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

Members Present: Rex Mumford, Chair; Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer
Staff Present: Rick Grover, Planning Director; Scott Mendoza, Assistant Planning Director; Charles Ewert, Principal Planner; Courtlan Erickson, Legal Counsel; Clark Crockett, Legal Counsel; Tiffany Bennett, Office Specialist; Kary Serrano, Secretary

**Pledge of Allegiance*

Regular Agenda Items

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

Chair Mumford introduced the first agenda item as provided above.

Prior to starting the first item on the agenda Courtlan Erickson, (representing the Weber County Attorney's Office) requested that the Chair allow him a moment to speak to the Board. Mr. Erickson stated that he is normally the attorney that advises the Board of Adjustment and that, internally within the Attorney's Office, they have determined that - for item #2 BOA 2016-05 on the agenda - he will be sitting in the audience participating to some extent, possibly assisting the Planning Division. Mr. Erickson further explained that Christopher Crockett will be acting as the legal advisor for the Board during the discussion of BOA #2016-05.

Chair Mumford asked for clarification, from Mr. Erickson that the Board of Adjustment, in the case of appeals, can only consider what is of record, not new information. Also, Chair Mumford asked about others (besides the appellant) having an opportunity to express opinions during an appeal.

Mr. Erickson clarified by stating that the Board of Adjustment typically considers only the record.

Scott Mendoza (representing the Weber County Planning Division) stated that this item is an appeal of a land use decision that was rendered back on May 22, 2016 and that he would like to have Mr. Reeve, who is representing the appellant Carol Browning, come up and spend as much time as he needs to explain his appeal. Mr. Mendoza described that the subject appeal was due to a decision to approve an "access exception" and that he believed that the Board understood what an "access exception" was. Mr. Mendoza further described that an alternative access is an access that is constructed in lieu of constructing a full public standard street and that some landowners, from time to time, request an "access exception" which serves as the primary access which is more or less a driveway rather than a road.

Mr. Mendoza explained that the role of the Board is to review the record. Mr. Mendoza directed the Board to page 2 of the staff report and an excerpt from the Land Use Code, Section 108-7-31 which is, what Mr. Mendoza explained to be, the guide for the planning staff when reviewing "access exception" requests. Mr. Mendoza stated that the code section is entitled *Access to Lots/Parcel using Right-of-Way or Access Easements* and that the Board could see the **"bolded"** and applicable text that reads: *"Lots which do not have frontage on a street but which have access by a Private Right-of-Way or an access easement may under certain circumstances use those types of things as the primary access"* and *"Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend the street to serve as access to the subject property."*

Mr. Mendoza explained that some of the things that the planning staff looks at, when considering an approval or denial of a request for an "access exception," are unusual soil, topographic, or boundary conditions and that those things are examples of certain circumstances that may exist on a property and assist when rendering some type of decision. Mr. Mendoza further explained that, in this case on May 22, 2016, staff was presented with information; therefore, considered what was available to them and they made a decision for approval.

Mr. Mendoza discussed the duties of the Board and directed the Board to page 5 of the staff report where it described that the Board is the appeal authority and that the Board takes a look at decisions that are made by the Land Use Authority and determines the correctness. Mr. Mendoza stated that appeals can come from these decisions or when interpreting land use code or the zoning map and that the Board of Adjustment shall determine the correctness of the decisions when the planning staff applies the land use code.

Mr. Mendoza directed the Board to top of page 3 of the staff report where it points out that the appellant has the burden of proof to show that the planning staff erred in making the determination for approval. Mr. Mendoza then directed the Board to item number 5 on page 3 where it shows the code requiring that appeals, to the Board of Adjustment, consist of a review of the record.

Mr. Mendoza presented a site map that showed the subject parcel located at approximately 6050 S 2900 E in the Uintah part of the County.

Chair Mumford stated that he thought that, in the packet, there was a page that showed the granted right-of-way. Mr. Mendoza asked if it was in the Notice of Decision. Chair Mumford replied that he was not sure where he saw that.

Board member Ehlers-Rhorer asked if Mr. Mendoza could show them, on the map, how the applicant for the "access exception" would access the lot. Mr. Mendoza showed the access, pointed out a parcel owned by Weber County, and directed the Board to a table in the staff report that explained a series of events. Mr. Mendoza then explained that one of the events was a time when Mr. Rasmussen presented a request to the County Commission and was granted an access easement across the lot owned by Weber County which is a detention pond. Mr. Mendoza stated that the County Commission did agree to grant an access easement; although, the specific location of the easement, described in County Commission meeting minutes, was not very clear and they may have not made a real final decision on the location but as far as granting an easement, the access was granted.

Ms. Ehlers-Rhorer asked if the easement is a permanent easement that would carry forward with any owner of the land. Mr. Mendoza stated that the easement would be permanent but depends on the language in the easement, and that he has not seen the actual easement. Mr. Mendoza explained that the easement was something that was approved by the County Commission and he did not know if it was actually executed but it had been approved. Mr. Mendoza also explained that he was not certain but assumed that the way the easement would be written would grant a perpetual and unlimited access to the subject property.

Mr. Mendoza explained that there were two accesses that were discussed during the Commission meeting. One being in a tree line and one on an existing driveway that Uintah Highland Improvement District uses to get to an old water tank site. Mr. Mendoza then made note that it was interesting that the water tank parcel was the subject of a previous Board of Adjustment case where the Board approved the same type of (access) request due to steepness. Mr. Mendoza explained that the Board of Adjustment used to hear these types of requests before they became an administrative staff level approval.

Mr. Mendoza showed, on a map, two locations that Mr. Rasmussen could use as access to the subject property. One was along the south westerly line of County property and the other, Mr. Mendoza explained, was more complicated because the Improvement District owns a parcel and in order to utilize the second location, the access would require the cooperation of the Improvement District to acquire a short segment of easement across their lot.

Chair Mumford asked if the easement, shown in their packet on Page 14 of 25, is the proposed easement location. Mr. Mendoza replied saying yes and that the one shown on page 14 is the one through the tree line, which is the location that is not preferred by the neighbor to the southwest. Mr. Mendoza, on a map, then showed the location of the easement illustrated on Page A, 14 of 25. Chair Mumford stated that on Page B, 11 of 31, it shows the 20 foot right of way easement, but then asked if the easement could be one or the other. Mr. Mendoza replied and said that he believed that the easement location had been left open enough so, if there were more specific design challenges that came because of the location; a different location could be considered. Mr. Mendoza said that there had been quite a lot of dialogue back and forth between the north side of the property or the south side of the property being the best location. Mr. Mendoza stated that on the north side, there's an intersection at 2900 East Street and Melanie Lane and there was some concern with this access because it would be so close to that intersection. Mr. Mendoza stated that Mr. Rasmussen would have to work with the County Engineer and that access could possibly begin at a point south of the intersection and then turn and go north onto Weber County's lot and then across, if they want to utilize an existing dirt road.

Chair Mumford asked if the granting an "access exception" (by the County) absolutely defines where it's located. Mr. Mendoza stated that it's the easement that will define that actual easement location and that, a lot of times, a granted easement is between two private landowners. In this case, Mr. Mendoza stated that, Weber County is a land owner and does have the right to grant the easement.

Ms. Ehlers-Rhorer asked, while looking at a map, what a particular structure was on Melanie Lane and whether or not it was part of the subject site. Mr. Mendoza replied saying that it is an existing home that is part of the site and if the "access exception" is upheld and because the easement was granted by the County Commission, the next step would be to subdivide

the subject property that is outlined in red. Mr. Mendoza further stated that today the site is one lot, within the Calais Subdivision, but would become three lots. Mr. Mendoza also mentioned that the existing lot is a Restricted Lot.

Mr. Mendoza explained that if Mr. Rasmussen is successful, then he would be coming in with step two which would be to actually plat the property, turning one lot into three. Mr. Mendoza further described that the existing home would continue to front off of Melanie Lane and the two other home sites would be serviced by a driveway (access easement) rather than a full blown public street. Mr. Mendoza directed the Board to the Notice of Decision, in Exhibit A Page 7 of 25, and explained that the Notice of Decision lists the types of things that the planning staff looks for - like unusual soils, topography, and boundary conditions. Mr. Mendoza expressed his opinion which was that because the property had already been looked at, at a survey level of detail, the types of things listed in the Notice of Decision were "substantial evidence." Mr. Mendoza further explained that the slopes are so steep on the lot that it was previously determined to be a Restricted Lot which means that the slopes are in excess of 25%. Mr. Mendoza continued by explaining that boundary conditions are something that the staff considered because the subject property is bound by other properties and that it does not have frontage, except for what is on Melanie Lane. Mr. Mendoza pointed out that there is concern with where the property has frontage on Melanie Lane because of two curves in the existing road and that before ever rendering a decision or preparing a staff report, the planning staff approached the Weber County Engineer's Office about how safe an access for a street would be at the location where the subject property had frontage. The Engineer's Office's first concern was with how steep the slopes are at the location and how it is not an ideal location because of the steep slopes. Mr. Mendoza continued to describe that due to the reverse curves and existing configuration of Melanie Lane, it would not be an ideal location for a road because of the reverse curve and limited sight distance.

Chair Mumford referred to Exhibit A, Page 14 of 25 and asked if there is an easement for a drainage ditch on the upper lot. Mr. Mendoza confirmed that there is an easement for a drainage, in addition to an existing home being there. Mr. Mendoza pointed out that, in Western Weber County, there are setback standards in place to preserve natural habitat along riparian areas, and that is something else that was considered. Mr. Mendoza explained that, in addition to the drainage setbacks, there is an easement that complicates locating a street that would intersect with Melanie Lane; not only due to topography and steep slopes, but due to the location of the existing home and the drainage that is already there. Mr. Mendoza continued by describing that, along the lines of "substantial evidence", they would find more information that was presented to Mr. Grover (planning director) who was the decision maker. Mr. Mendoza described that the information was a UGS (Utah Geological Survey) map that shows faulting that goes through the property, and then explained that the faulting was another finding that supported the approval. Mr. Mendoza clarified that, because of the faulting, slopes, and boundary conditions, it didn't seem practical to have Mr. Rasmussen build a full blown public street in that area. Mr. Mendoza summarized by stating that he wanted to point out all of the information so the Board understood why the planning staff ended up with the decision that they did.

Richard Reeve, representative and legal counsel for the Carol Browning, 5160 S 1500 W, in Ogden, stated that Ms. Browning resides on an adjoining parcel, next to the proposed subdivision, and is directly affected by the proposed subdivision and specifically, the access exception that's been granted. Mr. Reeve continued explaining that he wanted to point out that the alternative access, across the Uintah Highland District property, was not part of the record that is before the Board and that it, "as far as he was aware," had not been discussed or made part of the Notice of Decision. Mr. Reeve further explained that, as he understood it, the District had not granted an easement nor was it in favor of considering one and that he did not believe that the access across the District's property was an alternative, and expressed again, that it was not part of the record that is before the Board today.

Mr. Reeve stated that he wanted to begin by providing context, and then explained that this was not the first time that this "access exception" had been before the Board of Adjustment and that the Board had granted this "access exception"; we appealed to the District Court and prevailed on a motion for summary judgment. Mr. Reeve explained that the court had remanded the decision back to the Planning Department and that the planning director considered it again and had made a more precise finding in the Notice of Decision. Mr. Reeve thanked Mr. Mendoza for his work on the case and being good to work with.

Mr. Reeve began by saying that the code section in the County code is a good place to start and that the code is what they need to use to guide their decision. Mr. Reeve stated the he also wanted to refer the Board to a Supreme Court cases in Utah that said that a municipality must strictly comply with its own code provisions and that there is a strict compliance standard that says that substantial compliance is not enough and if something is in the code, it must be strictly complied with.

Mr. Reeve referred to County Code Section 108-7-31(c) and explained that *"based on substantial evidence,"* is the standard that the planning director needed to consider when judging Mr. Rasmussen's application. Mr. Reeve stated that the application

needed to be based on substantial evidence and that *"it shall be shown that it is infeasible or impractical to extend a street to serve the lot or parcel."*

Mr. Reeve went on to explain that an important part of the code says that *"Financial adversity shall not be considered"* and that the code lists a number of circumstances or non-exclusive conditions that should be considered like unusual soil, topographic, or property boundary conditions. Mr. Reeve also referred to a later code sub-section that says that, *"It shall be demonstrated that the agricultural parcel or other lot/parcel has the appropriate and legal access due to historic use, court decree, or the execution of an easement."* Mr. Reeve summarized by saying that substantial evidence cannot consider financial adversity and must consider things like soil, topography, property conditions, or boundary conditions and that his client's point of view is that financial adversity is very important because the developer knowingly purchased a landlocked piece of property.

On a map, Mr. Reeve showed the Board that the area used to be a man-made pond named Bybee's Pond and explained that the pond was decommissioned because it was determined that it was not stable enough due to roots, from surrounding trees, creating an issue of instability. Mr. Reeve continued stating that the developer - for whatever reason purchased the property knowing the topography, knowing the steep slopes, and knowing that he didn't have access – is now essentially asking the County to bail him out of his business decision. Mr. Reeve described that the developer purchased a landlocked property that he knew didn't have access to it and is not prime for a subdivision. Mr. Reeve also described that the developer is not only asking the County for an "access exception" but for a grant of easement across public land to be able to make his business decision a profitable one.

Mr. Reeve stated that when Mr. Mendoza was talking about bringing an access off the frontage that the lot has, Mr. Mendoza said that it is not ideal to bring a road from there. Mr. Reeve said that "unfortunately, ideal is not the standard, the standard is they must show, with substantial evidence, that it is impractical or infeasible, and not from a financial adversity standpoint, that it is impractical and infeasible to bring a road off of Melanie Lane down to serve that property." Mr. Reeve continued by explaining that he didn't believe that the public should have the burden to care that the developer purchased property even though the topography and steepness of the slope existed when the developer purchased the property.

Mr. Reeve stated that Ms. Browning "is concerned about the unique situation that occurs in the area and the complete lack of data or engineering reports, or any type of objective material that shows that an "access exception" is appropriate and that it would not harm the property or surrounding property owners." Mr. Reeve continued by explaining that he had already pointed out that the subdivision and the access road, where proposed, cross the historic bed of a manmade pond and that the application and staff decision was not based on geotechnical analysis or soil reports and that nobody knows how building an access across a pond bed will affect the property or other property owners. Mr. Reeve pointed out that the "access exception" is going to run along the bottom, downward side of a 50 year old retention basin and he hadn't seen engineering studies that showed how the private access road would influence the structural stability of the retention basin. Mr. Reeve stated that the subdivision is at the bottom of a very steep area that has a lot of natural springs and water that gathers in the retention basin.

Mr. Reeve expressed concern that the retention basin's structural integrity and lower property owners could be affected by constructing an access on the retention basin berm. Mr. Reeve asked if the retention basin could fail and then stated that questions like that are very important and they have not been addressed. Mr. Reeve stated that the questions may be able to be addressed in an effective way but they just hadn't been addressed. Mr. Reeve asked for data, objective analysis, and engineering reports from professionals that can give reassurance that the access is not going to cause problems for property owners that live in the area. Mr. Reeve went on to describe that, in the 1980's, pretty significant mud landslides occurred in the area and that scars from the slides could still be seen off of Melanie Lane. Mr. Reeve stated that the area is not stable, there is a lot of water runoff, there are a lot of soil issues, and that those things need to be considered.

Mr. Reeve referred to the developer's application and stated that it is completely deficient and that the Planning Commission, Planning Department, the Planning Director, and the Board need to look at it. Mr. Reeve said that it is the application that is being decided upon and if the Board looks at the application the Board will see that, in a section that asks for supporting data, it's blank and that it appears that Mr. Rasmussen had not undertaken any soil analysis or engineering reports. Mr. Reeve claimed that he has been involved in the process from beginning to end, and knows that the applicant has said that there is data and studies that have been done, but done as part of the subdivision approval process. Mr. Reeve asked the Board: where is that data; why hasn't it been made available; and why hasn't it been referred to in the Notice of Decision? Mr. Reeve stated that if that information is there, and if the information states that everything is safe, good, and fine, then Ms. Browning's concerns are resolved and things can move forward. Mr. Reeve further stated that asking for information is reasonable and that Ms. Browning wants reasonable assurances, through objective professional data, that the "access exception" and its proposed location will not cause problems, erode the stability of the retention basin, exasperate the unstable soil conditions in the area, and will not worsen the drainage situation of the steep topography in the area.

Mr. Reeve stated that another fault, in the application and the Notice of Decision, is that there is no discussion of alternatives and there must be discussion of alternatives because the County and applicant need to consider them when determining that they are either impractical or infeasible. Mr. Reeve reminded the Board that the alternatives cannot be judged under the financial adversity standard.

On a map, Mr. Reeve pointed out another place that could be used as access to the proposed subdivision which is a vacant, undeveloped lot that is for sale. Mr. Reeve said that "it may be a steep price to ask that the developer to come in a buy another lot and somehow work with the County to have it become an access, but again that is not the County's job to decide whether that's financially impractical. It's certainly, from an engineering perspective, practical." Mr. Reeve continued by stating that the alternatives had never been addressed, had never been the subject of any objective studies or data, and that there is no discussion, in the application, of issues like the 50 year retention basin or the history of mud and landslide. Mr. Reeve said that steep topography and a fault line was discussed but pointed out that there are multiple fault lines across the subject parcel and other public roads that are in this area. Mr. Reeve questioned the standard for judging whether or not to build public roads because of fault lines because he felt there would be very few public roads in the Wasatch Front area if that were the case.

Mr. Reeve asked the Board to look at the application, then stated that it provides little to no explanation as to why an access exception should be granted. Mr. Reeve explained that the application really focuses on a land swap, where the developer gives the County a little bit of property and the County gives the developer a little bit of property. Mr. Reeve further explained that part of the berm, that he has referred to, has been on the developer's property for 50 years and that the developer gave land to Weber County in exchange for an easement. Mr. Reeve then challenged the Board to look at the applicable code section and find that a land swap is something that the county can consider when determining whether or not an "access exception" is appropriate. Mr. Reeve stated that he could not see anything in the code that would allow the County to consider a land swap or allow the planning director to be able to receive a conveyance or to convey property. Mr. Reeve further stated that the application focused on the land swap and was asking the director to be involved in the conveyance and acceptance of property.

Mr. Reeve summarized saying that he had focused on the most important points which are: the lack of data and that the applicant had put a heavy burden on the planning staff by asking for an "access exception" while providing no engineering reports, surveys, or data for the planning department to consider. Mr. Reeve explained that the lack of evidence and data makes the decision inappropriate and that the application failed to meet the standard of substantial evidence. Mr. Reeve stated that he also wanted to point out that the code requires the applicant to show that there has been historical or legal access to the subject property but the property had been historically landlocked without historical and legal access.

Board of Adjustment member Phil Hancock asked Mr. Reeve if he thought that the developer's motivation, for purchasing the subject property, should have been considered by the planning director? Mr. Reeve replied, "It does", then described that he thought that the public policy, behind the code, was that it is not the County's job to dedicate or convey public property to a private land owner who is seeking to develop and create a profitable subdivision. Mr. Reeve further described that he thought that his point about profit was one of the reasons why financial adversity was not something that the County could consider in granting an access exception.

Mr. Hancock stated that all developers try to make a profit. Mr. Reeve agreed and said that "there are not many developers that come in and say I bought a lemon, why don't you give me some property, Weber County, and make my lemon into a profit." Mr. Hancock asked Mr. Reeve if he thought that the Weber County code requires the County to consider a developer's profit as a part of the criteria for an approval. Mr. Reeve replied by saying that "the context of that is something that the County should consider, that is, has the developer bought himself into a difficult situation and now he is looking for public help to turn that bad piece of property into a profit." Mr. Hancock asked Mr. Reeve if he thought that it would make a difference if it were a developer or private citizen that requested an "access exception." Mr. Reeve replied "No" and explained that he doesn't think that any citizen should look to the County to bail them out of a poor business decision.

Mr. Hancock referred to the soil data issue that Mr. Reeve mentioned and stated that he (Mr. Hancock) had been involved in construction and development for some time and never found a requirement to provide that kind of detailed information until the civil engineering was completed. Mr. Hancock also stated that he did not understand why Mr. Reeve thought that it should be a part of the approval then asked Mr. Reeve if he thought that not having the soil information at the moment negates the final review of all of the departments in the County. Mr. Reeve replied saying that it does and that he (Mr. Reeve) was not the one that drafted the code that directs the County to consider unusual soil, topographic, or property boundary conditions. Mr. Reeve further stated that it was a strict compliance standard and that some County employee included the language "unusual soils" so there is a County code provision that governs "access exceptions." Mr. Reeve said, "Those words needs to be given their proper due and this is separate from the subdivision approval process. It is a separate land use application. It's separate

from the subdivision approval application. It's a separate land use approval process that has its own separate land use code section so you can't say; well we will take care of that in the subdivision application process. That renders all the language and all the requirements and the application for this land use action completely irrelevant. Let's just waive all those code requirements; we won't have to consider any of those things because we will deal with it later. Once the County grants this "access exception", regardless of whether the subdivision goes through or not, this individual has an "access exception" and a granted proposed easement."

Mr. Hancock asked Mr. Reeve if his concern was that a subdivision review by the County Engineer's Office would not require civil drawings. Mr. Reeve agreed that it would be required but stated that it can't be waived in this situation because it was going to happen later. Mr. Reeve further stated that the code requires consideration of any unusual soil conditions and that a later review doesn't negate the required first review. Mr. Reeve described that there is a two-step review process of soil and engineering data and that the Board is required to strictly comply with the language of the code.

Mr. Hancock explained that a project's civil engineering needs to be reviewed by a qualified engineer and that the Board and planning division are not qualified to do that kind of review; therefore, that is why engineering is not required. Mr. Reeve agreed with Mr. Hancock but stated that the applicant can hire a licensed engineer and present that information to the planning staff on the second page of the application, but that page was left blank. Mr. Reeve further stated that the applicant has shifted the burden of hiring a professional engineer to the County and its resources, which is a problem.

Ms. Ehlers-Rhorer stated that she wanted to get things in chronological order and asked if the County owned the pond. Mr. Reeve replied by saying that the pond was owned by a private landowner. Ms. Ehlers-Rhorer continued by asking for clarification on property configuration and ownership. Mr. Reeve described that the retention basin had been in place for over 50 years and that the County's ownership of the retention basin would overlap with the time that pond had been in place. Mr. Reeve described that the access would cross a corner of property where the pond historically sat.

Ms. Ehlers-Rhorer asked Mr. Reeve for clarification on what property Mr. Rasmussen owned and if the land was swapped for the right-of-way granted by the County. Mr. Reeve explained that a portion of the County's retention basin berm was on Mr. Rasmussen's property, so Mr. Rasmussen's proposal is to swap land in exchange for an access easement. Mr. Reeve continued by further explaining that Mr. Rasmussen offered to deed land to the County so that the County could keep its retention basin berm on property that Mr. Rasmussen owned and in exchange, the County would deed Mr. Rasmussen a piece of property upon which Mr. Rasmussen could put an access exception if it's granted.

Ms. Ehlers-Rhorer said that Mr. Reeve confused her and asked for further clarification on what property Mr. Rasmussen owned. Ms. Ehlers-Rhorer asked Mr. Reeve if Mr. Rasmussen ever owned a rectangle property where the easement would go in. Mr. Reeve replied "No, that is public land and he (Mr. Rasmussen) now has an easement." Ms. Ehlers-Rhorer asked Mr. Reeve if the County was going to take a chunk of Mr. Rasmussen's property. Mr. Reeve explained that Mr. Rasmussen is offering a chunk to the County in exchange for access across County property.

Ms. Ehlers-Rhorer asked Mr. Reeve if all of the property used to be one plot, if Mr. Rasmussen already owned and lived in the house that is on the subject property, and whether or not Mr. Rasmussen acquired the pond property at a later date. Mr. Reeve replied by saying that he didn't know the history of the property. Ms. Ehlers-Rhorer explained that the reason she was asking questions was because she wanted to understand why Ms. Browning has objection to Mr. Rasmussen's project. Ms. Ehlers-Rhorer stated that she believes that the objection is due to the proposed subdivision. Mr. Reeve explained that Ms. Browning does not object to the subdivision, but does not want the subdivision to "unreasonably and unfaithfully burden Ms. Browning's property." Mr. Reeve continued by describing that if a road is built, on the berm of a 50 year old retention basin without proper engineering, it could collapse sending water onto the Browning property. Mr. Reeve said that Ms. Browning had experienced water on her property before because of multiple landslides in the area.

Ms. Ehlers-Rhorer asked for clarification on where the access easement was going. Mr. Reeve explained that the alternative location on the east side of the retention basin was not part of the record and the Uintah Highlands Improvement District was adamantly against the access being on the east side of the basin. Ms. Ehlers-Rhorer asked Mr. Reeve if the easement was ambiguous because it didn't specify where the easement was to be located or have a legal description. Mr. Reeve replied by saying "that's the first time I heard of that today." Mr. Reeve continued "What I am telling you is that, what Mr. Mendoza explained to you about this being a potential alternative, I have never heard that, it's not part of the Notice of Decision, and it is not part of the record that I think this Board can properly consider." Mr. Reeve explained that all discussions and all of the application's attachments focused on the access being on the detention basin's lower (southwest) berm. Mr. Reeve also explained that he was not aware of the alternative (east) location of the easement until Mr. Mendoza discussed it. Mr. Reeve stated that he did know that the Uintah Highland District was not interested in granting an easement.

Mr. Mendoza displayed Exhibit A, on page 15 of the staff report, at Chair Mumford's request. (Audio position 50:20-50:57 is inaudible) Chair Mumford explained that Exhibit A shows a 4,555 sq. ft. piece of property that Mr. Rasmussen is willing to convey to the County and a 3,767 sq. ft. area where the County would grant an easement. Chair Mumford continued explaining that he did not see an actual land swap, that Mr. Reeve referred to, but could see that Mr. Rasmussen is willing to correct an issue in exchange for an easement. Chair Mumford clarified, and Mr. Reeve agreed, that the County is not giving up property but is giving a property right in exchange for Mr. Rasmussen's property.

Chair Mumford referred to Mr. Reeve's description of the severity of a potential collapse of the retention basin and then explained that the provided maps, of the subject site, show that the Bybee Pond sits approximately 40 feet below the Browning property. Mr. Reeve replied saying "that is incorrect, the Browning property, if you walk the ground, it's clearly above and is a steep walk up to the Bybee Pond." Chair Mumford stated that it's possible that the map is showing the pond above Ms. Browning's property, not below. Mr. Reeve agreed. Chair Mumford asked Mr. Reeve if a berm still existed around the old Bybee Pond. Mr. Reeve replied by explaining that the pond had been decommissioned but part of it still had a berm around it.

Chair Mumford asked Mr. Reeve how the pond had been accessed historically. Mr. Reeve described that the property owners, in the existing and adjacent subdivision, had a beach and a dock and would access the pond through their own back yards. Chair Mumford stated that he thought that the County approved "access exception" was a very early step in the development process and that on-site stability issues would ultimately be addressed by going through the subdivision process, which hadn't taken place yet. Chair Mumford explained that he felt confused by Mr. Reeve's feeling that the County had erred because addressing stability issues hadn't taken place first. Chair Mumford felt that addressing stability, at the "access exception" level of approvals was like putting the cart in front of the horse.

Ms. Ehlers-Rhorer stated that Mr. Rasmussen could already access his own land (pond property) using the existing access at Mr. Rasmussen's house and that Mr. Rasmussen didn't need an access from the back. Mr. Reeve described that the County code has a separate process for granting an "access exception" and that the Board had to strictly comply with it. Mr. Reeve went on to explain that the code required substantial evidence and that the planning director had to consider things like unusual soil conditions and topography before granting an "access exception." Mr. Reeve further explained that he agreed with the Board about what information is required later (at the subdivision level of approvals) but felt that, from a practical standpoint, providing on-site stability information twice didn't make sense. Mr. Reeve stated that he didn't know why the County had decided to put the code requirements in place.

Board member Doug Dickson asked Mr. Reeve to clarify why the District Court, on January 27, 2015, decided to send Mr. Rasmussen's "access exception" back to the planning staff to reconsider it. Mr. Reeve replied by explaining that the court determined that Ms. Browning was not appropriately given "Notice"; therefore, the case was sent back to County planning so that Ms. Browning had an opportunity to be heard before the planning director rendered a decision.

Mr. Dickson asked Mr. Reeve if Ms. Browning just didn't want the subject property to be developed. Mr. Reeve replied "No", and then explained that Ms. Browning doesn't care who develops the property but does care how it's developed. Mr. Reeve continued by saying that Ms. Browning was concerned about being a down-hill property owner and wanted to make sure that, in an area with landslide and water issues, the development was done in a reasonable and professional manner, with supporting engineering reports and objective data that shows that it is safe and not going to impact her property. Mr. Reeve explained that Ms. Browning would be satisfied if all of the necessary data was provided and it was able to be determined, through substantial evidence, that an "access exception" was appropriate. Mr. Reeve summarized by saying that Ms. Browning was not trying to stop the development but wanted it to be done right. Mr. Reeve also pointed out that Ms. Browning was denied access to the subject property when she asked for permission to do her own engineering analysis.

(Audio position 59:14-59:53 is inaudible) Mr. Dickson asked a question about the direction of natural water flow. Mr. Reeve replied by saying that he is not representing himself as being an engineer or even knowing the property very well, but (Mr. Reeve) assumed that the County invested resources into a retention basin that is in a low spot where water would flow to. Mr. Reeve also stated that there is a stream that runs down toward the back part of the property.

(Audio position 1:00:26-1:01:50 is inaudible) In response to a question asked by Mr. Dickson, Mr. Reeve explained that the approval of Mr. Rasmussen's "access exception" shouldn't be left up to someone who failed to fill out the second page of an application; rather it should be left up to an expert that can understand retention basins and slope lines, and can give assurance that Ms. Browning's property will be safe. Mr. Reeve stated that Ms. Browning wants assurance through objective data.

Mr. Hancock asked Mr. Reeve if he was suggesting that the County Engineer is not an expert and could not make a decision. Mr. Reeve replied saying "Not at all." Mr. Hancock read the following from the Weber County Commission meeting minutes:

"Commissioner Zogmaister asked if all of the studies from the road had to be completed in order to grant this easement. Mr. Anderson, who is the County Engineer, his opinion is that the access is needed first in order to know if they can move forward to start the process of where the road would be located, its design, grading, geotechnical report, and water impact etc." Mr. Hancock continued, stating that the minutes went on to say, "Mr. Wilson said that if the road cannot be extended, the County can look at granting another easement and look at stated criteria to see if there is a better location for it." Mr. Hancock questioned Mr. Reeve saying that Mr. Reeve had, earlier, said that there was no mention of an alternate location of the easement. Mr. Reeve replied by saying that the record is the Notice of Decision and that he didn't believe there was any reference to alternate locations in the Notice of Decision or in the application. Mr. Hancock asked Mr. Reeve if he thought that alternate locations were not submitted as part of the County Commission meeting. Mr. Reeve replied by saying that the Board's job is to strictly comply with the language of the code and if the Board didn't like the code, everyone should call the County Commissioners and get it changed. Mr. Reeve continued by stating that the Board's job is to enforce the code because that is what the court said the Board's job is. Mr. Reeve said, "If there is a code section that says you are supposed to have substantial evidence and you're supposed to look at soil conditions and other things; we can all say we don't like it, but it is what it is. It's the code section."

Chair Mumford clarified, for Mr. Dickson that the reason the Court sent Mr. Rasmussen's "access exception" approval back to the County, was because of the lack of notification to Mr. Browning. Chair Mumford further clarified that the judge didn't make any ruling on the actual access being granted but did send the issue back to the County to make sure that notifications were correct. Chair Mumford explained that another reason the court may have sent the approval back to the Board was because the Board did not consider an earlier appeal because of timing and the date the earlier appeal was submitted. Mr. Reeve explained that the court remanded the whole issue back to the County in order to provide notice to Ms. Browning so that she could have an opportunity to present concerns prior to a new decision being made. Chair Mumford clarified that the issue had gone back to the planning division and a new decision had been made.

Ms. Ehlers-Rhorer stated that the property and easement exchange, with Weber County, would take place at the time the subdivision was recorded. Ms. Ehlers-Rhorer further stated that Mr. Rasmussen wasn't even proposing that the approval of easement or "access exception" take place unless he got an approval of the subdivision. Mr. Reeve explained that there are different parts of the approval process - one being the easement that is granted by the County Commission and the other being the approval of the "access exception" which is the "land use" step that is under the Board's purview. Mr. Reeve further explained that Mr. Rasmussen was seeking the approval of the "access exception" so that the granting of the easement would immediately occur. Mr. Reeve stated that the code requires certain things, from the County, and those things were the focus of their appeal.

(Audio position 1:07:40-1:08:35 is inaudible) In response to a statement made by Mr. Dickson, Mr. Erickson (County legal counsel) explained that it is not true that the Board was to always rule in favor of a landowner. Mr. Erickson further explained that the role of the Board of Adjustment (in a case where there is an appeal of a decision of the land use authority) was to determine whether the land use authority made the correct decision. Mr. Erickson, reading from the code, stated, *"The Board of Adjustment shall determine the correctness of a decision of a land use authority in its interpretation and application of the land use code and zoning maps."* Mr. Erickson continued by saying that the Board needed to review the record in order to be able to make the determination.

Mr. Mendoza referred back to the court's remand and affirmed that the reason Mr. Rasmussen's "access exception" approval came back to the planning division was because of noticing and that it had nothing to do with the substance of the decision to approve the "access exception." Mr. Mendoza referred to Mr. Reeve's statement, about how the developer should have known that the property was landlocked, and explained that being land locked is not considered but things like unusual soils, topography, or boundary conditions are. Mr. Mendoza emphasized the word "**or**" for the Board. Mr. Mendoza continued by stating that he believed that the land use authority could approve the "access exception" based on one (not all) of the considerations, i.e., unusual soil, or topography, or boundary conditions. Mr. Mendoza further pointed out that (in the Notice of Decision) the planning division had referred to more than one consideration (topography and boundary conditions) and that Mr. Reeve was correct when he said that the planning division hadn't received anything from a soil scientist that talks about soil type. Mr. Mendoza also agreed, with Mr. Reeve, about soil type needing to be looked at very closely by the County Engineer's Office and that soil information would be required to come from a professional who would be addressing soil at the subdivision level of approvals. Mr. Mendoza explained that the "access exception" approval is more like a conceptual approval which is a small step that gets Mr. Rasmussen to the next step which is the subdivision level.

Ms. Ehlers-Rhorer described that there appeared to be a chicken and an egg situation with a problem, where Mr. Rasmussen

doesn't want to spend any money without having access to the property and Ms. Browning doesn't want Mr. Rasmussen to have access to the property before knowing that the property is going to be completely safe. Mr. Mendoza explained that, when consulting with the public, the planning staff will tell an applicant that they can't get an access exception until they have access because one of the things that a landowner has to show is that they have appropriate and legal access. Mr. Mendoza continued by stating that history, in Mr. Rasmussen's case, has nothing to do with the approval; although, the code does say that one has to have access due to historical use, court decree, or execution of an easement. Mr. Mendoza pointed out that, according to the County Commission meeting minutes, an access easement had been approved.

Mr. Mendoza referred to Mr. Reeve's statement, about the subject property being landlocked, and explained that the property being landlocked is not something that the planning staff considers. Mr. Mendoza also explained that having a landowner know that the property is landlocked is also, not something that the staff considers. Mr. Mendoza continued by describing the criteria that the staff does consider. Mr. Mendoza explained that "infeasible" is one of the criteria and that someone may be able to spend a lot of money to make something feasible; however, the planning staff never felt that Mr. Rasmussen was trying to get out of building a road because of financial concerns. Mr. Mendoza continued by pointing out that "practical" is another criterion and the definition of "practical" shows a synonym for the word which is "ideal." Mr. Mendoza stated that the situation was not ideal and that the staff thinks it is not practical to construct a road for all the reasons that had been discussed earlier and listed in the Notice of Decision.

Mr. Mendoza spoke to Mr. Reeve's concern about not having seen any studies on how a driveway would affect the area or the existing retention basin. Mr. Mendoza explained that the code (for an "access exception" approval) did not require studies but studies would be something reviewed in depth, once Mr. Rasmussen gets to the subdivision level. Mr. Mendoza continued by explaining that the planning staff looks at whether or not construction of a road is infeasible or impractical. Mr. Mendoza acknowledged that hiring a professional to provide studies at the "access exception" level of approvals is perfectly acceptable and that in Mr. Rasmussen's case, studies were not provided. Mr. Mendoza described that the planning staff did find "substantial evidence" which was an existing lot in a subdivision that is an "R" (Restricted) lot. Mr. Mendoza explained that an "R" lot is one that has slopes at or exceeding 25% and in the minds of the staff, the slopes were "substantial." Mr. Mendoza also referred to the fact that the planning staff relied on a Utah Geological Survey map - not a survey-grade - that shows potential for faulting in the area and because of that map, the planning staff felt that it was not practical to build a public street that would provide access to such a limited number of homes and then have the public be responsible for the ownership and maintenance of that street. Mr. Mendoza spoke to Mr. Reeve's concern about an area on Mr. Rasmussen's application being left blank. Mr. Mendoza acknowledged that the area was left blank but explained that applications are not always perfect and when the planning staff sees a lack of information, the planning staff will reach out to the applicant and do everything necessary to acquire that information. Mr. Mendoza stated that he had not been involved with Mr. Rasmussen's application from the very beginning but did confirm that, earlier, the staff member involved had reached out to Mr. Rasmussen and had other discussions that provided enough information to make the planning staff feel comfortable moving forward with Mr. Rasmussen's application.

Mr. Mendoza stated that Mr. Reeve had earlier claimed that alternatives were not considered. Mr. Mendoza disagreed by saying that alternatives were considered and had been discussed earlier. Mr. Mendoza listed the alternatives as being off of Melanie Lane and through a vacant lot. Mr. Mendoza described that the access off of Melanie Lane had difficulties due to steep slopes, the location of an existing home, and the location of a drainage easement.

Mr. Mendoza reminded the Board that the discussion was not about locating an easement but was about whether or not a public street should be built to provide access for Mr. Rasmussen's subdivision. Mr. Mendoza continued by describing that the access, through the vacant lot, also had difficulties because that alternative would create a situation where two lots would become corner lots and corner lots have greater setback standards on the side that faces a street. Mr. Mendoza explained that making the two lots (that had already been developed) corner lots could create a situation where the existing homes could become illegal because they may not meet the corner lot setbacks. Mr. Mendoza stated that turning the existing vacant lot into a public street was not ideal or practical. Mr. Mendoza further stated that he disagreed with Mr. Reeve because the planning staff did look at alternatives very closely before rendering a decision.

Mr. Mendoza addressed the idea that there had been a land swap by explaining that the granting of the easement was a separate decision and what the planning staff was looking at was whether or not Mr. Rasmussen had an easement, not that there had been a land swap. Mr. Mendoza explained that a land swap was beside the point and Mr. Rasmussen had approached the County and was successful in getting the easement; therefore, met that requirement. Mr. Mendoza stated that he disagrees with Mr. Reeve when Mr. Reeve says that Mr. Rasmussen has to analyze all of things like soils, and topography, and boundary conditions. Mr. Mendoza further stated that soils, topography, and boundary conditions can be looked at

separately.

Ms. Ehlers-Rhorer asked if it would be feasible for Mr. Rasmussen to build the driveway before he does certain tests. Mr. Mendoza stated that the County will make sure that the retention basin is safe and, through the subdivision process, the location and construction details, of anything built on top of the pond's berm, would be more specifically reviewed. Mr. Mendoza continued by saying that the County has a responsibility associated with that retention pond and would protect everyone around it. Ms. Ehlers-Rhorer asked if there were still plenty of hoops that Mr. Rasmussen would jump through before the driveway could be built. Mr. Mendoza explained that Mr. Rasmussen would be required to provide professional information, like that which Ms. Browning had requested, but it comes after the "access exception" process. Planning director Rick Grover stated that, as part of the conditions of approval, Mr. Rasmussen would be required to satisfy all service provider comments which meant that any requirements, from Weber County Engineering Office, would need to be met before subdivision approval.

Mr. Dickson asked if the previously discussed alternatives and the court order of January 27, 2016 had been recorded in the planning division's logs or if they needed to be referenced as part of the Board's action. Mr. Mendoza explained that the alternatives were documented in the Notice of Decision. Chair Mumford confirmed that the alternative involving the corner lots was also in the Notice of Decision.

Ms. Ehlers-Rhorer said, "What about the exact location of the easement." Mr. Mendoza replied by saying that the exact location was not a real consideration for the planning staff. Mr. Mendoza continued by saying "the fact that Mr. Rasmussen has secured the easement is what I feel satisfied for the requirements here." Mr. Mendoza explained that if the location of the easement needed to move, the planning staff would have to address it.

Chair Mumford stated that the approximate location of the easement had been decided upon, but the exact location had not. Mr. Mendoza stated that he reviewed the County Commission meeting minutes and tried to pinpoint a location. Mr. Mendoza agreed, with Mr. Reeve, that all of the paperwork had shown the access easement being on the southern side of the basin. Mr. Mendoza continued by explaining that the neighbors, living right next door to the proposed access, were concerned with the driveway being constructed on the southern side. Mr. Mendoza further explained that he thought that Mr. Rasmussen had talked to the neighbors and considered locating the driveway somewhere else to benefit them. Mr. Mendoza described that moving the driveway to another location would not change the planning division's decision to approve the "access exception" because the considerations would remain the same. Mr. Mendoza then described that during the subdivision process, the County would look at the access and its construction-type documents like improvement plans with profiles that show depths of road base and other things.

Chair Mumford stated that the case was an appeal of an administrative decision and the Board was entitled to deliberate. The Board moved to another room for deliberation.

The Board members and legal counsel returned from deliberation and Chair Mumford asked for a motion.

MOTION: Board member Bryce Froerer moved that appeal BOA 2016-03 be denied; based on the criteria in Section 108-7-31 of the record, showing that the requirements had been met and that there is substantial evidence of compliance with the ordinance. Mr. Hancock seconded. A vote was taken with Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer, and Chair Mumford voting aye to deny the appeal. Motion Carried (5-0).

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

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

Charles Ewert said the appellant is appealing a decision for a Recreational Lodge on Lot 6 of the Sanctuary Subdivision. The Sanctuary Subdivision is located in this area of the Ogden Valley as they go through Green Hill Country Estates Subdivision. The lot in question is Lot 6 which has about 44 acres that was presented to the Planning Commission for review. They have subdivided lots which are accessed by a series of private drives through private streets; that go all the way down to a public road which culminates in a turnaround. This is where it picks up to a private driveway where it would go up Maple Drive which is a private drive through Green Hill Country Estates Subdivision where it picks up a private driveway and is platted up to the Sanctuary Subdivision, which provides access to those lots. At the time those subdivisions were installed, access was provided

to those lots. The primary claim that the appellant is making in this particular case, is that the county had an obligation to defer to the scope of the private access agreement between the Greenhills HOA and the permittee. Basically what they are saying is the Planning Commission had the responsibility of reviewing that easement agreement, whether or not the applicant had access and the appellant is asserting that access doesn't exist. When the permittee petitioned the county for a permit and petitioned the Planning Commission for approval; he did affirm that he has access. As part of the record in the meeting, there was an individual from the Greenhills HOA who read into the record the excerpt from that agreement that discussed what types of uses were allowed in the Sanctuary Subdivision in order for that access across the Home Owner Association roads to be granted.

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

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

Chair Mumford asked this appeal of the Sanctuary Recreational Lodge conditional use permit, it says to operate a lodge on Lot 6; and their packet specifically on Page 44 of 61, there is a picture of a lodge, is this lodge already constructed or is this a conceptual rendering. Is the conditional use permit to operate this lodge, like the first step of many steps for this lodge to come about. Mr. Ewert replied it was the applicant's intent to give the county as much information as they need to provide for the esthetic treatment of the site, provide for vegetation, and that kind of stuff. They have conditional use permit process which granted the design review, where they have been asked additional questions like access, esthetics, vegetation, and other stuff which they did do. The next step would be to apply for a building permit.

Zane Froerer, Green Hills HOA Representative, 2510 Washington Blvd Ogden, said that the county really stacks the deck against the appellant. They have the attorney changing position, and he gets bookended between the staff report and the guy coming up and talking again. He is going to do his best to overcome these hurdles. He will boil this down to one thing here, don't care about the lodge and in fact they have reached out and discussed compromises to allow those to go in. So this is not a case

where the Home Owners Association is concerned about the lodge. They have one concern; that is the use, the maintenance, and congestion of traffic flow on Maple Drive that is a road that they own. They have an interest to limit the scope and maintenance of right-of-way, for use by Sanctuary. The statuary laid out in his brief is very clear; a conditional use is one where the county should consider detrimental impacts upon other land owner's property interest. The problem here is the Planning Commission decided to ignore Green Hills' property interests with the agreement. They are not asking for the county to decide whether or not there is legal access, whether there is physical access, whether they are taking a mule train up there. What they are asking is for the county to respect their property interest; that is the right to charge Sanctuary a fee to contribute to the maintenance.

Zane Froerer said that he was going to go into how the change of use from a single family dwelling does detrimentally impact his client's property here. The problem is that is not on the record because they didn't even get into it, because the Planning Commission was instructed to not even consider it. The agreement between these parties defines their property interest; this is not a situation where the county is being placed in the position of interpreting property interest. They are being placed in the position of doing exactly the job of the statute requires them to do; which is look at, define property interest, and then determine whether any detrimental impact upon that property interest should be mitigated. We didn't even get a chance to talk about mitigating the impact on their right-of-way, because the county said they are not going to consider your right, or the scope of your right in this road. What he finds funny is when the county roads are involved; the county requires all kinds of considerations to make sure this proposed conditional use is not going to cause a problem with their roads. But when it came to his clients road and whether or not this is going to have an increase amount of traffic; this is going to cause increased damage, this is going to increase cost for maintenance, and the county's position was basically to punt that. We're going to rubber stamp this conditional use, but they recognize that there might be a problem here, so Green Hills if you're going to sue this guy and get an order that states that this is going to impact their road then this permit is void. That is absolutely the county punting that dude, that's the county's dude, by statute and by ordinance.

Zane Froerer said that the county should have looked at the agreement; and should have said, *"What is the use that was agreed upon for this right-of-way that was on the plat."* The right of way that is the basis for us granting a conditional use permit. What use is provided in this agreement because that would define his client's property rights, his client's property interest, that they came to the county saying we need you to protect this. Before you grant a conditional use permit, you need to look at whether or not going from a single family dwelling to a ten room lodge, and right now it is a 10 room but why couldn't it be a 16 room lodge. They are essentially talking about changing it from a single family dwelling to a hotel on top of the mountain; with guest services, food services, rental shops, and repair shops. He believed that by itself is enough to demonstrate that maybe they should look at that and see if there is going to be a detrimental impact upon Green Hill's property interest in protecting their right-of-way and the county didn't see it that way and that's where they erred. He didn't think that they have to come up with these studies, and he really like the staff report.

Zane Froerer said that the staff and the applicant have as much time as they need they could do their studies; and anybody who is protesting has a matter of days, after getting notice of a Planning Commission meeting to come in and present their case. Is it the county's position really that in those days a protest should come up with studies, reviews, and explanations; there is no way that is a standard, there's no way that could possibly be required. That is what the Planning Commission should require of the applicant when the issue was raised; of whether or not there's a property interest. In the agreement it states they are only going to build a single family dwelling on that lot. Now you are coming to us and asking to use that same access that was set aside for a single family dwelling, and now you are asking to do a 10 room lodge, a repair shop, and a rental service. Those are all accessory uses so if the conditional use permit is granted those are also granted. They were granted and there were no mitigation to limit those. There was no mitigation to limit anything other than the number of rooms. Once the 10 room lodge is allowed, what would prevent the applicant from coming back and asking for 6 more rooms and make that a 16 room lodge.

Deone Ehlers-Rhorer said that to her understanding they were granted the conditional use permit to build it, but they didn't necessarily give them permission to go across the road. That is something they would have to work out with you. Mr. Reeve replied they would love it if that were the case. In fact the reality is just the opposite. The conditional use was granted based upon this road being the only access to that lodge. They could not get to that lodge right now any other way. That access was dealt with in a plat, there was a plat recorded and that plat did give legal access, since then the physical access has been improved. That plat refers to the right-of-way and talks about the Maple Drive. It also refers to an agreement called the Loop Trail Agreement; the Right-of-Way and Loop Trail Agreement were created by the same easement agreement and declaration covenance. So when the plat was recorded; legal access and physical access were granted to the Sanctuary under the terms and conditions of the agreement. The terms and conditions of the agreement vest in Green Hill the right to claim a contribution

from the Sanctuary owners to maintain that road because of their access. That also granted to Green Hill the right to seek a construction bond, anytime there is construction going on up in Sanctuary because they are using that road. It also granted a limit on that use; the traffic flow of that right of way, when it stated very clearly, it will be the development of the Naas Property which is currently Sanctuary, will be limited to 13 single family dwellings, so that creates a property interest.

Deone Ehlers-Rhorer asked so does that create a property breach; if they are not complying with the agreement they have with you then take away their access to the road. They were given access under those rules. Mr. Reeve replied that he agreed; here he had the problem with the county's decision impacting Green Hill's property interest. Under the conditional use permit process, his client Green Hill are entitled to put before the county, a request that the county imposed a mitigation condition upon the conditional use permit. When the county approved this without even considering whether it would mitigate any detrimental effects upon the private section of Maple Drive; that creates precedence and his client had 15 days to appeal that to this board. If this board rejects their appeal, they have 30 days to appeal that to the court of law. If they do not do that, they do not get to challenge that decision ever. He is not willing to have his client take the risk; that if they sue the developer of Sanctuary without dealing with this administrative process. The developer won't come back and say, *"They are challenging my right to access this under this decision that was made by the Planning Commission. They didn't exhaust their administrative remedies, they didn't go through the process and challenge that decision, grant him that right and now what they are doing, they are suing me and they are, and they are not allowed to do that unless they appeal all the way through."* By the county getting involved, without first doing exactly what was said before by asking, *"The developer the owner of Sanctuary, you own this lot, you say you have access through this private right-of-way. Green Hill over here are saying that you do have access, but you can't use it for anything other than single family dwelling, and if you are going to use it for something more, that's going to have a negative impact on you lot."* The Planning Commission could have said, *"As mitigation, they are going to require them to sit down, and negotiate an increase in your contribution. You have to work that out first. Once you work that out, if you work that out, then you get your conditional use permit."* The problem is that the county put the cart before the horse; they give the developer the conditional use permit, and not going to worry about if it impacts this road.

Zane Froerer said that is the problem with Paragraph 14 in the decision; he noticed in the staff report that this is what they want, it is but it's tweaked just enough to allow the county to basically rubber stamp this without really doing its job, without looking at the detrimental impact on his client's property interest. This includes not having anything else other than the occupants or the use associated with the single family dwelling driving up and down their right-of-way. That is right in the statute and in the ordinance; they are not asking the county to decide whether the Sanctuary has legal access or physical access. They are asking the county to look at the agreement; they are impacted because under the agreement they don't have this access. If the county is going to say they can use it that is going to impact their ability to maintain the roads. Right now Sanctuary can demand that Green Hill maintain that road. The declaratory judgment relieves Sanctuary of any obligation beyond the contribution to maintain that road. What the county has done and said that they are going to increase the burden of that road without mitigating it, without even considering whether they are increasing the burden. That is the problem he has with the Planning Commission's decision, they didn't even look at his client's property burden. They basically said that's a private agreement, they didn't want to get into that, and let them work that out that they are detrimentally impacted. They are going to approve this even though the statute required them to look at traffic; the ordinance required them to look at traffic, it doesn't say "may" it states "shall" look at traffic congestion, traffic safety, and they may impose conditions to mitigate. There is an important distinction there; he does not represent the residents of Green Hill. Some of them may have problems with anything going up there. That is not their concern, the HOA concern is they have duty to maintain the road, they want the county to take that into consideration in granting this.

Chair Mumford said for clarification he is looking at Page 19 of 61 of the staff report; and this was all during the Ogden Valley Planning Commission which is part of the record. One individual stated that he had 84 signatures of people that are opposed to this because of water, sewer, well head protection, DWR's, water sheds, and there is a whole list of things yet you are saying it's just the road. So the HOA is not opposed to anything other than mitigation on the road. Mr. Reeve replied that he was the only one that spoke on behalf of the HOA; those people were speaking on behalf of themselves. His client had three primary concerns; the first being the contribution to the maintenance of the road. The second was the construction bond. They want to work those two out, and the third is if they believe that he can construct a 16 room recreational lodge, or a ten room recreational lodge, and that's permitted under the agreement, then they should sit down and resolve that. They could work to a compromise on this but his clients are going to draw a line on if they are going to put one of these on every single lot. That is private; that third one is not something the county gets involved. That was a private agreement dispute, does that allow the developer to build 13 residential lodges, rather than 13 single family dwellings. That is something that the parties can work out. The problem is the rate of contribution and the bond for the construction. They are not asking the county to set those amounts either; what they are asking the county to do, is before they approve the conditional use permit, they do see a detrimental

impact. They are going to ask that they mitigate that by negotiating with the HOA in working out a rate increase, and a construction bond that you can mutually agree upon and go from there. Some of the residents don't like the lodge but they want to be good neighbors, some of them do and he knows that you have had some bad experience with some of the neighbors. As far as the people that he works with the HOA, they want to be good neighbors; they want this to be a success. But they do have right and they are defined by the agreements, and they are going to protect their rights. It's going to start with standing up to the county, when the county bulldozes us over, and says they are not even going to consider whether or not this is going to impact your agreement. That's their big concern here tonight.

Chair Mumford said that he read somewhere that this concern came up during the Planning Commission and under the decision there was Item #14; the CUP approval is based upon legal access existing by Maple Drive in the event that it's proven that this access is not legal or valid, then the CUP is invalid. He read that somewhere in here that you were okay with that as an attorney for the HOA. Mr. Reeve replied when they were talking about it, he was okay with that as a condition precedent, before you get this, if you can establish this access and all this will work then yes. If they can work out that there are no detrimental impacts, or that they have access or the agreement allows them to build a recreational lodge up there, if it's within the scope of the agreement then yes. Sanctuary can use the right-of-way, up to and to the extent of what is allowed under the agreement. If they can work that out, whatever it is whether it's the court saying this is what they're allowed to do whether it's the parties coming together agreeing on it. His point is the HOA is not interested in stopping the recreational lodge; they are fine with the recreational lodge if they can work out protecting their property interest and protecting that right-of-way. They need to understand he was getting questions and he was trying to express what he was saying. If there were any misunderstanding; if as a condition precedent to that conditional use permit, if the parties or court can define what this scope is, or work it out and that mitigates the damages that would be imposed on his client.

Chair Mumford said the property right is the road. Mr. Reeve replied the property right is the road; his client owns the road and they have an obligation to maintain the road, they have the right to limit the use of the road.

Phil Hancock asked how the HOA enforces that right. Mr. Reeve replied that currently the way that it has been enforced is they charge the rate. Phil Hancock said not the mechanics; he should have explained that differently. By what authority, power, statute, State or Local County, is the HOA able to enforce their requirements. Mr. Reeve replied that it is a private agreement, so it can be litigated though the court system, and then the judge would issue an order saying they are right or wrong and there they would go. Mr. Hancock said there is no state law that says that they have to comply with the HOA requirements as part of the nature way. Mr. Reeve replied there is but Sanctuary is not part of the HOA; the Sanctuary is separate from the HOA, it is the neighbor. If the neighbor is using your driveway to get to their house, and the neighbor has a house there and they decide to build a 10 room hotel and still use his driveway. He is going to have some concerns that it's going to have an impact on his driveway, and that's the HOA. That is what they are saying, the Planning Commission should have said, they are right, there is a detrimental impact on the road for changing the use.

Deone Ehlers-Rhorer said that's when he can say, they can't use his driveway anymore. Mr. Reeve replied that is true, but the county can't subvert that right, and come in and say this is particular to conditional uses, because the county shall consider traffic, traffic congestion, and other detrimental impacts on a case by case basis. That is definitely a part of this, if the parties can't work it out and that may end up being the case. The problem here is that this creates a land use right, that he has a very narrow window to challenge. That land use right could end up affecting Green Hill's right to close that off; because now when they go to close that off, Sanctuary will say that they have a legal access. The conditional use permit was based on that this was their access for the 10 room lodge.

Deone Ehlers-Rhorer said as long as they follow the agreement they made, if they didn't then they would have to go to court or they would have to come up with another agreement. Mr. Reeve replied that is not part of the conditional use permit. Ms. Ehlers-Rhorer said no that is totally separate. Mr. Reeve replied that it could be but in this case it can't because if he were to sue the owner of Sanctuary and say that he had to stop using the road. The owner of Sanctuary is going to come back and say it's on the plat, he has a conditional use permit, you should have challenged those when you had the chance before the county, and you lost that chance, now you can't go back and challenge it. He agrees but the problem is that the judge could go either way and he is not going to advice his client to take that risk.

Deone Ehlers-Rhorer said it seemed like they have the same thing like the last one with the chicken and the egg; he wants to see if he can do his project here, and if he can he is going to work out all the details. Why go through all that if he can't do his project. Mr. Reeve replied because this is different, they already know who comes first. It's not a situation where does he want

to develop this or not they know that he has access; they are asking what kind of access does he have, and based on what kind of access that he has does he need to mitigate the impact on his clients property interests. That is not a survey or bunch of studies that is right in the will house of deciding whether to issue a conditional use permit; like looking at somebody's driveway, allowing their neighbor who uses that driveway, to change the use from a single family dwelling, to a 10 room recreational lodge. The county can look at that and say to him, he is going to have an impact on his neighbor's driveway. The neighbor is objecting because this is going to cause a lot of wear and tear on his driveway, and that is going to detrimentally impact his right. He owns the driveway, he maintains the driveway, and he has the right to say that guy can only use it for a single family dwelling. He is being told that the Planning Commission can't help him here even though the statute says that they can mitigate. He knows that they can mitigate so the problem is that the Planning Commission didn't even get to this step. They just said that just because this is a private agreement, they are not going to consider whether he is impacted by this decision. The problem is the statute and the ordinance requires the Planning Commission to consider it. Whether or not they end up imposing a mitigation that is up to them; but the problem with the Planning Commission's decision they didn't do the first part, the mandatory consideration and review of whether there were detrimental effects.

Chair Mumford asked if the Sanctuary contribute to the HOA for maintenance of the road. Mr. Reeve replied yes it does, and that was one of the three things that he brought up. Their rate of contribution, the amount of the bond they would have to post for construction use and those are two of the biggest issues that are being detrimentally impacted by the county's decision. The burden and repairing the road is being directly affected by the conditional use. One of the mitigation would be to work out with Green Hill and figure out what the rate is going to be, and it has to be more than a single family dwelling. Right now all the lots in Sanctuary are assessed for repair and maintenance of the road at the same rate as each of the residential lots in Green Hill. What they are doing is taking one of those lots and changing from a single family dwelling into a commercial enterprise; so the detrimental impact is the increase cost of maintaining the road based on the use of that recreational lodge.

Phil Hancock asked if the HOA doesn't address that potential. Does the HOA have the ability to adjust the rate since they don't have a vote, could they choose their requirements? Mr. Reeve replied that it does through the agreement, the agreement that the county refused to consider. The agreement says that the Sanctuary has to pay so much towards that rate, and that rate is the same as the residential rate charged by the HOA. They can't adjust it because Sanctuary isn't part of the HOA, if they could they would sit down and the board would pass a resolution that states Sanctuary Lot Owners that have a recreational lodge, they are going to charge X amount, and they can't do that because Sanctuary isn't part of the HOA. That agreement binds the HOA hands and prevents them from assessing a rate higher than what the agreement states, or higher than from their own members who are all residential users. Even the county ordinance recognized that there is a different impact in use between and single family dwelling and a recreational lodge. A single family dwelling is a permitted use whereas the recreational lodge is a conditional use; that is because they recognize that there is going to be a bigger impact on infrastructure, utilities, neighborhood of a commercial enterprise such as a recreational lodge versus a family living in their home.

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

Chair Mumford said that they are not opposed to the lodge; so there is just a concern about the road. Mr. Reeve replied that it is this strictly about the road. He is confident that the parties will negotiate and work this out; because his client doesn't want to spend the money fighting over it. Mr. Charlwood is a businessman and wants to be sensible about it; the problem is he has to protect his client's property interest. He sort of disagrees with Ms Ehlers-Rhorer; he could take the risk and not challenge the county, but his experience in land use issues, if he lets this window close and there is a chance that it could impact his client in the future, he is not willing to take this risk. That is the primary reason why they challenged this decision; essentially they may end up in court with the Sanctuary owners over the scope of the agreement, but right now they are asking the county to do their job and not dump that back on them. The county should at least consider the way this change in use impacts that right-of-way; that makes it simple and straight forward, they are not asking for anything other than to at least consider the detrimental

impacts this will have on the right-of-way. Just look at the agreement and it will guide them and it will tell them that there are detrimental impacts.

Chair Mumford said that it appeared that staff put in many conditions to protect a multitude of things. Mr. Reeve said they did for the most part; many of the more reasonable residents were quite pleased. The problem is when it came to that one stretch of road, the county basically got out from underneath its duty to determine whether there was an impact on the use of the road, by saying the use is defined by this agreement, and because it is a private agreement they are not going to consider it. When in reality that agreement would have informed the Planning Commission there is a huge difference between a single family dwelling and a 10 room lodge, and maybe there are some detrimental impacts on Green Hill's rights that should be mitigated. By not considering the agreement and refusing to even look at the agreement they avoided that; and he made this in his notice of appeal, by not having the agreement as part of the application, the application was not complete. When the Planning Staff and the county saw that there was a private right-of-way here; on county roads they know what is going on there, but what is going on with this private right-of-way, what is the scope of this private right-of-way, what is the use of it, bring that agreement in so they can determine whether or not there are detrimental impacts to the owner of that land that is going to be affected by that private right-of-way. Their position is that before the design review ever took place, that agreement should have been provided to the county, so they could have looked at it and made that determination.

Chris Crockett, Legal Counsel asked to interject a few comments. He just wanted to address a couple of items that were brought up and to reference some statutes and ordinances for the Board to consider. State Code under CLUDMA 17-27a506 addresses conditional use, Subsection 1, *"A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance."* So under that, *"State Statute gives county the authority to establish what standards are going to be applied for a conditional use permit."* Subsection 2a, *"Conditional Use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards."* Those standards are identified in Weber County Code Section 108-4-5. Another issue he wanted to address, as far as potential litigation in court and taking the requirement that an applicant exhaust administrative remedy that is a requirement imposed by CLUDMA. If the court is presented with a question that doesn't fall under CLUDMA, they are not barred from that rule. For example if a court is presented with a private agreement between two parties and there is an allegation of breach of contract, the court has adequate remedies and resources to address that independent of CLUDMA. Another issue is the definition of a conditional use in zones there is permitted uses; a conditional use is a permitted use with conditions. Finally he wanted to address a statement that was made at the beginning; stating that the county has stacked against the applicant. In discussing with the county attorney about assignments for deputy attorneys within an office, it had been determined the deputy attorney assigned over Western Weber at the Planning Commission level would handle Board of Adjustment appeals for the Ogden Valley, the appeals that come from the Planning Commission. Land use decisions that originate from the Ogden Valley Planning Commission the counsel for the Board of Adjustment be assigned for Western Weber. That is an effort to promote all fairness to all that are involved.

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

Charlie Ewert said in the beginning of how this should go and Mr. Froerer's opinion of how this should go were pretty far apart, but not after what was just said. He wanted to address a couple of things that it's possible that the private agreement is inadequate to address all of the uses that are allowed by the zone. That seems to be the case here that the private agreement didn't contemplate the possibility of the detrimental effects of all the uses of the F-40 Zone specifically the conditional uses that are allowed by the zone. To his knowledge that hasn't been added in since the existence of the agreement of those standards. That's one part; the other part is he doesn't disagree that the county should have considered the detrimental effects of the use on the right-of-way that is something they do when they do conditional use permits. They do consider traffic circulation, traffic flow, mitigation of potential congestion, etc. As they did their review of the addition of the 10 room lodge, what they provide in Paragraph 11 of the BOA Staff Report is the review that they did do for the County and the Planning Commission for their consideration of the permit. This is where a number of the conditions to the permit came up, with the number of conditions came out of the analysis of traffic circulation, access, right-of-way conflicts, etc. When they are looking at private right-of-way

or public right-of-way; they want to be fair to both and they want to do a fair analysis where there may be a little more emphasis on public right-of-way because of the public nature of it and the financial resources that go into maintaining and operating it. It doesn't mean that they shouldn't provide efficient and adequate review of how a use will affect the private right-of-way and they did that.

Charlie Ewert said if they go to Page 2 thru 3 of the Planning Commission Staff Report; Page 31 of 61, it starts with the italicized subsection Access and Circulation. It's the information the Planning Commission had for their review, *"The site is accessed through the Green Hills Subdivision along Maple Drive. The applicant asserts that an adjudicated right-of-way exists, with an access agreement, between the Green Hills HOA and himself, which provides the opportunity to access the site across private property, as proposed. The agreement is a private agreement between the applicant and the HOA. Enforcement of it is the responsibility of the HOA and the applicant, and as such the county should offer no opinion as to its provisions. The county's public right-of-way ends at the end of 9000 East Street."* The staff report goes on to provide an analysis of the different views; it's not a single family residents and that's true. So wanted to determine what the additional effects of that would be, *"In determining how the use will affect traffic demand, the Planning Commission should focus on whether the use will cause any material degradation in the level of service of public road infrastructure. It is anticipated that this lodge will average above 50% vacancy rate, with occasional peak times at full occupancy. In Utah, the typical year-round single family dwelling that contains a household of 6 people generates about 32.7 vehicle trips per day,"* and they go on to do a full analysis. They talk about traffic as it relates to the road infrastructure. They talked about the right-of-way, and what was pointed out in the meeting, and they also talked about how the conditional use chapter allows for some of these provisions to be applied to private right-of-way, it just talks about access rights, and it was provided for the Planning Commission to consider. It was considered by the Planning Commission, that access from 900 East all the way up through Green Hill Subdivision, and the detrimental effect of the conditional use permit in terms of additional traffic demands it was determined and conditions related to it. They don't disagree that it should have been considered.

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

Doug Dickson asked was the issue brought up in compensation from the neighbor for maintenance on the road and if it was what was the county's response? Mr. Ewert replied if they look at the conditions of approval; number 12 was intended to address that concern. Now an ongoing maintenance agreement was not something that they addressed that concern. But number 12 discussed improving the road due to damage.

Chris Crockett said he would refer to the Rules of Order, on Page 3 Section 4, on Consideration of Application, it states on procedure, *"Any person may appear in person by agent or attorney in the meeting of the Board of Adjustment in the order of procedure and hearing of each application shall be as follows: Presentation of the Planning Staff of the application including staff recommendation. Presentation shall include the reading of pertinent written comments or reports concerning application. Additional presentation by the applicant or his or her agent; public comment in favor of the application and public comment against the application, rebuttals by invitation of the chair."* Chair Mumford said that the board doesn't take public comment on an appeal. Chris Crockett replied with that he would say that he would leave it in the discretion of the chair. But with the comment that since the underlying application to have this conditional use permit that was submitted by this individual; he has an interest in this application, and to adhere to fairness and due process to all parties, since his application is being discussed it would be appropriate to hear.

Tim Charlwood, 9000 E Maple Drive, Sanctuary in Huntsville, said that was quite relevant that he has gone through this process; he has been close with the President of the HOA, and attempted to do all the right things. They did a couple of large $100,000 bonds when they were doing the road construction, which is ten times what they do with homes. They paid and when they did all that damage it was put back right and remedied by rock and post construction, there was never a problem. Recognizing that the recreational lodge may have some additional traffic; he went to him and suggested that they should be paying an additional doubling of the fees, for the road contribution, which he thought was very fair. He went to his board and came back saying that he couldn't accept it because so many of the homeowners were doing nightly rentals illegally and it would be a conflict and he

was refused. In subsequent discussions with Zane Froerer; he brought the attention that they wanted three things, which was increase piece for the road they talked about the increase of doubling the fees and they thought it was fair. He wanted to increase the bond, which has now gone from $10,000 to $15,000 for every construction, and he had no problem with that, but that was the first he had heard about it. Then he said that he would like for me to restrict the development to six recreational lodges; and his response was that six recreational lodges is effectively 16 rooms and he would never do 16 rooms and he never has any intention of doing 16 rooms. He would be happy to restrict the number of bedrooms in any dwelling to ten, and that was very fair. That was the last he heard to this whole lack of communication that has been going on that could have all been resolved, and he even asked to go to the HOA Meeting but was refused. So there is sort of a lack of communication between certain members of the HOA that he tried to put right and he can't do more than he has done. He has gone beyond mitigation in reducing the homes. He does have for the use which recreational is included; they did sign an agreement with all ten members of the board back in 2004, saying that they would not oppose any entity or use under the F-40 Zone. What they need now is just to say, even if this is refused, he would stand by his word and what he offered to pay them, irrespective of whatever it is. As the HOA President had said it may have bid if it is a bond treaty arrangement; and that would be nice and that's how they left it.

At this time the Board Members left to discuss and deliberate. The Board Members returned from deliberation and discussion.

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

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

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

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

Chair Mumford asked legal counsel what his opinion on an applicant that is not present; do they have a due diligence to act without hearing from him, especially in this case where it's an interpretation request. Courtlan Erickson, Legal Counsel replied that interpretation requests are not well defined in their ordinance, there are not standards clearly explained on what to do in this situation. He would say that if they feel there is a need to have the applicant present for purposes of making a correct decision, then they could entertain a motion to table the discussion until the applicant could be here. Or if they feel they can move forward then they could choose to move forward.

Director Grover said just to give them a history on this, they have been working with the applicant for quite some time and it surprises Mr. Ewert that he is not here. One thing that he is concerned about is that they did receive a letter from an individual in the area that has some concerns about it, and the applicant has not seen this letter, or had any opportunity to possibly address that, which may or may not affect their decision. If it does affect their decision and he is not here and he is not aware of it that does concern him. He does not want the Board's decision to change without the applicant being aware of that; but he knew that the applicant was in an extreme panic mode as it is affecting his lively hood, because he wants to relocate his facility into this location. He didn't know if that helped or hindered but he wanted them to have that information.

MOTION: Deone Ehlers-Rhorer moved to table this item in all fairness to Mr. Martini so they can have all of the facts that they table this until the next meeting. Phil Hancock seconded. A vote was taken with Deone Ehlers-Rhorer, Douglas Dickson, Phil Hancock, Bryce Froerer, and Chair Mumford voting aye to table this item until the next meeting for September 8, 2016. Motion Carried (5-0).

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

Respectfully Submitted,
Kary Serrano, Secretary; Weber County Planning Commission