

September 22, 2022

Minutes of the Board of Adjustments meeting of September 22, 2022, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Member Present Rex Mumford
 Laura Warburton
 Joe Paustenbaugh

Staff Present: Rick Grover, Planning Director; Steve Burton, Principal Planner; Brandon Quinney, Legal Counsel; June Nelson, Secretary

- Pledge of Allegiance
- Roll Call

There was no chair or vice chair in attendance. Laura Warburton motioned to have Rex Mumford serve as temporary chair. Joe Paustenbaugh seconded the motion. Motion was unanimous. 3-0

1. Minutes: July 21, 2022 approved
2. Voting for new Chair and Vice Chair for the year 2022

Laura Warburton motioned for Rex Mumford to serve as Chair. Joe Paustenbaugh seconded the motion. Motion carries 3-0
Joe Paustenbaugh motioned for Laura Warburton to serve as Vice Chair. Rex Mumford seconded the motion. Motion carries 3-0.

The new Chair is Rex Mumford. The new Vice Chair is Laura Warburton.

3. **BOA 2022-04:** An appeal of two land use decisions made by the Planning Division regarding a residential development known as The Barn at Terakee Farms. Appellant is Heritage Land Development. **Planner: Steven Burton**

Liam Keogh, acting as attorney for the County Planning Office, spoke on behalf of the County.
We have determined that the conditional use permit (CUP 2017-02) has expired, and that phase 2 as proposed, does not meet today's zoning, therefore it cannot be approved unless a rezoning occurs. This determination is based off of the county's nonconforming use code (108-12-7) which says, "Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be in conformance with the current provisions of the Weber County Land Use Code."

This appeal was submitted on August 9, 2022. Heritage Land Development is appealing two decisions made by the Planning Division. The first decision was made by the Planning Division, who determined that a conditional use permit (CUP 2017—02) expired. The second decision of the Planning Division was to require both owners of the Barn at Terakee Farms subdivision to sign the appeal application. The following is an explanation of why the two decisions were made.

Planning Division Decision #1: On July 19, 2022, The Planning office informed the owners of the Barn at Terakee Farm Subdivision that their conditional use permit for the Barn at Terakee Farm PRUD (Planned Residential Unit Development) expired. The conditional use permit was originally issued on May 16, 2017. The conditional use permit was granted so that the developer could plat and construct a multi-phased, 79 unit residential subdivision.

In **March of 2021**, the land use code regarding PRUDs was amended, and the following language from the ordinance made the developer's previous approvals non-conforming:

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Sec 104-27-2 Applicability

(c) Nonconforming PRUD. The adoption of this ordinance also repeals an ordinance governing the creation of a planned residential unit development (PRUD). A planned residential unit development for which an application was submitted prior to the date specified in Subsection (a) of this section is hereby a nonconforming planned residential unit development, provided the County has not adopted new regulations governing a planned residential unit development after this effective date.

The change to the PRUD ordinance meant that the conditional use permit which governed the approval for the Barn at Terakee Farms was now considered non-conforming. The county land use code has the following provision in the non-conforming use chapter:

Sec 108-12-7 One-year vacancy or abandonment

(a) A legal structure, or portion thereof, which is occupied by a nonconforming use, and which is or hereafter becomes vacant and remains unoccupied for a continuous period of one year, except for dwellings and structures to house animals and fowl, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located. Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established and any future use shall be in conformance with the current provisions of the Weber County Land Use Code.

On **May 11, 2021**, the developer recorded the first phase of the Barn at Terakee Farms consisting of 36 lots. Under the non-conforming chapter above, the developer had until May 11, 2022 to record a subsequent phase, otherwise the use of the property as an approved PRUD would expire. When the developer inquired about submitting a subdivision application for phase 2 in July of 2022, the Planning Division issued the following statement in an email to the owners of the subdivision:

After meeting with our attorney we have determined that the conditional use permit (CUP 2017-02) has expired, and that phase 2 as proposed, does not meet today's zoning, therefore it cannot be approved unless a rezoning occurs. This determination is based off of the county's nonconforming use code (108-12-7) which says "Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established and any future use shall be in conformance with the current provisions of the Weber County Land Use Code."

This decision can be appealed. I noticed an application for the Barn phase 2 that was submitted last week. Since the conditional use permit expired, we will not be able to entitle phase 2 because it no longer meets zoning. If you have any questions or concerns about this or Terakee Farms please address them to me.

Planning Division Decision #2: On July 19, 2022, The Planning office informed the owners of the Barn at Terakee Farms Subdivision that, in order to appeal the Planning Division's decision to deem the conditional use permit expired, that both owners needed to sign the appeal application.

This decision came about because the Barn at Terakee Farms is owned by two entities. One entity, Heritage

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Land Development, owns the lots on which homes were proposed to be built. The other entity, Terakee Properties LP, owns the open space that was required to be included in the development.

Since the time that the Planning division informed the owners that they would both need to sign the appeal application, the Planning division's legal counsel advised us to move the appeal forward, regardless of whether or not both signatures were received on the appeal form. Both signatures were not received and the appeal has been filed only by Heritage Land Development. Since the proposal will be considered by the Board, this planning division decision has become irrelevant.

A representative for Heritage Land Development, Aaron Robinson, spoke on behalf of the applicant. On July 19, 2022 Heritage Land Development received an email from Steve Burton, stating that the conditional use permit for The Barn PH 2 subdivision located at approx. 900 S 4700 W, Ogden UT had expired. The explanation from Steve was as follows:

"After meeting with our attorney, we have determined that the conditional use permit (CUP 2017-02) has expired, and that phase 2 as proposed, does not meet today's zoning, therefore it cannot be approved unless a rezoning occurs. This determination is based off of the county's nonconforming use code (108-12-7) which says, "Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be in conformance with the current provisions of the Weber County Land Use Code."

Heritage Land Development was also told in an email by Steve Burton on July 19, 2022 that both Heritage Land Development and Brad Blanch would need to be included on an appeal application.

Heritage Land Development hereby appeals the requirement to have Brad Blanch included on this appeal application. Heritage Land Development LLC is the sole owner of this property.

Heritage Land Development, also hereby appeals the decision regarding the expiration of the conditional use permit for phase 2 of The Barn and requests a hearing with the Board of Adjustment.

Permit number: CUP 2017-02, the approved conditional use permit for Terakee Village states the following as "The purpose of conditional use",

"A conditional use for Terakee Village, a planned residential unit development consisting of 79 residential units, one lot for an assisted living center, and four accessory dwelling units for a total of 84 units"

In addition, line item 12 of the approved CUP states,

"This CUP is for parcel numbers 15-515-0001, 15-515-0002 and 15-048-0037 and does not include Phase 2/the 14-acre parcel number 15-059-0026 that is not contiguous."

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As stated above, this CUP was approved for 79 residential units which ended up being platted over 2 phases, however both phases are located on the above listed parcel number, 15- 048-0037. We have only developed 36 of the 79 approved units. The phase 2, 14 acre parcel that is mentioned above is NOT part of The Barn or the 79 approved units.

We would also like to point out the following codes,

Weber county code section 108-4-8(b) states:

"Unless there is substantial action under a conditional use permit within a maximum period of one year of its approval from the land use authority, the conditional use permit shall expire."

Weber County Code Section 108-4-9 states:

"When an approved conditional use has been discontinued and/or abandoned for a period of one year, the conditional use permit becomes null and void."

According to the above codes, the one-year timeline only applies if there is no substantial action or if the conditional use has been abandoned for a period of one year. Heritage Land Development has taken substantial actions towards completing the improvements on the first 36 lots of the CUP and has been diligently working towards finalizing the construction edits on the remaining 43 lots. Heritage has been to numerous meetings with the county, reviewed plans, and worked with utility companies to make sure that this project continues to progress. Again, although the 79 lots have been constructed into two phases, our initial approved CUP has always and continues to be advancing in significant ways.

Thank you for your time and consideration. We look forward to completing this subdivision as it was originally approved. It is our pleasure to provide a beautiful subdivision for future and current residents of Weber County to call home.

Board members asked exactly what work had been done for this phase of the project. Aaron Robinson said that they had installed larger sewer and water lines. We built up the roads and layout of the roads with some structure filling that we had access to in our phase 2 in anticipation of phase 2. Mr Mumford compared this to getting a building permit. He would then be expected to report to the County what progress he had made within a certain time period or the permit would expire. Mr Burton agreed that this was a good analogy. Mr Mumford asked if this was considered a new subdivision. Mr Burton said yes. This is basically a new subdivision.

Brad Blanche, West Weber. I completely support Heritage in building this development. The County has been supportive. We retain ownership of the private right of ways and open space. We have landscape planned. This has been a long journey. I want to see it come to fruition.

Mr. Roberts, 900 South. I live directly across from this development. I have been watching. You have to make your deadlines. I am not saying that I am for or against.

Doug, 664 S 4700 W. Directly north. IF this development has to be reapplied for will there still be the public utility easement? Ms Warburton states that it is not germane to our hearing. Call the County Planning Office.

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Mr Mumford asked Mr Aaron Robinson if he wanted to comment on anything that has been said. Mr Robinson stated that they had watched the original property owners struggle to get this complete. We were making sure that we were still working on the project.

Mr Mumford asked if there were any other comments from staff. No there was not. Since there were no other comments, Laura Warburton motioned to go into a closed session. Joe Paustenbaugh seconded the motion. All voted in favor.

Closed Session

Laura Warburton motions to go back into open session. Joe Paustenbaugh seconds the motion. We are now back to an open session.

Chair Mumford calls for a motion. Board Member Joe Paustenbaugh motions the following:

I motion that we deny the BOA 2022-04 appeal for the Conditional Use Permit because the burden of proof that substantial action on phase 2 was not met by the applicant. The applicant needed to provide evidence of substantial action on phase 2 after May 11, 2021, which was not provided.

Laura Warburton seconded the motion. All voted in favor of the motion. Motion passes 3-0.

Chair Mumford ask Director Grover and Attorney Quinney if they have any comments. Both said no. Laura Warburton motions to adjourn the meeting. Joe Paustenbaugh seconds the motion. Motion passes 3-0.

Adjourn

Respectfully Submitted,
June Nelson
Lead Office Specialist