



Weber County



W2349341

Friday, June 20, 2008

EN 2349341 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
20-JUN-08 452 PM FEE \$.00 DEP LF
REC FOR: WEBER COUNTY PLANNING

**Weber County Board of Adjustment
Notice of Decision**

Jason Allred
PO Box 112
Millville, Utah 84326

Parcel Numbers: 23-012-0017, 23-012-0018, 23-013-0026, 23-018-0002

Board of Adjustment Case Number: 01-08

You are hereby notified that your request for a special exception to allow access by private right-of way for 10 lots without frontage and to allow access at a location other than across the front lot line for 8 lots in The Ranches at Monte Cristo Subdivision was heard by the Weber County Board of Adjustment in a public hearing on Friday February 15, 2008 after due notice to the general public and specifically to adjacent property owners.


The Board of Adjustment has given consideration to your appeal relative to the merit, circumstances, and conditions affecting your property and hereby renders the following decision:

Your appeal to the Board of Adjustment is:

Approved as noted in the minutes (See Exhibit A)

Reason for Decision:

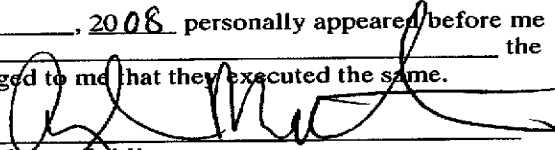
Motion: Robert Heffernan moved to accept the petitioner's request, given the overwhelming argument of the topographic physical conditions which cause undesirable and dangerous conditions for access other than what is being proposed. Sandra Tuck seconded the motion. A vote was taken and the motion carried.




Sean Wilkinson, Planner
Weber County Planning Division

STATE OF UTAH)
 ss:
COUNTY OF WEBER)

On the 20 day of June, 2008 personally appeared before me
Sean Wilkinson and _____ the
signers of the within instrument and who duly acknowledged to me that they executed the same.



Notary Public


ANGELA MARTIN
NOTARY PUBLIC • STATE OF UTAH
2380 Washington Blvd. Suite 240
Ogden, Utah 84401
COMM. EXP. 11-24-2011



Legal Descriptions

- 23-012-0017: ✓ EAST 1/2 OF SECTION 24, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN.
- 23-012-0018: ✓ SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24 AND ALL OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALTBASE AND MERIDIAN.
- 23-013-0026: ✓ ALL OF SECTION 19, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE MERIDIAN, U.S. SURVEY EXCEPT THAT PART DEEDED TO WEBER COUNTY (1375-1130).
- 23-018-0002: ✓ THE WEST 1/2 OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN. EXCEPTING THAT PORTION THEREOF CONTAINED WITHINEVERGREEN PARK SUBDIVISION NO. 1. SUBJECT TO A 20 FOOT RIGHT OF WAY FOR INGRESS ANDEGRESS OVER THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT A POINT NORTH 19D10'32" EAST 220.69 FEET FROM THE SOUTHWEST CORNER OF LOT 271, EVERGREEN PARK NO. 1 SUBDIVISION, BEING IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, U S SURVEY AND RUNNING THENCE NORTH 61D30' WEST 27.0 FEET; THENCE NORTH 23D38' WEST 235.0 FEET; THENCE NORTH 30D23' WEST 192.5 FEET TO THE POINT OF DIVERSION. (E#1454875 & 2103767)

Weber County Board of Adjustment

Exhibit A

February 15, 2008

Minutes of the Board of Adjustment Meeting held on February 15, 2008 in the Weber County Commission Chambers at 4:15 p.m.

Roll Call.

Present: Robert Heffernan, Sandra Tuck, Sue Wilkins, Phil Hancock

Absent/Excused: Celeste Canning, Jeffry Burton, Robert Froerer

Staff Present: Sean Wilkinson, Planner; Kary Serrano, Secretary; Chris Allred, Legal Counsel

Pledge of Allegiance

Regular Agenda Items

1. Election of Chair and Vice Chair for 2008
 2. Approval of the Board of Adjustment 2008 Member Information List
 3. Approval of the Board of Adjustment Policies and Procedures
 4. Board of Adjustment BOA #01-08 Request for a Special Exception to Allow Access by Private Rights-of-Way for 10 Lots Without Frontage and to Allow Access at a Location Other than Across the Front Lot Line for 8 Lots in The Ranches at Monte Cristo Subdivision Located Northwest of Evergreen Park Subdivision
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1. This item was tabled until the end of the meeting.

2. **Approval of 2008 Member Information List**

MOTION: Sandra Tuck moved to approve the 2008 Member Information List as written. Robert Heffernan seconded the motion. A vote was taken and the motion carried.

3. **Approval of Board of Adjustment Policies and Procedures**

MOTION: Robert Heffernan moved to approve the Board of Adjustment Policies and Procedures as written. Sandra Tuck seconded the motion. A vote was taken and the motion carried.

4. **Board of Adjustment BOA #01-08 Request for a Special Exception to Allow Access by Private Rights-of-Way for 10 Lots Without Frontage and to Allow Access at a Location Other than Across the Front Lot Line for 8 Lots in The Ranches at Monte Cristo Subdivision Located Northwest of Evergreen Park Subdivision**

Staff read the following report:

The petitioner is requesting a special exception to allow access by private rights-of-way for 10 lots without frontage and to allow access at a location other than across the front lot line for 8 lots in The Ranches at Monte Cristo Subdivision located northwest of Evergreen Park Subdivision. The Board of Adjustment may allow such special exceptions when it considers the extension of a road unfeasible or impractical due to unusual topographic or property boundary conditions (see Chapter 29-3 10a. and 11 included in the packet).

The Ranches at Monte Cristo Subdivision consists of 22 lots on 898 acres and each lot contains at least 40 acres. Lots 4 and 5 will have access from the dedicated private road that runs through the subdivision while lots 12 and 13 have access from Middle Fork Road. The lots with access from the proposed private

rights-of-way include 1, 2, 3, 9, 14, 15, 16, 17, 18, and 19. The lots with access at a location other than across the front lot line include 6, 7, 8, 10, 11, 20, 21, and 22.

The Ranches at Monte Cristo Subdivision is located on a mountain with steep slopes and extensive vegetation. Each lot has a designated building area shown on the plat. These building areas are generally located in the less steep areas of the lots, which are also the best locations for access points. Most of the feasible access points are not located along the main road, however, which is why access at a location other than across the front lot line is being requested. The topographic and boundary limitations of this area can be considered special circumstances, which would cause an undesirable or dangerous condition to be created for property access.

In order to keep road grades to a minimum and avoid large land cuts and removal of vegetation, the private rights-of-way traverse through the less steep areas and at times actually cut through lots, which would not be possible if they were dedicated roads. The rights-of-way will be built to County Standards including hard surface paving and would be private roads if not for topographic limitations which direct the rights-of-way through some of the lots. The private rights-of-way will reduce large cuts and fills and help save vegetation. A covenant to run with the land (stating that the petitioner will agree to participate in the cost of developing any future road required by the County to replace the private right-of-way as required access to additional lots) must be signed as required by Chapter 29-3 10a of the Weber County Zoning Ordinance. If a special exception is granted it will be subject to the following requirements:

1. Chapter 29-3 10a of the Weber County Zoning Ordinance.
2. Chapter 29-3 11 of the Weber County Zoning Ordinance.
3. Requirements and recommendations of the Weber County Engineers Office.
4. Requirements and recommendations of the Weber Fire District.

Staff Recommendations:

Staff recommends approval of the request to allow private rights-of-way for 10 lots without frontage and to allow access at a location other than across the front lot line for 8 lots in The Ranches at Monte Cristo Subdivision.

Jason Allred, Petitioner, stated that he didn't have anything more to add as staff had expressed what he was going to say.

Robert Heffernan asked if there were buildings on this lot at this time. Mr. Allred replied no. Mr. Heffernan asked when was this subdivision approved? Staff replied that the subdivision was not approved, but in order to get preliminary approval before the Planning Commission on the 19th of this month, they needed to have the Board of Adjustment either approve or deny the requested variance so they know if they need to redesign the roads.

Robert Heffernan stated that on the terms of surrounding subdivision property, how does this impact them? Mr. Allred replied that they would not be going through any of Evergreen Subdivision. Their private road comes off Little Fork Road. Evergreen Subdivision owners probably would not be able to see them because they will circle 100 feet, almost 1,000 feet elevation above them, so there will be little or no traffic impact.

Franklin Monty Neilson, who resides in Ogden, stated there are a couple of issues that he needed to discuss. In 1976, he bought Lot 283. He indicated on the map where Lot 283 was located. He stated there are two more lots before you enter their property. His concern is in 1976 when he bought his property, there was an Evergreen Park 1 and an Evergreen 2 Subdivision. The proposed subdivision property was part of Evergreen 2. The stipulation was that Evergreen 1 had to be developed before they could develop Evergreen 2, and that has taken 30 years. They were told that they had access to 55 miles of roads including those through Evergreen 2. They have used those roads for 30 years. Some of those roads take them to the National Forest property on top. His question is how would he get back to the National Forest property?

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Chair Pro-tem Wilkins asked Chris Allred, Legal Counsel, if he was aware of any agreement made to any of the property owners. Chris Allred replied that he was not familiar with the history of the property. If there are agreements in place, that is something that would be beyond the Board of Adjustment's authority to address. They are only looking at the variance in this case. There may be some rights of way, but that would be a dispute between the owners. If that were not the case, the board members would not have any ability to resolve that issue.

Mr. Neilson stated that 30 years ago the roads were all dirt roads. Then when they first started to develop there, they had to use snow machines, which they do now to get into Sunridge because of the winter snow. When others started to build there, they paid Utah Power and Light \$1,000 each plus \$50.00 a month on top of their electricity bill for five years. After the five years, Utah Power took back the lines so they could maintain them. After that, the road was blacktopped right to his property. His property tax used to be \$36 a year and now he pays \$1,400 a year. What he wanted to know was that if the Board does not give their approval, what happens to the 55-mile road that he uses to get over to the National Forest.

Chair Pro-tem Wilkins stated as Legal Counsel has indicated, that is not something that they have an answer to from this board. She does not know who he could get an answer from. Chris Allred replied that they would have to ask the petitioner. He didn't know if the petitioner knew anything about the history, or if he knows if there are any easements etc. It sounds like if there were a dispute it would be between adjacent landowners.

Clyde Niederhauser, who resides at 768 Taylor Ogden Ave, indicated that he noticed where someone started building a road up there last fall. His property is on the riverside of the lot and when they cut the road in after a nice big rainstorm, the whole creek was full of red silt. He believes they need to have some kind of drainage program in place before they cut any more roads.

Rod Taggart, who resides in Morgan, stated that he has three lots in Evergreen Subdivision. He indicated he believes that the proposed access would go right through his property. The concerns that he has is that he has tried to preserve the natural habitat of the corridors. He does not do anything that would disturb the watershed. They also need to try to do what they can to maintain the rural atmosphere environment. He originally bought one lot and ended up buying two other lots next to his to provide a barrier to try to maintain that rural environment. He would like to try to balance the rights of the property owners with the rights of the current owners.

Judy Niederhauser, who resides in Ogden but owns land in the Evergreen Subdivision, said what her husband asked was if they are going to start building along the roads and not take into consideration what they've already done? The road that they have already put in doesn't look like it's a very good plan, because they get all of the runoff coming down. The creek is dry most of the year it is only full of water during the first part of the year when they have the runoff. The rest of the creek for the remainder of the summer is spring fed for most of the spring on their property. Many people think that the creek runs all of the time and it doesn't. When the spring run-off comes, a lot of water comes down that creek so they are concerned with all the roads already built. They know that they want to do other roads up there and like the gentleman said, they probably won't even see them. They don't know how much construction is going on there and how it is going to impact them in the future, but they are a little concerned about the first road that was built before they continue on with building other roads. She does not know if that has to do with anything but it bears looking into.

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Chris Allred stated that there would be some engineering review prior to or during the subdivision process. Staff replied that is correct. The road will be designed and engineered and will have to meet Fire District and engineering requirements. A Storm Water Pollution Prevention Plan is required to be filed by the State of Utah to protect against some of that runoff coming down. All of those things will need to be addressed as part of the subdivision.

Robert Heffernan asked if those issues would be addressed by the Planning Commission. Staff replied that is correct. Mr. Heffernan replied that is a point to be made and that they are looking at making special exceptions whereas many of issues that have been raised are really Planning Commission issues. Staff replied that Mr. Heffernan raised a very good point and he is correct.

Chair Wilkins stated to the audience that the Board of Adjustment is very limited on the things that they can look at and although all of the comments that have been made would be more appropriate if they presented them at the Planning Commission meeting.

Ms. Niederhauser clarified that the Planning Commission meeting is next week, and staff replied that is correct.

Chair Wilkins stated that they appreciate the comments and interest on this issue, but again this board is limited as to the things that they could look into. If they do approve the exception, that in of itself does not approve this subdivision. It is a completely separate process.

Ms. Niederhauser stated that when you're a citizen and you get a letter which doesn't give any information, you have no idea what is being applied for. Therefore, they had to come to this meeting and raise questions so they would know whom they are talking to. It is nice to let this developer know that they are not oblivious to what he has been doing up there and some of those things they do not feel were right.

Chair Wilkins stated and that reason that adjacent property owners are notified is to give them a chance to know what is going on. It is not a secret process by any means.

Mr. Neilson stated that he was up there a week ago and noticed there were about seven automobiles with trailers that had snow machines loaded and they had gone in to Sunridge. As he was going out of there, he watched the Weber County Sheriff write about seven tickets so there are problems there. Chair Wilkins replied this is something that he should bring up at the Planning Commission meeting next week.

Staff addressed the notices that were sent out. The notices are sent out as a courtesy and they don't explain a whole lot in the title but they do put the name and the phone number of the planner handling the project and also a link to their website where the information is. There is information out there for people to look at or call and talk to a planner. He has had several calls and emails about this, but they do try to make sure the public knows what is going on and maybe they just need to work on doing that a little bit better.

Phil Hancock stated he had a question and apologized for coming in late, but it seems that most of the concerns have not been in the purview of this board's responsibility. Was the majority of that heard before he came in that same vain? Chair Wilkins replied yes, he actually came in when the first person was talking.

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Phil Hancock stated that he would like to make a comment regarding one of the concerns about balancing the rights of the property owner with the rights of the rights of the developer. Planning issues try to balance those rights but it is a very difficult thing to do sometimes. They have a very precise set of ordinances that cover these issues. They are obligated to only compare the request with the current ordinances, and so that being the issue, the peripheral items though not unimportant are not their main concern.

Chair Wilkins replied there are things that they really cannot take into consideration. If anyone is interested in looking at the items in the zoning provisions, they are certainly there. She would encourage everyone to attend the Planning Commission meeting Tuesday night.

Phil Hancock stated and ordinances can be changed so if someone disagrees with those ordinances, there is a process that they go through to make those changes. If he is not mistaken, anyone can submit to the County Planning Commission a proposed ordinance change, and then it goes through the proper processes and hearings and then the County Commission makes the final decision. Chris Allred replied that he correct.

Chris Allred stated that there is an ordinance that will guide the members in knowing the exact findings that they need to make. They need to find that it is unfeasible or impractical to extend a street to provide access to the lots because of unusual topographical boundary conditions in the case of accessing the lots off the private rights of way.

Sandra Tuck stated that they are actually dealing with two exceptions so their motion will need to address both of those.

MOTION: Robert Heffernan moved to accept the petitioner's request for both the private access and the private road given the overwhelming argument of the topographic physical conditions, which cause undesirable and dangerous conditions for access other than what's being proposed. The motion is subject to the condition that the owner would agree to participate in the cost of developing any future road required by the county. Sandra Tuck seconded the motion. A vote was taken and the motion carried.

Robert Heffernan reminded the audience that there is an Ogden Valley Planning Commission meeting on Tuesday where those people who have questions should attend.

1. **Election of Chair and Vice Chair for 2008**

MOTION: Sandy Tuck nominated Phil Hancock for Chair. Robert Heffernan seconded the nomination. Sandy Tuck nominated Robert Heffernan for Vice Chair Phil Hancock seconded the nomination. A vote was taken and the motion carried.

5. **Adjourned**

The meeting was adjourned at 5:30 p.m.



Kary Serrano, Secretary
Weber County Planning