Mr. Froerer states that it is 3940 N 3175 W. Chair Mumford states approximate addresses are not given out until the subdivision is fully complete, this is when addresses are fully assigned. He states that it is not unusual to have an approximate address. Mr. Froerer states that he does not have a problem with this, but looking at the agenda, and the staff report the notices

refer to the address in Box Elder County. The problem is the notices that were received from the County and looking at the agenda, and the staff report, refer to the Box Elder address. It's good that they got it right in the notice of the decision, but it is without the benefit of informing his client and allowing her and present her information because they sent out the notices referencing the wrong property. The notice of decision is not relevant because it is too late that was made after the meeting. Chair Mumford states that perhaps the County can verify and address this.

Mrs. Borklund states that concerning the timelessness of the access easement and the subdivision. The easement would have to been approved before the subdivision. Mr. Froerer states that he is not sure about this, this is a staff question. He notes that they have not been able to find in the record in the staff report approving the alternate access. The record shows that alternate access was approved on the same day as the subdivision. Mrs. Borklund asks what his client's concern is. She asks if it has to do with the proximity of her house to the subdivision. Mr. Froerer states that her concern was that the proper process wasn't allowed and that the County granted a subdivision and alternate access on a 2.5-acre lot. She feels that some issues and concerns should have been raised concerning the granting subdivision and of the alternate access. She never had a chance to voice her concerns. He notes that they are not looking to have the home taken down, but there is another lot upon which a potential building lot or permit could be issued. She would like is to be involved in the discussion of whether or not that subdivision should take place and have another home built next to her house. Mrs. Borklund states that the subdivision has been recorded, she asks how it can be unrecorded. Mr. Froerer states that the subdivision was recorded because the County approved it, this is what he and his client are trying to appeal. If the Counties decision is illegal, capricious, or arbitrary then it is void and the Board of Adjustment's job is to decide if the County properly issue that subdivision. The County's ordinance requires that they send out notices and that there needs to be a hearing and opportunity to present this on the record. He notes that this is a review but there can't be a fair record review when people are denied the right to that record. The subdivision has been recorded. He states that the Board of Adjustment is there to decide if the County approved the subdivision illegally because they did not send out proper notices. He states that because the notices were not properly submitted or accurately provided and they did not provide a meaningful opportunity of notice before the meetings this subdivision decision should be void and the County should go back and reverse the decision.

Neal Barker states that he missed the answer to the question of where the notices were being sent to. He asks if they don't mind repeating that. He asks when the notice was sent and when it was received. When did she find out that this was taking place? Zane Froerer states that the notice that was sent to Mrs. Zaugg was sent to a non-deliverable address and essentially just disappeared. She realized something happened when she noticed that there was construction occurring on May 6, 2019, and so she never got an actual written notice. She went in found that there had been a land-use decision concerning the alternate access and the subdivision and a building permitted and that's when she consulted with his office. she was informed by his office that she had 15 days from when actual notice whether that be through a mailing notice, or if something is happening on the property that would alert her that there was a potential building permit they have 15 days.

Chair Mumford asks if there is an exact address of the subject lot. Steve Burton states the address for the lot in question is 3950 N 3175 W.

Chair Mumford thanks Mr. Froerer and asks there are any more questions for him.

Steve Burton states that regarding notice the County has an affidavit on record with an address update filed by Mrs. Zaugg in April of 2019 because the address that she had for that parcel had the wrong address. She did not file the correct mailing address with the County. He states that he is prepared to show the mailing notices that were sent out in November of 2018. She had the incorrect address filed with the County at the time which could help explain why she did not receive the notice. He adds that the Planning staff puts approximate addresses on the notices sent out. Typically with subdivisions, they do have to figure out what the house

address is going to be. He notes that they don't necessarily have it when they are sending out notices. Planning staff sends out approximate addresses.

Chair Mumford asks Mr. Crockett if Mr. Burton can present the notices as an exhibit. Mr. Crockett states that he would ask the attorney's representing both parties if they have any objections. Mr. Wilson and Mr. Froerer agree that it is part of the record and they don't have any objections.

Steve Burton states that he would like to give his staff recommendation and then present the notices. He states that regardless of the date of the notices Weber County ordinance regarding the Board of Adjustments on any appeals of land use decisions is clear about the 15 days requirement. He references section 102-3-4(4) *All appeals to the board of adjustment shall be filed with the planning division not more than 15 calendar days after the date of the written decision of the land-use authority.*
The date of the written decision of the subdivision and the alternative access is November 22, 2018. He notes that the Planning Staff does not send written decisions to surrounding property. Written decisions are sent to the owner of the subdivision so that they have documentation of whether or not the subdivision was approved, so that they may act accordingly. He adds that they also have minutes showing the record of what was approved so that the owners can go back and look at what happened during that meeting. He states that because the appeal was not filed within 15 days of the November 22nd Staff recommends that the appeal be denied.

Chair Mumford states that the written decision was sent to the owner which is Kevin Schildhauer, Mr. Froerer mentioned that there was a letter that referenced August 30, 2018. He asks if this was a typo. Mrs. Borklund states that it sounded like the August 30 date was the approval of the access easement. Mr. Burton states that both the subdivision and the access easement were approved on November 22, 2018. Mr. Wilson states that it was a typo. Mr. Burton notes that it was approved by the Planning Director. The Planning Director can review and approve or make other decisions on small subdivisions such as the one in question as well as the alternative access that was being applied for. The subdivision and alternative access were approved during an administrative meeting by Director Grover. Mrs. Borklund asks if it was advertised as a public meeting for administrative approval. Mr. Burton states that those notices are mailed out for a public meeting. Chair Mumford states that from personal experience the notices typically mailed out to everyone within a certain distance of 500 ft. He asks if this is the case. Mr. Burton states that this is correct it is 500 ft t is what the ordinance states. Chair Mumford asks if the actual address of the property is 3950 N 3175 would the applicant be eligible to receive a notice. That seems to be more than 500 ft. Mr. Burton states that she would have received a notice. Her property is next-door.

Mrs. Borklund asks if there is a notice requirement in the County code or is its policy. Mr. Burton states that it is part of the County code to send out notice within seven days of the meeting.

Chair Mumford asks if the notice is sent out to allow the surrounding property owners to let people express an opinion or is it a notice of approval. Mr. Burton states that it is a notice of the meeting that will take place in which Planning Staff would be making a recommendation for approval.

Matt Wilson 2380 Washington Blvd. states, that he with the Weber County Attorney's office. He states that he is at the meeting representing the Planning Department. He asks that if the Board of Adjustment is going to review those documents that were sent over from Mr. Froerers, He would ask that the Board of Adjustment review the County's motion reply, as well. He notes that Mr. Burton touched on this the prior address for the Zauggs was 865 S 1000 W this was pulled off of the Weber County parcel search it shows on the tax history that was the address. It was the address was that updated on April 30, 2019, by Mrs. Zaugg to show her current address. Concerning the address, the County's position is that the notices were proper. They were adequate and proper based on this address the 4186 N 3175 W in Ogden. Even though it may not make logical sense because the 4000 N is North of the property it shows that the property would logically North of 4000 W is South of that. To claim that the address pops up this Box Elder, the County would disagree with that claim. The notice was sent to the address that was on file, even though it wasn't her proper address. That was the County relies on. The County does not have the manpower or ability to be able to confirm with every

property owner within the County, their address. It is something that is not feasible. Notice was adequate and proper. She did receive the notice that was sent to her address whether that was an incorrect address or not. That was not the fault of the County. There was a mention of upload dates of the notice of decision long after the date of the decisions were made. That's because the County made a switch of their systems from Miradi to Frontier. This is the reason for the change in date for the upload. Also, there's no question that Mrs. Zaugg was aware on May 6, 2019. She became aware of the subdivision and the alternative access and building permits filed an application for appeal to the Board of adjustment. She filed an appeal with the County on May 21, 2019, however, no fee accompanied that for an application to be complete It must have the accompanying fee, which is $500 that fee wasn't paid until June 25, 2019.
For argument's sake May 6, 2019, she received constructive notice despite notice properly-being adequate and proper back in November. May 6, 2019, she knows about and files an application without the accompanying fee on May 21. On June 7, 2019. The Planning Department sent an email requesting the fee. 10 days later they sent a follow-up email requesting the fee again and it wasn't paid until June 25. From June 7 to June 25, they were past the 15 days appeal period. They still did not meet this timeliness and that's what's required. An applicant cannot sit on their rights to appeal. The law is clear the ordinance states “shall appeal to the Board of Adjustments within 15 days of the notice of the written decision”. It didn't happen back in November, December. Didn't properly happened in May. It happened more than 15 days after an email for payment was requested. The County’s position is that this was notice was proper and even if The Board of Adjustments finds that notice was not proper back in 2018 it still beyond the 15 days past the May 6th date. He states that the County would argue that it was not timely and asks that the Board of Adjustments dismiss the appeal. He asks if the Board of Adjustments has any questions for him.

Chair Mumford ask under the circumstance that notification was not received and on May 6th the applicant from seeing construction, would this be accepted as the beginning of the 15 days for notification. Mr. Wilson states that it would not because the notice was sent to her address but even the County did, she still did not appeal in the timely manner that’s required. From May 6th to May 25th that is exactly 15 days. The application was incomplete because she did not pay the fee. Chair Mumford asks according to Mr. Froerer when she first tried to submit her appeal the Planning Staff would not accept it and there was some exchange with the paralegal. He asks if Mr. Wilson knows anything about this. Mr. Wilson states that he does not. He notes that looking at the dates June 7th to June 25th when the application was turned into the Planning Staff no payment was included, it was past the 15 days. Chair Mumford asks if it is typical to accept an application without a payment. Mr. Burton states that applications are not typically accepted without a fee. He states that they often get an application that gets dropped off and the person runs. He notes that it is not considered submitted until the fee is paid. Chair Mumford ask if the application was submitted 34 days after the application was dropped off May 6th date and nearly a month and a half after the May 6th date.

Neal Barker asks if Mrs. Zaugg had responded to the email that was sent out requesting the fee. He asks if there is any dispute with this at all. Mr. Wilson states that the Planning Staff did receive a response in the form of an email to Mr. Froerer. Chair Mumford asks when that response was received. Mr. Wilson states that there was no response to the June 7th email, but there was a response to the June 17th email. Chair Mumford asks what the response was. Mr. Wilson asks Mr. Froerer if it okay if he reads it. Mr. Froerer states that he has no objections. Mr. Wilson reads the part of the email which states “I spoke with my client Wednesday and went over the appeal with her, she wanted a few days to think about what she wanted to do.” Mr. Froerer states that there is more but he is fine with what was read.

Mr. Crockett states that there was a question about whether there is a provision in the law regarding what constitutes a complete application, He refers the Board of Adjustments to Utah Code 17-27-A 508 (1) (A) that states *an applicant who is cited Complete land use application including the payment of all application fees is entitled to substantial review of the application under the land use regulations.* Until the fees are paid the applicant is not entitled to review. Mrs. Borklund asks if this is listed on the application. Mr. Wilson states that he does not believe this is the case but it is in the State Code and the County Code. Mr. Burton agrees and states that it is not considered complete until the application fee is paid.

Chair Mumford asks is it proper to allow the property owner, Mr. Carson Tolman, to speak. Mr. Crockett states where this impact his land and his application that an argument could be made for his due process right to be heard. He notes that in the order of thing the appellant would have the last opportunity to speak. Mr. Froerer would have an opportunity to respond to anything.

Carson Tolman 3950 N 3175 W, states that originally it was 3128 N 3175 W, he notes that they had to go in and change that because it was correlating with another address nearby. He states that he doesn't have a lot to add. They went through the entire process and got the building permit and did everything by the book and they have been happily living in the house for a year. He notes that the property in front of his was purchased by a family member at a high price because it is a building lot. He states that his concern is if there were to be any reverse decisions on the County's end it would only be fair that their family member who owns the front lot wouldn't get left high and dry because they bought a building lot and not a piece of a farming property. He states that he doesn't have much reason to change what's been done.

Chair Mumford asks if there is any question for Mr. Tolman. There are none.

Mr. Froerer states that while he can sympathize with Mr. Tolman being concerned about a family member losing value. That's a private transaction, the purchase of the lot the value that he paid that's a transaction between him and the seller. They are responsible for those issues, not the County. The Board should not concern itself with the outcome if the outcome will adversely affect someone if the decision is void because it's arbitrary capricious or illegal? It is not something that the Board should consider? He states that he wants to address two points that he thinks are relevant and not quite understood by the Board and not accurately represented by the County. Mr. Burton indicated that the 15 days from the written decision is a hard deadline that is just 15 days from the written decision is over. He states that its not the law at all. He refers to the Board of Adjustments to the Utah Supreme Court's decision in Fox vs. Park City. This is concerning an opportunity to appeal a final decision. It's broken up its opinion into different sections with some headings in section B says "without notice the right to appeal is meaningless" the County has argued that Mrs. Zaugg had the wrong address and it's her fault, they presented no evidence of that. There's nothing on the record, or in the staff report that indicates and it is irrelevant, even if the County has the wrong address and they rely on good faith, and they send out a notice to the wrong address. And if Mrs. Zaugg is responsible for that, the law says it doesn't matter because she is an adversely affected landowner. She has an absolute right to have the decisions reviewed and if she doesn't get noticed that right is meaningless. He continues to read through Fox vs. Park City "that any person that is adversely affected by land-use authority's decision administering or interpreting the land use ordinance has the right to appeal that decision to an appeal authority. A Planning Directors issuance of a building permit constitutes a decision administering or interpreting a land use ordinance, as does a subdivision approval, and alternate access. Any person who is adversely affected by the issuance of a building permit has a statutory right of appeal a right to appeal a decision is meaningless, however, if the person possessing the right has no actual or constructive notice of the decision." He notes that this removes any consideration of whether or not the County had the right address and, whether or not they acted in good faith with the correct address. If the County sent the notice to an address where she was not able to get in the mail then she did not get actual notice of the meeting. She must then rely on constructive notice. It doesn't matter what affidavit of correction of address or anything like that with filed. She has an absolute right to appeal this, whether they got it to her or they didn't. If they got it to her then the time runs from when she got that mailing. The County has conceded that they sent it to an address where she doesn't get mail. What the County is saying is that she has to keep her address updated. If she doesn't, she forfeits her right to an appeal. That's not the law. He states that this is about balancing the rights. It's the County's job to follow the law and ensure that If she didn't get actual notice of the meeting or some other event that she at least needs to have constructive notice. That doesn't happen until May 6th Mr. Wilson and Mr. Burton, arguing that the deadline doesn't happen and that it doesn't extend to May 6th is not accurate because by conceding that they sent this to a different address they're not contesting she didn't get it. He continues reading through Fox vs. Park City, "this is often the case when building permits are issue the Utah code does not require a municipality to by to provide notices to neighboring landowners that a building permit has been issued." in this case It's a building permit, that there's no requirement even send out a notice in this. The requirement to mail something out isn't even there. Neighboring landowners do not receive the actual notice? There was a meeting that happens to address these land use applications and the applicant. Mrs. Zaugg never got actual notice of the meeting. And there was no constructive notice of those meetings. She

had no way of knowing she had to go in and represent her rights and present the evidence opposing these applications. Mr. Froerer continues reading through Fox vs. Park City "additionally neighboring landowners often do not receive constructive notice until construction begins. This often does not happen until several weeks or months after the building permit has been issued. Construction began several months after the final decision and as the case states that's when her time to appeals starts. Thus, if the appeal period begins when a building permit is issued by the time from the neighboring landowners receive any type of notice the permit issuance, the statutory time for appeal is passed in such a situation, the landowner, statutory right to appeal is meaningless." The court goes on to say "the landowner would be forced to check the municipalities or in this case, the Counties records every 10 days to see if any building permits have been issued that may have an adverse effect on the landowner's property. Such a rule places too high a burden on landowners to exercise their statutory right appeal, we accordingly reject the proposition that the issuance of the building permit begins to run begins the running of the statutory appeal period." So this goes directly against what Mr. Burton said. It doesn't matter when the final decision is issued. It doesn't matter when the notices were sent out. What matters is did the people have actual notice? If so they're right to appeal is not meaningless. This is a record review, if the person doesn't go to the meeting and they're not allowed to present at the meeting they are denied the right to appeal. They're denied their right to make any arguments with the Board of Adjustments. The first notice of a meeting happening and the public comment where they can present their argument and create their record is important. And if denied, because they don't have actual constructive notice their right to appeal is meaningless. He continues to read through Fox vs. Park City "thus we conclude that to give meaning to this statutory right of appeal, neighboring landowners must receive actual or constructive notice of the issuance of a building permit for the 10 day appeal period to begin." Mr. Froerer states that he wants to make clear to the County and to the Board that the appeal deadline has to be tied to when Mrs. Zaugg knew that there was going to be a decision. He states that looking at the record the staff report refers to 3938 N 3175 W and the agenda is for 4186 N 3175 W there is an entire two-block difference from where it was mailed. He states that he does not find it credible that an address that on its face is approximately two blocks away from the address that was eventually subdivided is right where the lot is. He states that he is not sure how it comes up on google, but on it face it doesn't seem that you can connect the two addresses with reasonable certainty. He adds that he is not sure if shows up in Box Elder, his client stated that when she went and searched for it, it showed up in Box Elder. Box Elder is North of Weber County. He notes that he assumes it is correct. These are two separate addresses that should be two blocks away from each other.

Looking at the agenda for November 21st the County approved the alternate access. They did not state this was inaccurate. Nowhere in there does it mention that the alternate access is on the agenda. The County needs to recognize that if a person is going to have a meaningful opportunity to be heard they need to have meaningful notice. They should be aware that there's going to be a meeting so that they can go in and voice their concerns to the County. He adds that they have shown that concerning the notices they went to the wrong address approximately two blocks away and in Box Elder County. Mr. Wilson is welcome to show his map if he disagrees. The next thing is they haven't found any notice of the meeting approving the alternate access and that seems to be completely glossed over here. The final decision for the alternate access was issued on November 21, 2018. It's not on the agenda. He states that he doesn't have the staff report for it so he can't confirm when the notices were sent out. He adds that he doesn't want the County to simply overlook that. The final point he wants to make is concerning the 15 days after May 6 that is the accurate deadline. That's when construction happened and that's when the neighbors would know, If they hadn't received actual notice the appeal and the deadline started. He asks who should be responsible for the failure to pay the filing fee when Mrs. Zaugg attempted to go in, attempted to comply, and exercise her rights and was turned away. He adds that if it wasn't for his insistence, repeatedly sending his paralegal over the County would have never accepted this. He concedes that the fee needs to be paid at the time the application is accepted. The problem is, it was based upon the County's failure to accept applications when it was submitted and then ask for the fee that led to this issue. The County wants to pass that off entirely off on to Mrs. Zaugg. These can be misunderstandings. This is a technical area of the law. Mr. Burton's adherence to that demonstrates there's an understanding among the staff that it's 15 days from the written decision, and they don't have to accept applications after that. That's the opinion held by the County because instead of submitting the original application to the Board of Adjustments, it was denied by the County Attorney's office that required them to go through the expansion effort of appealing that decision to the District Court. The District Court ultimately ruled in Mrs. Zaugg's favor that the staff doesn't get to decide whether to accept or deny applications. That's the Board of Adjustments job. What is occurring in the County blaming Mrs. Zaugg for mistakes that the County's staff made. The County

should have accepted the application taken her $500 when Mrs. Zaugg went in. By not doing that the County itself set off a chain of events that resulted in Mrs. Zaugg being confused and frustrated. This resulted in the subsequent delay. The question the Board should ask is in fairness, can the County hold Mrs. Zaugg 100% responsible for the delay. He states that their position is no. The Board should determine did she eventually paid, was that the application was accepted. Is it reasonable to allow her to proceed? He adds that they did receive an email from the County. One of the emails stated that the fee needed to get paid or the application would be denied. He states that this was weeks after the deadline. This was presented to the Court in the appeal. This is one of the reasons the Court sent it back because by accepting the check and sending an email weeks after the May 21st deadline the County gave Mrs. Zaugg the impression that had some time to weigh her options. This is partly why they feel, that the County made the initial mistake and refused to accept the application and refused to request the fee at the time the application was accepted it would have been immediately taken care of. The County should bear the responsibility of this.

Chair Mumford states that the Board of Adjustments appreciates their closing statement. He asks if the Board members have any questions for Mr. Froerer.

Neal Barker asks if there is any record that the applicant was denied the opportunity to pay the application fee. Is this something that the County is disputing and that the County told her she didn't have to pay that on May 21st? Is it just her statement that she was denied. He asks if there is any record of these things occurring. Mr. Froerer states that there is no record of this and she states that she was told she would have to pay it and her response was she was ready to pay it, but they would not accept her application on the 20th. This leads her to be scrambling on the last of the 15 days to get anything in.

Chair Mumford asks if Mr. Crockett has any comments or any recommendations to the Board of Adjustments.

Mr. Crockett states that at this time the Board is allowed to adjourn into closed session to deliberate on the appeal. He states that if this happens everyone will be excused from the room and the Zoom Conference except the Board members, Legal Counsel, and the Secretary. This will be done so that the Board members can have open and free deliberations to ask any questions and talk amongst each other and arrive at a decision. The decision can be announced in the open meeting or if the parties are willing the Board could issue a written decision.

Board members agree to issue a written decision.

Jannette Borklund moves to adjourn into closed session. Neal Barker seconds. Motion carries (3-0).

Board members adjourn closed session.

Janette Borklund moves to adjourn the meeting. Neal Barker seconds Motion Carries (3-0)

Adjourned 6:56 PM