



## BOARD OF ADJUSTMENT

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**MEETING AGENDA**  
**Thursday, July 16, 2015**  
**4:30 p.m.**

*\*Pledge of Allegiance*

**Regular Agenda Items**

- 1. Minutes**      **Approval of the June 18, 2015 meeting minutes**
- 2. BOA 2015-05**      Consideration and action on a variance request from the current standard used to determine the 35' maximum building height as measured from the average natural grade to the previous standard used to determine the 35' maximum building height as measured from the average finished grade (Steven and Michelle Buck, Applicants)
- 3. Adjournment**

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



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

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Minutes of the Board of Adjustment held June 18, 2015 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present: Rex Mumford, Chair; Celeste Canning, Nathan Buttars, Phil Hancock

Staff Present: Sean Wilkinson, Planning Director, Jim Gentry, Principal Planner, Ben Hatfield, Planner; Chris Crockett, Legal Counsel; Kary Serrano, Secretary

*\*Pledge of Allegiance*

## Regular Agenda Items

### 1. Minutes: Approval of the March 26, 2015 meeting minutes:

**MOTION:** Phil Hancock moved to approve the March 26, 2015 meeting minutes as written. Celeste Canning seconded. A vote was taken and Chair Mumford indicated the minutes were approved with Celeste Canning, Nathan Buttars, Phil Hancock, and Chair Mumford voting aye. Motion Carried (4-0).

### 2. BOA 2015-02: Consideration and action on a variance request to the required stream corridor setbacks to a stream (50 feet) to build a barn. Property is within the Forest Valley-3 (FV-3) Zone, located at 1958 N 3850 E (Weston Loegering, Applicant)

Ben Hatfield said the applicant is requesting a variance for a reduction to the stream corridor setback requirements of the Ogden Valley Sensitive Lands Ordinance in order to build a barn. This property was first approved and recorded in June of 2005, as Lot 1 of Loegering Subdivision. This 18.46 acre lot is accessed by a private right-of-way through other properties to the northwest and then the access crosses drainage and opens to a buildable area. This buildable area lies at the base of some steep slopes and between two draws; one of which has the aforementioned drainage and is to the northwest of the area; the other, which is smaller, is to the southeast. During some months of the year, soil in this area is wet and unsuitable for building. On December 20, 2005, the Weber County Commission approved an ordinance amendment which created setback requirements from natural ephemeral streams (drainages) such as this. In 2006, the applicant constructed a new home within the buildable area of Lot 1, well away from the drainage. On July 5, 2007, the applicant's contractor applied for a permit for a barn with an agricultural exemption. In December 2014, contractors representing the owner made an application for permits to install solar panels.

Ben Hatfield said in reviewing these plans, staff requested that setback distances be shown from the stream to the nearest portion of the addition. It was discovered that the barn was already built approximately 35 feet from the stream. The site plan shows the flattened buildable area which the owner had prepared with the subdivision in 2006. This left a sizable slope in the 28 feet of land in between the stream and any possible building area. Accessory buildings are allowed as a permitted use in the FV-3 Zone and granting this request will not increase the number of existing dwelling units in the area. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan. Staff recommends approval of the variance for a 22 foot encroachment into the stream corridor setback based on its compliance with the applicable variance criteria discussed in the staff report.

Nathan Buttars asked staff to elaborate on the December 5, 2005 Ordinance Amendment for the setback and stream area. To his understanding, they applied in 2007 and the ordinance amendment went into effect in 2005. Mr. Hatfield replied that the ordinance went into effect in 2005 and the barn was built in July 2007. Mr. Buttars asked staff the specific setback requirements in the ordinance amendment. Mr. Hatfield replied that the setbacks and text didn't change, only the chapter locations in the code.

Celeste Canning said in the error that was made, was the error was in part the landowners in that he did not meet the required setback requirement and also in part, the Planning and Zoning staff's wherein not catching this fact when the original land use permit was issued? Mr. Hatfield replied yes, it was not located or required on the land use permit that was issued.

Celeste Canning asked the purpose of the setback and if this variance affected the water quality of the stream. Ben Hatfield replied that the purpose of the setback is to preserve water quality, and he had enclosed the water quality requirements for those streams with the land use permit application. After visiting the site, he would say that it had not affected the water quality of the stream. After doing a subdivision, the applicant cleared a lot of brush, the slope, flattened a large area, and put down a gravel-based road and the stream corridor setbacks came into effect after he had already done that. The applicant built the barn 35 feet from the stream. The additional few feet that this addition would go into is already being excavated, and would not disturb the water quality, in that the land owner had extensively revegetated that area. Chair Mumford said and that would be based on that it was cleared and cleaned. Mr. Hatfield replied yes.

Carson Young, who resides in Liberty, said he is representing Solitude Builders and the applicant and is attending the meeting to answer any questions.

Chair Mumford said if they look at Exhibit A, the top states that the applicant seeks to add an extension approximately 22 ft. x 14.9 in. and he assumes that should be 14 ft. 9 in. At the bottom of that page it states, "also the addition of the barn will not encroach any closer to the seasonal stream but will remain the 35 foot distance from the stream." He is not sure how they went from 35 feet to 28 feet, and if Mr. Young had any knowledge of that. Carson Young replied that is correct; they tried to take some measurements before having the owner pay for a full onsite plan, but it became evident that they needed a site plan to submit to everyone, and that's where the 35 feet came from. They were advised from staff to get a professional survey so they paid Hansen's to do an accurate survey.

Chair Mumford asked Mr. Young if he knew of the elevation change from where the building used to be at stream corridor level and Carson Young replied that it would be approximately eight feet. The high-water mark may be 12 inches on that stream. Solitude was the contractor who built the house in 2005 and recalls that it was a big snow year and the creek was about 12 inches wide. They have been involved in this home and area for quite awhile.

Nathan Buttars asked the reason why they didn't include the setbacks on the application. Celeste Canning replied that she was concerned where the error came from. It sounded like when the applicant applied for a building permit, he didn't include that setback because he didn't know it and the ordinance statute was fairly new; and also that the planning and zoning staff didn't request it, so it was a mutual error. The streams weren't marked on the map, so planning staff wouldn't have required it.

Ben Hatfield referred to the question on Exhibit D. In order to help clarify this exact scenario and to help notify staff of where these streams were, the code reads, "natural ephemeral streams," and that sometimes was difficult for staff or the County Engineer to interpret so they marked those on the map.

**MOTION:** Celeste Canning moved that BOA 2015-02 be approved for the reasons set forth in the staff report; because approval of this request will not affect the water quality, for the purposes of the setback and because a situation resulted from an innocent error; both on part of the homeowner and on part of the planning staff due to recent changes in the statute of ordinance. Phil Hancock seconded. A vote was taken with Celeste Canning, Phil Hancock, Nathan Buttars, and Chair Mumford voting aye. Motion Carried (4-0).

**3. BOA 2015-03: Consideration and action on a variance request of 3 feet to the required 10 foot side yard setback for a dwelling. Property is within the Agricultural Valley-3 (AV-3) Zone, located at 3319 North Highway 162 (Zane Froerer representing Darold and Carol Harris)**

Jim Gentry said this request is for a three foot variance to the side yard setback at 3319 North Highway 162. He said that at one time it was joined with the other property that had a house. In 1991, Mr. Harris was given a permit to build a storage building on this property. The request is for a three foot variance; it is not to deal with the conversion of a storage building to a house. There are other issues that the applicant will have to deal with, such as health and building codes to convert it to a house; that is the ultimate plan that the applicant has, but that is not the issue for this board. This was started in 1991 when a land use permit issued by Craig Barker of the Planning Division showed the side yard setback of 10 feet. The fence was used to determine the setback. This is what our building officials use to make their measurements and this is what was represented as the property line.

Jim Gentry said at that time a letter was issued for this property, clarifying its legal status, but not the structures or anything else on the property. The applicant has explored options with moving the corner of the building to meet the side yard setback, but that option was too expensive. He also approached the adjacent neighbor about a 244 sq. ft. adjustment on the property line, but the neighbor was not willing to do that. The lot is classified as an irregular shaped lot, which includes any building lot with a boundary comprised of three or more than four lot lines, and this lot has three sides. A natural ephemeral stream runs through the property which has a 50 foot setback from the high water mark. The fence line used to determine the setbacks has been in place for over 30 years.

Jim Gentry said the County approved the garage relying on the fence line. He then listed the considerations for the Board of Adjustment. Staff's analysis is the literal enforcement of the Land Use Code would require the removal of three feet of the corner of the building. The building was constructed 24 years ago and until recently was believed to have been built in accordance to the side yard setback requirement based on the fence line. The request is not self-imposed but rather a correction to an error made 24 years ago. There are unique boundary conditions and special circumstances attached to this property. Zoning gives property owners the right to construct a dwelling unit on parcels that were legally created on a lot of record, as this parcel was, and there was a letter stating that. The General Plan indicates that this area should allow and be preserved for single-family dwellings, and no changes are proposed. The variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to correct a mistake that occurred in 1991, and render the reduced setback legal. In granting a variance, the Board of Adjustment shall make a finding that the variance meets the five criteria listed in the staff report. Staff has determined that this variance request complies with the variance criteria and recommends approval of a three foot side yard setback reduction.

Nathan Buttars asked who did the inspection and Mr. Gentry replied that it was probably the building inspector back in 1991. They don't require fence lines or property lines to be surveyed prior to people constructing buildings, so they have to rely on the information that they have before them.

Chair Mumford asked staff to clarify that 24 years ago when this building was first built, the building inspector went out and measured from the fence line, and indicated that it met the side setback requirement. Mr. Gentry replied that was correct and said that they then discovered that the fence was in the wrong location. Nathan Buttars asked when the discovery was made. Mr. Gentry replied that he would have to ask the applicant.

Zane Froerer, 2755 Washington Blvd, Ogden UT, said to address the question from Mr. Buttars, there was a survey done in 2007, not by applicant, which indicated that the fence line was not the property line. In constructing the garage, it wasn't a simple guess as to whether the fence line was the property line because it was literally the way the neighbors and adjoining properties had treated the property line. Mr. Harris had a survey done at the time confirmed to the applicant that the fence line was indeed the property line. He doesn't have a record of that; it was done 20 years ago and offered as proof that when they built. Mr. Froerer referenced a past photograph showing a propane tank located next to the fence line. Based on the survey in 2007, that propane tank would have been on the adjoining property. This shows that the adjoining property owners treated this as a boundary line, and it complied with the legal requirements of boundary by acquiescence or boundary by agreement.

Zane Froerer said that his client has had occupation up to a visible fence line; the area was treated as the exclusive property for the landowner and applicant. There has been mutual acquiescence between the two neighbors for a long period of time. The original fence existed prior to 1991 and then in 2007 it was unilaterally taken down while his client was out of state. His client did not agree to the fence being taken down, and there have been efforts to work out the problems since that happened. The time since the barn was constructed, has clearly satisfied the long period of time by adjoining land owners. In their opinion, they are not asking for the Board to make a determination as to where the property line actually is, or where it was; they are asking the Board to treat the fence line as a boundary line and approve the building setback. He believes staff has presented the issue correctly and straight forward.

Celeste Canning asked Mr. Froerer if he knew when the fence was built. Mr. Froerer replied that he didn't know personally, but he knew from his client that it existed several years prior to the construction.

Darold Harris stated that he is the applicant of the variance request and noted in his application that the fence was in place prior to his ownership. Celeste Canning asked when he purchased the property and Mr. Harris replied that he purchased the property in 1984.

Celeste Canning asked why they are speaking of a variance and not of a boundary by acquiescence case. Zane Froerer replied that he knows that the boundary by acquiescence is something they would have to seek against the adjoining land. Mrs. Canning indicated that it is a method of alleviation which can be solved before a variance. Mr. Froerer replied that it is a method of remediation that can be sought with a variance or after a denial of a variance. In this case, they have neighbors suing neighbors and this is a path that hopefully avoids a protracted neighborly litigation.

Chair Mumford asked the date of the aerial photo which was submitted. Darold Harris indicated that he paid for the aerial photo to be taken and would estimate that the building was constructed in 1991 or 1992.

Chair Mumford said in the narrative that Mr. Harris attached to his application; he indicates in the second paragraph that in 2007 the new owners of the adjacent lot removed the fence without notice to the applicant. The new owners replaced the existing fence with a newer fence that was moved towards the garage. The applicant paid for a survey and learned that the new fence line is also not on the actual property line. Are they saying that the survey brought into question the incorrect property line? If so, what is the correct property line? Darold Harris replied that is correct. It gets complicated, but the property line where the existing fence is located between that and the building is the correct survey, but as the fence continues out toward Highway 162, the fence has encroached onto his property by 12 feet.

Chair Mumford said that at this location, they are dealing with the 10 foot property line. Darold Harris replied that the 10 feet would be between the fence and where they had vehicles drive between the fence and the building. Chair Mumford asked Mr. Harris if he is asking for three foot variance from the seven feet shown on the approved survey. Darold Harris replied that is correct; he did not become aware of the discrepancy until 2007 when he owned both properties and sold the property with the home to the south. When he had the property surveyed for the new owners, they became aware of the proper property line. Upon finding the problem of the building being too close, he had the surveyor try to adjust by giving 244 sq. ft. to Mr. Foley, where his currently well-maintained fence is, rather than have him tear that down. If he allowed him to have that, Mr. Foley would give him 244 sq. ft. along that property line, thereby exchanging an equal amount of 244 sq. ft. and then the fence line could remain intact.

Chair Mumford asked Mr. Harris if this solution was presented to his new neighbor and he did not accept it. Darold Harris replied that is correct.

Celeste Canning asked Mr. Froerer what he would estimate costs to be to pursue a value by at best if claimed through District Court, exclusive of any appeals. Zane Froerer replied that through District Court, exclusive of any appeals, cost and attorney fees would probably be \$20-\$30,000 conservatively, depending on how much fuss is created. Mrs. Canning said let's say you have maximum resistance. Mr. Froerer replied that with maximum resistance, it would be at least \$30,000 for both trials and he would guess that would be appealed.

Francis Foley, adjoining property owner, said that he had listened to this presentation and disagreed with Mr. Harris' portrayal of the situation. He indicated that he rebuilt the fence exactly where it previously was. At the time the building was built by Mr. Harris, he had mentioned to him that it was too close to his property. Mr. Harris didn't agree. Mr. Foley then found out that Mr. Harris had a permit to build a garage, and until he declared it a residence and built it from beginning to the end as a residence, there was nothing that Mr. Foley could do about it. When Mr. Harris completed the building, he asked Mr. Foley to go over and examine the apartment above the garage. At that time, he stated that he had built the building so that he and his wife could retire in it, and then sell the remaining property for an income, if the economy went that way. Francis Foley said that he had told Mr. Harris from the beginning that he had built the building too close to his property, but he went ahead and built it. As far as he is concerned, this is a self-imposed hardship because he knew the boundary was not correct, but built the building anyway. Mr. Harris had options where he could have built on the other side of the ditch. From there, the building is seven feet from the boundary and has a restricted access to the garage and they would have to jackknife back and forth to get in. The boundary will always be a concern along there should there be a fire and there is restricted access to the building for equipment. The county has deemed the areas to be in a flood zone; it's bounded on both sides with ditches that have the potential of erosion. As for the property swap he believed it was a generous proposal and he was willing to give him a 12 foot span by 15 feet deep that was the county's right of way.

Chair Mumford said that he didn't think that their decision is based upon his agreement or lack of agreement with the property owner; it is simply that they are addressing the variance request to go from 10 ft. to 7 ft. based on the fence line. Mr. Foley said that he put the fence line in the same spot where it historically was. Francis Foley said he is aware of the history of his property. Kenny Sutton was the originator of his property and he located him in Phoenix Arizona. In a conversation with him, Mr. Sutton informed him that the first thing he did was fence the property according to the boundaries he had. He said he was unable to go completely to the boundary because of the cottonwood trees and issues of that nature, so he put the fence back on to his property. The fence has always been on his property and is legally on his property. That boundary has been there; his property was initiated in 1965, and the fence was put up at that time. When he rebuilt the fence, already having issues with Mr. Harris, he was very careful to maintain the fence right where it was. He has pictures, aerial photographs, and a video he took of the property; however, he was not aware that he needed to present such evidence.

Celeste Canning asked Francis Foley when he purchased his property and Francis Foley replied that he took possession on August 1, 1988. Celeste Canning said that he made it very clear that he put the fence back where the original fence was, but also indicated that he believed his property line extends beyond the fence boundary. If that is the case, why is he so concerned about putting the fence back where he pulled it from? Mr. Foley replied that at that time he was not aware of where the fence was and his option was to contact Mr. Sutton who was the original owner of the property and originator of the fence.

Nathan Buttars asked in granting this variance, how would this negatively affect Mr. Foley? Francis Foley replied that the property intent is to be a residence that is seven feet from his corral. This building encroached on his property and is totally undesirable. The culvert at the entrance into the building was placed too high in the ditch; therefore, when they have spring runoff it floods his property and goes over the highway. The county had redone the culverts underneath two culverts adjacent to the property to help relieve the situation, but it has not completely relieved it.

John Galley, 3768 E 2300 N, Liberty, said in reference to Mr. Buttars' question, the law is for the protection of all residents; why should one individual stand out in the crowd and be allowed a variance knowing full well based on his attorney and his own statement that he knew where the property line was just going off of the fence line? For him, it doesn't matter; he has had to deal with the county on numerous occasions when he has built on his property and was required to go off the fence line by FEMA and also had to keep his building ten feet away from Scott Storey's property. When he purchased his home, he had liens against it from the county because it was noncompliant. He did what he had to do and Mr. Harris should do what he is expected to do; that is the law and that is the basis. He believes that this board should table this matter, so they can get some experts to look at the request and evaluate the process before they grant a variance.

Chair Mumford said the variance is based upon this building being a garage, not a residence that has encroached by three feet. The applicant is requesting a three foot variance for the garage. John Galley replied that the variance should not be granted.

Chair Mumford asked staff, that based on the testimony they have heard so far, is it staff's opinion that the fence is in the same position as it was in 1991; was it measured incorrectly, or does staff have any idea? Mr. Gentry replied that he didn't have any idea.

Celeste Canning asked if staff knows what the procedure was to determine setback compliance in 1991. Jim Gentry replied that it is typical from what it is today; the applicant has to visually show the building inspector when they go out, where their property lines are.

Celeste Canning asked in staff's experience, can the building inspectors tell the difference between seven and ten feet? Jim Gentry replied that he has had an inspector be able to tell one and three inches. Yes, in his opinion they can.

Phil Hancock asked if the county has in their possession aerial photos of this area in 1991. Jim Gentry replied that they do but he was not sure if the scale was where they could see what is on the ground. They have 1991 photos and also 1995, but because it is the Ogden Valley, they flew at a higher height than they did in the lower valley.

Chair Mumford said even with an aerial, they could see with this photograph that the roof overhangs enough, but he is not sure they would be able to know where the foundation is. Jim Gentry replied that would depend on when they put in the trees, etc. He has looked at all the aerial photos trying to figure things out.

Chair Mumford asked if the three foot variance or the seven foot setback would go to the fence as it now is, or to the property line. Jim Gentry replied that it would go to the fence line as it is now. Director Wilkinson said the three foot variance would go to the property line where they have to measure the setback.

Chair Mumford said this building is an agricultural garage. Jim Gentry said this was built as an accessory unit to the house. Mr. Harris applied for a land use permit to convert the accessory building to a house, but he needs a variance in order to proceed with the building department. There may be septic issues that may have to be addressed at that time.

Chair Mumford said from a county's standpoint, if a variance was not granted and if the building was not built far enough away, would the county force them to tear the building down? Jim Gentry replied that if the variance is denied, they would be required to remove the corner to meet the setback.

Phil Hancock asked if staff has visited the site and if it was currently a barn. Jim Gentry replied that it shows as a garage and he has not been inside. Phil Hancock said this being a garage; it is not an expensive method of construction. Jim Gentry replied that the applicant has made it into a dwelling at his expense without obtaining the required permits. Staff has asked him to look at the cost of tearing it down or removing the corner, and as indicated in the staff report, the applicant has said that it was too expensive, so they have asked for the variance.

Chair Mumford asked if cost can be a reason for granting a variance. Jim Gentry replied that cost cannot be a reason for granting a variance.

Celeste Canning said they have an issue of cost or an economic hardship not being a reason for a variance, but if that were actually a goodwill case, they would not approve a variance. With enough money they could solve any problem. In looking at this, her concern is that she doesn't think that it is self-imposed; there is plenty of evidence that there was an error. If there is an error, it is related to the boundary line. The owner of the property admits that he didn't know where the boundary was. She didn't see a problem there; her concern is they do have balance to this. Even against hardship being a solution, she thinks there is another solution in litigation with the neighbor for boundary by acquiescence; however, she is not sure whether that option still remains or that granting a variance is essential. She is not sure that it's much of a hardship to ask him to pursue his other options before looking at this variance. The estimated cost is about 20%, assuming that the value of the property, assuming that there are no appeals, and she is not sure if that is an unreasonable hardship.

Nathan Buttars asked if the Board of Adjustment was the last option for something like this. If he were the applicant, he would come to the board first. Celeste Canning said she would also; it would certainly be more economical. However, their requirement is that this is an unreasonable hardship, and she is not convinced one way or another that litigation is an unreasonable hardship, and if she were to make a motion to deny this, she would have a condition of the motion that if after pursuing litigation with the variance, the applicant could reapply for a variance. In her mind it comes down to 20% of the value of what he is arguing about in litigation costs and is that an unreasonable hardship?

Phil Hancock said that he believes there are other avenues that need to be approached, and his concern is whether to table this item. He is not convinced that this variance needs to be approved.

**MOTION:** Celeste Canning moved to deny BOA 2015-09 on the grounds that the applicant has not met his burden of establishing that it is an unreasonable hardship and to require that he pursue other available avenues to dissolve either for a variance before coming to the board. She would ask for a stipulation, requirement, or acknowledgement that if he pursues this other avenue, particularly litigation to establish a boundary line and is not successful in that, that the Board of Adjustment would consider a second request for a variance on the property. Phil Hancock seconded.

**VOTE:** A vote was taken with Celeste Canning and Phil Hancock voting aye in favor and Nathan Butters and Chair Mumford voting nay in opposition. Director Wilkinson said that in order for a variance to be granted, there would have to be three concurring votes. He believed that there could be another motion, or no decision made at this time.

**DISCUSSION:** Celeste Canning asked if the vote that they already have could serve as a denial held without the condition. Chair Mumford said that they had two votes in favor of the motion and two votes in opposition to the motion so the motion does not pass. They could have further discussion.

Phil Hancock asked Chair Mumford what his concern was. Chair Mumford said that they could grant a variance or not. It has been stated that the applicant may have other available possibilities for resolution. It sounds like the applicant tried to make a land swap with the neighbor to make the difference and perhaps that would have worked had the land swap been more equitable in the neighbor's pocket. There needs to be some extra room without the extensive litigation that he thought the two parties could explore. Celeste Canning said that it wasn't her intention to postpone other avenues, and she believed that she actually did say against court or other solutions. She didn't care how the applicant attempts to solve it; she just thought that he needs to go pursue those other avenues and she wants to make sure that if he does that and is unable to find a resolution, that he could reapply for a variance. If it will assist, she will move to amend her motion to clarify as follows:

**AMENDED MOTION:** Celeste Canning moved that the applicant should take the action which he deems advisable including but not limited to, pursuing a boundary by acts and claims with the neighbor to resolve the requirement for a variance without the need for a variance. Nathan Butters seconded.

**VOTE:** A vote was taken to deny this request as amended with Celeste Canning, Phil Hancock, Nathan Butters, and Chair Mumford voting aye. Motion Passed (4-0).

4. **BOA 2015-04: Consideration and action on a variance request for lot area, lot width, and setbacks for two historic parcels with a boundary adjustment. Property is within the Forest Residential-1 (FR-1) Zone, located at 398 Ogden Canyon and 400 Ogden Canyon (Paul Fifield and Andrew Deckman, Applicants)**

Ben Hatfield said an application was submitted for a variance for a reduction to the lot width and lot area requirements and any other setback requirements which may result from a shift of property lines. Two homes had been built on Lot 16 as part of the original development of the Hermitage Hotel and Resort; one in 1922 and the other in 1933, both prior to the adoption of modern zoning code requirements. In researching the homes, it was found that by 1966 Lot 16 was divided into Lot 16A and 16B. In 2004 both boundaries had been altered, which was reflected by a survey by Mountain Engineering labeled as "*Boundary Adjustment Lot 16, Hermitage Subdivision (Fifield - Barnes Properties)*." This reconfiguration left one parcel slightly smaller than it was before, and reduced the setback distance to the existing home. In reviewing the survey, it appears that the property line described prior to 1966 went through the home of Lot 16B. A separate survey done in 2001 also showed that property line placed in the same location. It appears that both owners worked out a placement of a new property line which was nearly an equal distance between each home and left an appropriate area for vehicle parking. Access to the two homes historically was through an easement to the northwest.

Ben Hatfield said a variance request is based on two main factors. First, the homes were historically built prior to zoning standards for lot width, lot area, and setbacks. Second, there are difficult boundary conditions that surround the properties including steep slopes and historically small lots compared to the current one-acre standard in the FR-1 Zone. Staff's analyses are as follows: Literal enforcement of the Land Use Code would require an undesirable result. These structures were built prior to zoning regulations. The special circumstances attached to this property are the historic nature of the lots and divisions of land created prior to the minimum zoning requirements. Zoning gives the property owner the right to construct a dwelling unit. The General Plan indicates this area should allow to be preserved for single-family dwellings. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to correct a mistake that occurred many years ago and render existing lot width, lot area, or setback requirements legal. Staff recommends approval of the variance for Lot 16A and Lot 16B in the Hermitage Subdivision for a reduction to the lot width, lot area, and setbacks as shown on the 2004 Boundary Adjustment Lot 16, Hermitage Subdivision plat.

Chair Mumford said that even though the applicants agreed to the boundary agreement, it is not an official boundary at this point; however, is the boundary still official through the middle of Mr. Fifield's house? Ben Hatfield replied no, the property rights were conveyed.

Phil Hancock said he assumed when staff says historic, it is not because it is registered, but is referring to the age. Ben Hatfield replied yes, it is greater than 50 years old.

Phil Hancock said it appears that it is a common driveway where both houses must access through this driveway. Ben Hatfield replied that there are private driveways amongst the Hermitage area. Previously, there was a private right-of-way that went through some other homes; also, this home has historically used a different right of way. This plat conveyed a boundary adjustment and conveyed a new right of way to lots that they continued to use. Mr. Hancock asked if they do not need to access their garage through the access used by the other adjoining properties. Are they doing a PRUD or is that common area? Ben Hatfield replied that they do back into the same area; it is actually Mr. Fifield's property and there is an easement for egress and ingress to the parking area.

Celeste Canning asked if there is a deed granting an easement. Ben Hatfield replied that it is deeded in the boundary description within the lots. The third box of Exhibit C indicates that it is easement for parking,

Nathan Buttars asked if Mr. Fifield's lot is a result of this conforming or is it still nonconforming? Ben Hatfield replied that it continues to be nonconforming; it is more conforming and Mr. Deckman's became less conforming. Mr. Buttars asked what exactly the variance that they are asking for is for. Mr. Hatfield replied that the variance would be for lot area, which would make it legal nonconforming.

Celeste Canning said the variance is for the lot size, the area of the lot, the boundary of the roadway, and setback issues, is that correct? Ben Hatfield replied yes, because it doesn't have frontage on the roadway, the width went from the original lot line, it became narrower.

In response to a question by Chair Mumford, Ben Hatfield said from what he could measure, it looked like it was 6-1/2 feet to Mr. Fifield's property and 7 feet to Mr. Deckman's property and their side yard.

Celeste Canning asked if they were to approve this variance what impact would that have on future building on these lots and would they be able to come in and get a building permit for something else that is noncompliant such as shed or detached garage? Ben Hatfield replied that the variance and what it would include would mean eventually clarify what permits could be issued for the lots; however, applicable setbacks would still apply.

Chair Mumford asked if there would still be rebuild issues with the homes if a variance was not given. Ben Hatfield replied yes, Mr. Deckman's home is clearly smaller in area and width than it was in 1956.

Phil Hancock asked if the home was demolished and an application for a new home was made, would the new home be grandfathered in but have to meet the setbacks. Mr. Hatfield replied that the new home would have two options; it would be to meet the current zone setbacks, or it would need to meet the Noncomplying structure setback to be established with the history of this home being there.

Paul Fifield, 400 Ogden Canyon, Ogden, said that the original survey shows the property lines as shown on the plat. The recent survey shows the property line going through their house and it was as a result of a survey marker that had not been reset and had slid twice from the time of the original survey. The survey line was off 25 feet and that put it through his house. He had to hire a surveyor and he found the original markers on McBree's property for Andrew Deckman. He did everything for the survey, and when Mr. Deckman bought that house, the property line was changed because the previous owners had put their shed in the back, where the property line went between the two houses. The property line went through the corner of their shed and they did not want to move it. In order to sell the house, he had his surveyor change the property line between the two houses instead of running it straight. The houses were both owned by the original owner and when all of this was going on, he spent three and a half years, reviewing the original history of the property and area. The original section of his house was built in the late 1890's; historically the house has been in the same place for over 60 years. If he has to move a corner of his house, he would have to move a corner of Mr. Deckman's house, and that would not be feasible.

Celeste Canning asked Mr. Fifield if some of the other properties in the Hermitage area also had survey markers that had slid from the original survey. Paul Fifield replied yes, the survey markers on the North Basin slope south of the highway, where the slide came down in 1972 and that quarter section marker is the one that the 1966 survey was done from. That marker slid 50 years before that, and it wasn't reset, and then it slid in 1972 and wasn't reset. They used the same marker which was found in the ground 25-30 feet from the original spot.

Celeste Canning said this property has not only suffered from the imprecise survey methods of a couple of centuries ago, but also from landslides that has caused survey markers to be moved, causing other difficulties of even knowing where the property lines were, or until that could be resolved with more accurate modern survey methods. Mr. Fifield replied and the accurate survey method is what they got, and what shows on this map.

Chair Mumford asked staff to clarify that the variance is for the reduction in the lot width, and lot area requirements with the setbacks. Ben Hatfield replied that is correct.

**MOTION:** Nathan Buttars moved to approve BOA215-04 based on staff's analysis that all of the requirements have been met with regards to reduction of lot width, lot area, and setbacks as shown on the 2004 Boundary Adjustment Lot 16 for the two parcels issued. Celeste Canning seconded. A vote was taken with Celeste Canning, Phil Hancock, Nathan Buttars, and Chair Mumford voting aye. Motion Carried (4-0).

5. **DISCUSSION: Board of Adjustment Rules of Procedure**

Director Wilkinson said that the Weber County Commission is accepting applications for the Weber County Board of Adjustment. Celeste Canning said she serve another term if they cannot find a qualified person but she has been on the board for a long time and believes that staff should consider getting someone new. Director Wilkinson said they do not have any applicants but will continue looking. If the Planning Commission members know of someone that would be interested in serving on this board, they should ask them to submit an application. He asked Mr. Buttars if he would like to apply to be a full member or continuing serving as an alternate. Technically, June 30<sup>th</sup> is the deadline; however, they will continue the submittal period until they get a replacement. The County Commission would like to appoint someone as soon as possible.

Director Wilkinson said that he and Chair Mumford had a discussion about the possibility of having the applicant present their case first. He asked Chair Mumford to express his reasoning for wanting this.

Chair Mumford said that it's not that the county does not do a great job, but the process is to appeal, and the cost for the appeal is \$225.00. A lot of time the board doesn't hear from the applicant until staff has done their presentation. It would be nice to have the applicant present their own opinion first, and then the county would present their findings.

Celeste Canning said that she didn't like that because the county does a good job of presenting on the factual issues. It helps them set up questions for the owners. The owner isn't going to have the experience and skill in getting the factual issues and this would put the owner at a disadvantage because they are there floundering. She has been in front of this board as an applicant, as counsel, and she now sits as a board member. She thinks it is a disservice for the applicant, and if they are appealing, it's on the record, and it's very helpful to have the county present first. Maybe they should encourage the applicant to present their case and speak and participate more.

Phil Hancock said that he has represented owners on boards like this in several states, and when they do the presentation before the Planning Commission, they usually don't know what the issues are and they do more damage to themselves with the issues that were brought up that shouldn't have been brought up in the first place and the applicant doesn't know the difference.

Chair Mumford said that the applicant may ramble and not stick to the issue but he doesn't want the applicant to not feel that it is not an important process. For instance, at tonight's meeting, there was an attorney that was representing the applicant who was in attendance. Celeste Canning said that this was a concern to her when the Chair asked the applicant to speak. The applicant had hired the attorney and it was the attorney's job or the representative's job to speak to the board. There are new violations in the Chair saying he wants to talk to the applicant. If they have an attorney to represent them, then the board members need to speak to the attorney, and if the attorney chooses to allow the

applicant to speak and they decide that's the way that it should go, then that is fine. However, she doesn't think that they can demand that the applicant speak.

Chair Mumford said that he didn't know if Zane Froerer was an attorney; he just thought he was real estate agent, and maybe when someone is being represented by an attorney, that needs to be said at the beginning. Director Wilkinson said that staff can do that. Celeste Canning said that it matters because some of the rules that apply for attorneys don't necessarily apply for a builder representative, or an architect representative. She thinks that when an applicant has an attorney, the board is required to speak to the attorney. Chair Mumford asked where he asked the applicant to speak and then the case was denied, does this put them in an unusual situation. Director Wilkinson replied no, the applicant would appeal the decision regardless. Celeste Canning said nothing that Chair Mumford said was a substantial factor for the decision. Director Wilkinson said when speaking with about this, staff indicated that they could go either way. When this was presented to both Planning Commissions, they indicated that they wanted to leave it as is, and have the county staff present first. Celeste Canning said that maybe as a board member, they could draw the applicant out so they have a chance to be heard.

- 6. **ADJOURNMENT:** The meeting was adjourned at 6:30 p.m.

Respectfully Submitted,



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

DRAFT



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a variance request from the current standard used to determine the 35' maximum building height as measured from the average natural grade to the previous standard used to determine the 35' maximum building height as measured from the average finished grade.

**Agenda Date:** Thursday, July 16, 2015

**Applicant:** Steven and Michelle Buck

**File Number:** BOA 2015-05

### Property Information

**Approximate Address:** 4087 West 2200 South

**Project Area:** 1.015 acres

**Zoning:** A-1

**Existing Land Use:** Vacant Residential Building Lot

**Proposed Land Use:** Residential Building Lot

**Parcel ID:** 15-396-0001

**Township, Range, Section:** T6N, R2W, Section 28

### Adjacent Land Use

<b>North:</b> Residential	<b>South:</b> Agricultural/Future Residential Development
<b>East:</b> Residential	<b>West:</b> Residential

### Staff Information

**Report Presenter:** Ronda Kippen  
rkippen@co.weber.ut.us  
801-399-8768

**Report Reviewer:** SW

## Applicable Codes

- Title 101, Chapter 1, General Provisions, Section 7, Definitions
- Title 102, Administration, Chapter 3, Board of Adjustment
- Title 104, Chapter 5, Agricultural Zone (A-1)

## Background

The applicant has submitted a request for a variance from the current County standards used to calculate the maximum building height for a single family dwelling in the A-1 zone (see Exhibit A). The subject property is located at approximately 4087 West 2200 South, UT and identified on the Weber County records as Lot 1 in the Blue Acres Subdivision (see Exhibit B). The applicant has applied for and received approval of a land use and building permit for a home on Lot 1 of the Blue Acres Subdivision with a condition of approval that a survey will take place at the four-way inspection to ensure that the building height does not exceed an average of 35' from existing grade. During the footing inspection the Weber County Building Inspector stopped work due to the amount of material that had been imported to create a buildable pad and encouraged the applicant to contact the Planning Division to discuss their options.

Blue Acres Subdivision was approved and recorded in 2005 at which time the maximum building height for a single family dwelling was measured from the final finished grade of a building lot. The 2005 Uniform Zoning Ordinance of Unincorporated Weber County §1-6 Definitions read:

**BUILDING/ HEIGHT OF:** The vertical distance from the average of the highest grade and the lowest grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest point of the ridge of a pitch or hip roof.

**GRADE:** (Adjacent ground elevation) The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building or structure and a line five (5) feet from the building or structure.

In 2008, Weber County adopted Ordinance 2008-9 modifying the standard for which the building height is determined. The current code standards used in the Uniform Land Use Code of Weber County (LUC) reads (italics added for clarification of the modifications):

Building, height of. The term "height of building" means the vertical distance from the average of the highest *natural* grade and the lowest *natural* grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest point of the ridge of a pitch or hip roof.

Grade, *natural/existing* (adjacent ground elevation). The term "grade, *natural/existing* (adjacent ground elevation)" means the lowest point of elevation of the finished surface of the *natural* ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five feet from the building, between the building or structure and a line five feet from the building or structure.

The existing grade of the lot is approximately six to seven feet lower than the County road known as 2200 South and the future road way under construction for Blue Acres Subdivision Phase 4 located to the east of the applicant's lot. Currently there is an irrigation ditch running along the west side of the lot and a land drain running through Lot 1 of the Blue Acres Subdivision. The land drain running through Lot 1 will be removed as part of the improvements of Blue Acres Subdivision Phase 4 and a storm detention area will be constructed on part of Lot 6 located to the south of the applicant's property (see Exhibit C). The topography of the area slopes downward toward the applicant's lot creating a natural drainage area (see Exhibit D). In order to drain surface runoff from Lot 1 into the future storm detention area, the building pad on Lot 1 will need to allow the surface runoff to be collected into the future storm drain improvements.

The applicant would like to import approximately six to seven feet of material to create an acceptable building pad in order to reduce the risk for surface and underground flooding. However, by doing so, the applicant will be starting six to seven feet higher than the "existing/natural grade" resulting in a building height according to the current standards of approximately 41'. If the applicant is granted the variance from the current standard to calculate building height and is permitted to use the average finished grade to calculate the final building height; the final building height will be 34' 4 5/8" (see Exhibit E).

According the County Engineering Division, the sewer line that the applicant will be connecting to in the County right of way is only six feet below grade. The County Engineering Division supports the applicants desire to raise the building pad in order to eliminate the need to install a sewer pump that has the potential to fail during power outages causing sewage to back up into the home.

## Analysis

The request for a variance from the current County standards used to calculate the maximum building height for a single family dwelling in the A-1 zone has been reviewed against the following criteria:

- a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code: The building lot was created at a time that the County allowed for additional improvements to the individual building lot to create a more desirable site for a single family dwelling. The building lot is significantly lower in elevation than the adjacent property owners and roadways. The current code identifies the grade as "the finished surface of the natural ground". Based on the word "finished", the applicant proceeded with designing their home based on the necessary improvements of the lot to minimize flooding risks. The literal enforcement of the code could cause an unreasonable hardship by increasing the applicant's risk of underground and surface flooding as well as increasing the risk of the public sewer system backing up into the home. The County Engineering Division has expressed their support of the proposed improvements of the lot to reduce the potential flooding risks.
- b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone: The natural/existing grade of the building lot is at risk for high ground water and surface flooding due to the adjacent properties being significantly higher in elevation creating a natural drainage area on Lot 1 of the Blue Acres Subdivision and the close proximity of the irrigation ditch. There may be other areas in the same zone that are similar to Lot 1; however, during the subdivision process, the Planning and Engineering Division attempts to encourage the developer to improve the lots to minimize such flooding risks.
- c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone: Single family dwellings are considered a permitted use in the A-1 zone. Although there is a potential risk of underground and surface flooding due to the adjacent irrigation ditch and the low elevation of the building lot, the County cannot restrict the property owner from building a dwelling with a basement unless the

property falls within a specific flood plain identified by FEMA. The subject property is not in a flood plain that is known to have a high risk of annual flooding and the variance is essential for the property owners to enjoy their property in a similar fashion as the adjacent property owners.

- d. The variance will not substantially affect the general plan and will not be contrary to the public interest: The adjacent properties have been developed under the previous building height standards; therefore, the variance will not substantially affect the general plan and will not be contrary to the public interest.
- e. The spirit of the land use ordinance is observed and substantial justice done: By granting the requested variance, substantial justice will be done and the land use ordinance will be observed by allowing the property owner to construct a single family dwelling similar in height to the adjacent property owners by utilizing the "finished surface of the natural ground" to calculate the maximum building height of 35' and minimize potential flooding hazards.

### Summary of Board of Adjustment Considerations

The LUC §102-3-3 states that the Board of Adjustments shall "hear and decide variances from the requirements of the Land Use Code". The LUC §102-3-4(b) outlines the decision criteria and standards for which variances from the requirements must be reviewed. The Board of Adjustments can grant a variance only if the following five criteria are met:

- a. *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.*
  - 1. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
  - 2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
  - 1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

### Conformance to the General Plan

Single family dwellings are allowed as a permitted use in the A-1 Zone. By granting the variance, safe and desirable development will take place and will not have a negative impact on the goals and policies of the Western Weber General Plan.

### Staff Recommendation

Staff recommends approval of the variance request from the current standard used to determine the 35' maximum building height as measured from the average natural grade to the previous standard used to determine the 35' maximum building height as measured from the average finished grade. This recommendation for approval is subject to all review agency requirements and based on the following conditions:

- 1. The maximum building height shall not exceed 35' from the average finished grade or 41' from the average natural existing grade.
- 2. Requirements of the Weber County Engineering Division.
- 3. Requirements of the Weber County Building Division.

This recommendation is based on the following findings:

- 1. The building lot was created prior to the adoption of Ordinance 2008-9 modifying the building height to be measured from existing grade instead of final grade.

2. The current definition of "Grade, natural/existing" refers to the "... ***finished*** surface of the natural ground" causing confusion as to whether or not the applicant could improve the building lot by importing material to raise the building pad to reduce flooding risks.
3. The natural/existing grade of the building lot is at risk for high ground water and surface flooding due to the adjacent properties being higher in elevation creating a natural drainage area on Lot 1 of the Blue Acres Subdivision.
4. The County Engineering Division supports raising the existing/natural grade of Lot 1 of the Blue Acres Subdivision to reduce the need to install a sewer pump for the single family dwelling.
5. The proposed single family dwelling will be similar in height with the adjacent property owners.
6. The applicant has received approval of a land use and building permit for the proposed single family dwelling.
7. The proposed variance will not be detrimental to the public health, safety, or welfare.
8. The proposed variance will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.

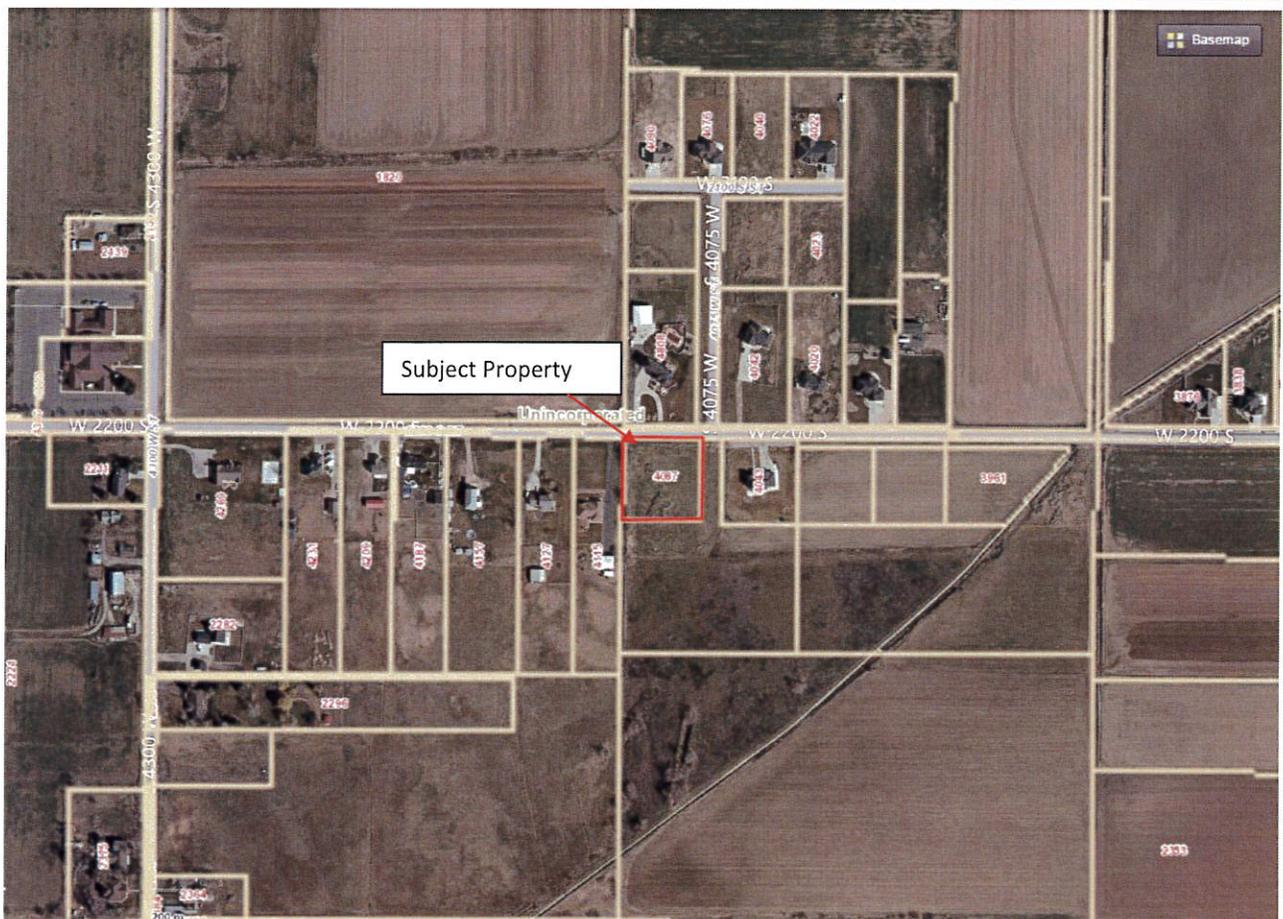
## Exhibits

- A. Application, narrative, and site photos
- B. 2005 Subdivision plat
- C. Blue Acres Phase 4 Subdivision improvements and storm water plan
- D. Contour/topography maps
- E. Proposed single family dwelling architectural renderings/elevations

Map 1



Map 2



<b>Weber County Board of Adjustment Application</b>			
Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted / Completed 06/10/2015	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) Steven and Michelle Buck		Mailing Address of Property Owner(s) 1012 West 4200 South Riverdale, Utah 84405	
Phone 801-628-1466 or 801-882-4998	Fax		
Email Address michellejbuck@yahoo.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Authorized Representative Contact Information</b>			
Name of Person Authorized to Represent the Property Owner(s)		Mailing Address of Authorized Person	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Appeal Request</b>			
<input checked="" type="checkbox"/> A variance request: __ Lot area    __ Yard setback    __ Frontage width <input checked="" type="checkbox"/> Other: <u>Height Restriction</u>			
<input checked="" type="checkbox"/> An Interpretation of the Zoning Ordinance <input type="checkbox"/> An Interpretation of the Zoning Map <input type="checkbox"/> A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance <input type="checkbox"/> Other: _____			
<b>Property Information</b>			
Approximate Address 4087 West 2200 South Ogden, Utah 84401		Land Serial Number(s) 150780068	
Current Zoning <u>A-1</u>			
<b>Existing Measurements</b>		<b>Required Measurements (Office Use)</b>	
Lot Area 44,220 SF or 1.015 Acres	Lot Frontage/Width 211.81	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback 77.5	Rear Yard Setback 39	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback 75	Side Yard Setback 35.5	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

## Exhibit A-Application

### Applicant Narrative

Please explain your request.

We the property owners request a variance to be approved, granting us the ability to use the average final grade (as it has been in years past) to determine the height of the house, instead of natural existing grade. As the natural grade of the area, all other lots in our subdivision slope downward toward our lot. Where our lot is up to 9 feet lower in elevation than other lots in the zone, it creates a potential hazard for flooding, as well as difficulty managing and cultivating the property because of drainage issues. Although we are choosing to build a daylight basement, we don't believe in subjecting ourselves to future insurance claims, costly clean-up from flooding, and additional liability to everyone involved by digging our basement lower than what has been recommended by experts. We believe this issue is not self-inflicting because of the planning and foresight of those involved in the process, as well as the specific wording on Weber County's Website, etc., on how the height limit is calculated, whether it be existing or final grade. For example, architects at Habitations Homes, Paul Keeler, landscape architect with Desert Land Design, and contractors and project managers at Remodel West have all considered the height restrictions prior to agreeing to move forward with the project, knowing that the average final grade would be approximately 25 feet which is well below the 35 feet restriction. We realize this restriction was initiated to protect homeowners' views who build near mountain sides and benches, since average existing grade would help those homeowners. We also realize there are several other homes in the county that were built before the wording was changed from final grade to natural/existing grade and are above the 35 feet limit at natural grade. Our lot is in a rural, relatively flat area, which would not affect views of other homeowners any more than the next house. In fact, the height will be similar to some of our surrounding neighbors because our starting point is so much lower than theirs. This hardship is unique to our lot specifically, which is the reason for the variance.

### Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
  - a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
  - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

**Variance Request (continued...)**

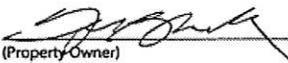
2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

**Exhibit A-Application**

<b>Variance Request (continued...)</b>	
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.	
5. The spirit of the land use ordinance is observed and substantial justice done.	
<b>Property Owner Affidavit</b>	
I (We), <u>STEVEN &amp; MICHELLE BUCK</u> , depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.	
 (Property Owner)	 (Property Owner)
Subscribed and sworn to me this <u>10<sup>th</sup></u> day of <u>JUNE</u> , 20 <u>15</u> .	
_____ (Notary)	
<b>Authorized Representative Affidavit</b>	
I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.	
_____ (Property Owner)	_____ (Property Owner)
Dated this _____ day of _____, 20 _____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.	
_____ (Notary)	

## Exhibit A-Application Narrative

### Applicant Narrative

We the property owners request that a variance be approved, granting us the ability to use the average final grade (as it has been in years past) to determine the height of the house, instead of natural existing grade. As the natural grade of the area, all of the lots in the subdivision slope downward toward our lot. Where our lot is up to 9 feet lower in elevation than other lots in the zone, it creates a potential hazard for flooding, as well as difficulty managing and cultivating the property because of drainage issues. Although we are choosing to build a daylight basement, we don't believe in subjecting ourselves to future insurance claims, costly clean-up from flooding, and additional liability to everyone involved by digging our basement lower than what has been recommended by experts.

We believe this is not self-inflicting because of planning foresight of those involved in the process, as well as the lack of specific wording on Weber County's website, etc. on how the height limit is calculated, whether it be existing or natural. This is what it reads in Single Family Residential Zones 10-4 Site Development Standards: Main Building Height Maximum 35 ft. It isn't until you look deep into Weber County's definition of building height you see it reads; Building height is the vertical distance from the average of the highest natural grade and the lowest natural grade to the highest point of the ridge of a pitch or a hip roof.

To make it even more confusing, Weber County's Definition of Natural/Existing Grade: (Adjacent ground elevation) The lowest point of elevation of the **FINISHED SURFACE AREA** of the natural ground, paving, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a structure line 5 feet from the building or structure.

Architects at Habitation Homes, Paul Keeler, landscape architect with Desert land design, and contractors and project managers with Remodel West have all considered the height restrictions prior to agreeing to move forward with the project, knowing the average final grade would be below the 35 ft height restriction.

We realize the height restriction was put in place to protect homeowners' views who build near or on mountainsides and benches, since average existing grade could help those homeowners. We also realize there are several other homes in the county that were built before the wording was changed from final to natural/existing grade and are above the 35 ft. natural grade. Our lot is in a rural, relatively flat area, which would not affect the views of other homeowners any more than the next house. In fact, the height will be at a similar or lower elevation than some of our surrounding neighbors.

### Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

**1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.**

*a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*

*b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*

Our lot is up to 9 feet lower than other lots in the subdivision which creates a hardship unique to us as all surrounding lots drain toward us and create a potential for flooding. Other houses in the area that have basements already have flooding issues as well as sump pumps running 24/7. The surrounding house's natural grades are already 4-9 feet higher than our starting point. The road that will exist when all of the improvements are made is set to be 3 ft higher than the "natural grade" of our lot. Does it make sense to have a lot three feet lower than the road?

## Exhibit A-Application Narrative

### Variance Request (continued...)

- 2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.**  
*a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone. Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:*

Again the special circumstances attached to our property are the same as our unreasonable hardship with the lower elevation of our lot as compared to others in the subdivision.

Our lot is up to 9 feet lower than other lots in the subdivision which creates a hardship unique to us as all surrounding lots drain toward us and create a potential for flooding. Other houses in the area that have basements already have flooding issues as well as sump pumps running 24/7. The surrounding house's natural grades are already 4-9 feet higher than our starting point. The road that will exist when all of the improvements are made is set to be 3 ft higher than the "natural grade" of our lot. Does it make sense to have a lot three feet lower than the road?

- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.**

Without granting our variance, many other houses in the area with similar finished height and size currently enjoy walk out basements where we would not be able to because of our lower natural grade starting point and inevitable flooding if we dig into the ground.

- 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Again, multiple houses in the area are similar in height and size and would not affect the general plan and be contrary to public interest.

- 5. The spirit of the land use ordinance is observed and substantial justice done.**

Our understanding of the spirit of the land use ordinance is to protect the views of neighbors. In our circumstances, that doesn't apply since we are in a rural, flat area and we would not be blocking any views of surrounding neighbors.

**Exhibit A- Pictures of Site from Lot 2 Blue Acres Subdivision**



**-Home located across street from Lot 1 Blue Acres**



Exhibit A- Difference in finished grade along new roadway to Phase 4



Exhibit A- Grade of new curb and gutter adjacent to Lot 1



2-1-19

**BLUE ACRES SUBDIVISION**  
PART OF THE SOUTHWEST QUARTER OF SECTION 28, T16N, R24W, S1488M, U.S. SURVEY  
MAY 1982

**Boundary Description**

PART OF THE SOUTHWEST QUARTER OF SECTION 28, T16N, R24W, S1488M, U.S. SURVEY, RESPECTED AS FOLLOWS: ...

**Remainder Parcel Description**

PART OF THE SOUTHWEST QUARTER OF SECTION 28, T16N, R24W, S1488M, U.S. SURVEY, RESPECTED AS FOLLOWS: ...

**Narrative**

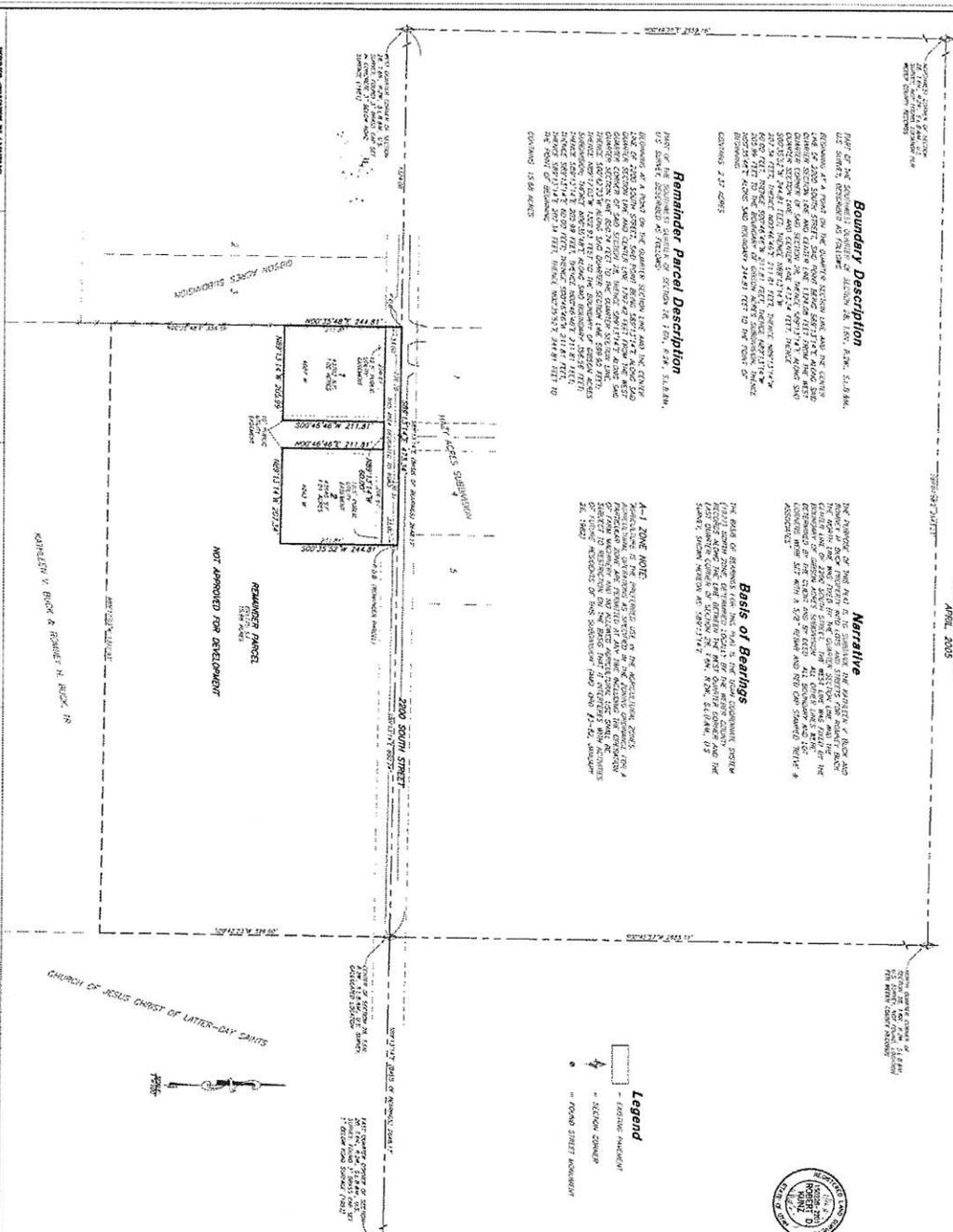
THE BOUNDARY OF THIS ACRES SUBDIVISION ...

**Basis of Bearings**

THE BASIS OF BEARINGS FOR THIS ACRES SUBDIVISION ...

**A-1 ZONE NOTE**

THE ACRES SUBDIVISION IS LOCATED IN THE A-1 ZONE ...



**Legend**

- EXISTING PARCEL
- SECTION CORNER
- ROAD STREET MONUMENT

**OWNER'S DECLARATION AND CERTIFICATION**  
I, Daniel J. Stokel, Professional Engineer, State of Illinois, No. 123456789, do hereby certify that the plan of Blue Acres Subdivision ...

**ACKNOWLEDGMENT**  
STATE OF ILLINOIS, County of Cook, ss. I, Daniel J. Stokel, Professional Engineer, State of Illinois, No. 123456789, do hereby certify that the plan of Blue Acres Subdivision ...

**ACKNOWLEDGMENT**  
STATE OF ILLINOIS, County of Cook, ss. I, Daniel J. Stokel, Professional Engineer, State of Illinois, No. 123456789, do hereby certify that the plan of Blue Acres Subdivision ...

<b>WEBER COUNTY PLANNING COMMISSION APPROVAL</b> This is to certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Planning Commission on May 1, 2019.	<b>WEBER COUNTY APPROVAL</b> I, Amber Cherry, Clerk of the Board of Health, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Board of Health on May 1, 2019.	<b>WEBER COUNTY COMMISSION APPROVAL</b> This is to certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Commission on May 1, 2019.	<b>WEBER COUNTY SUPERVISOR</b> I, Amber Cherry, Supervisor, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Supervisors on May 1, 2019.	<b>WEBER COUNTY ATTORNEY</b> I, Daniel J. Stokel, Attorney at Law, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Attorney on May 1, 2019.	<b>WEBER COUNTY ATTORNEY</b> I, Daniel J. Stokel, Attorney at Law, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Attorney on May 1, 2019.	<b>WEBER COUNTY ATTORNEY</b> I, Daniel J. Stokel, Attorney at Law, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Attorney on May 1, 2019.	<b>WEBER COUNTY ATTORNEY</b> I, Daniel J. Stokel, Attorney at Law, do hereby certify that the subdivision map and plat for Blue Acres Subdivision has been approved by the Weber County Attorney on May 1, 2019.
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**REEVE & ASSOCIATES, INC.**  
Professional Engineer  
1000 East 1000 South, Suite 100, Ogden, UT 84403  
Phone: (435) 744-1111

61-64

Exhibit C- Blue Acres Subdivision Phase 4 Improvement Drawings

**Project Narrative/Notes/Revisions**

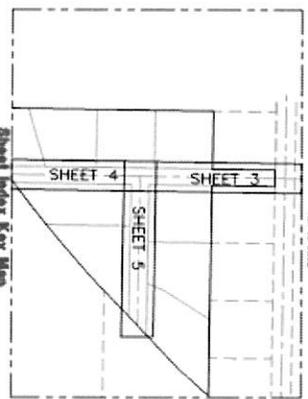
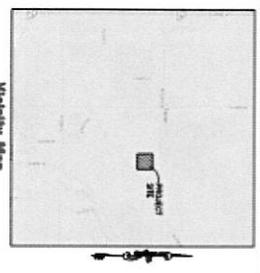
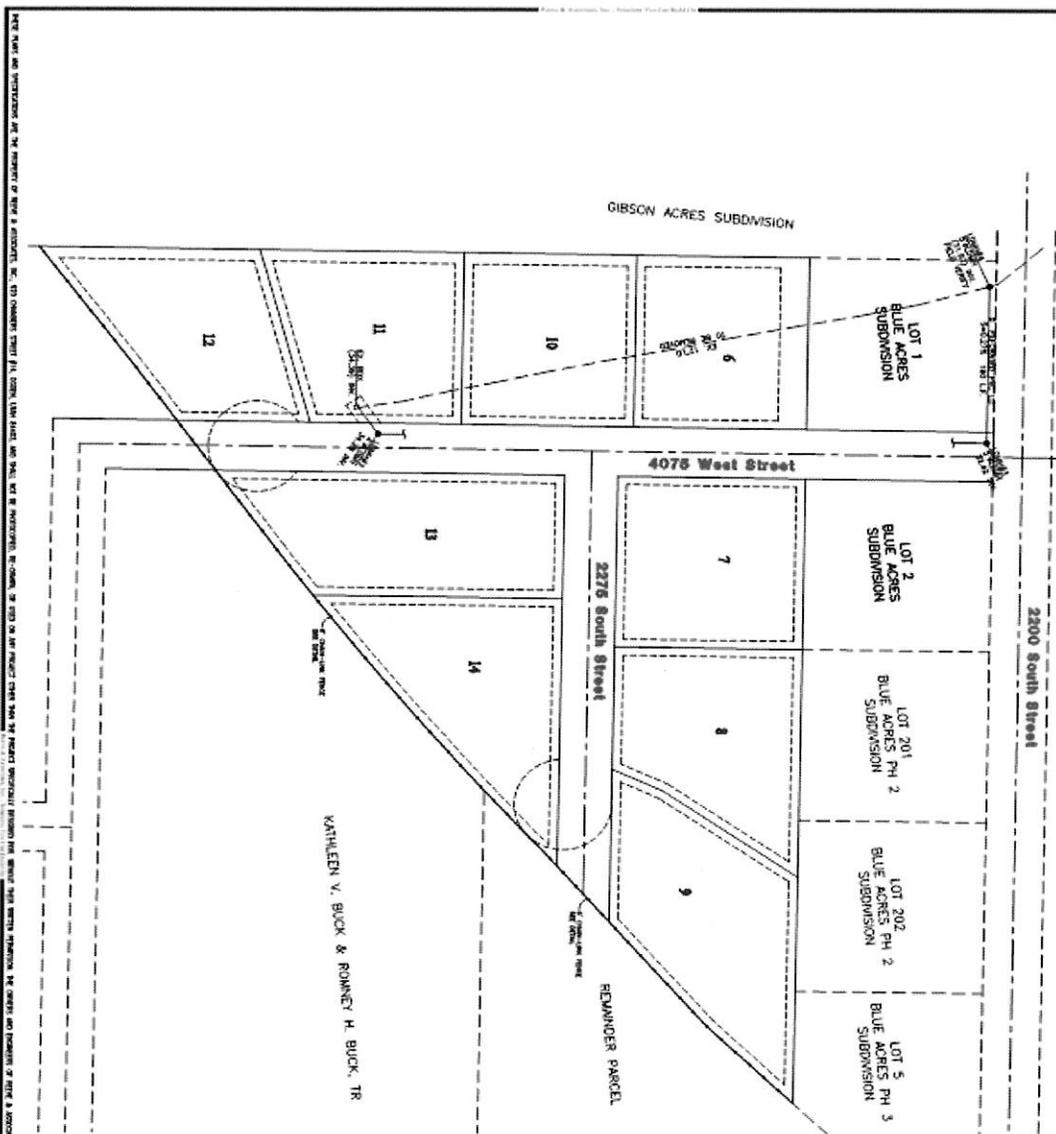
1) 10/21/14 Add - CONDUCTED VISUAL PERMIT STUDY & COUNTY REVIEW  
 2) 11/10/14 Add - REVISED DESIGN FOR STREET CORRECTS  
 3) 12/22/14 Add - REVISED DESIGN FOR STREET CORRECTS  
 4) 1/27/15 Add - REVISED DESIGN FOR STREET CORRECTS  
 5) 2/17/15 Add - REVISED DESIGN FOR STREET CORRECTS

# BLUE ACRES SUBDIVISION

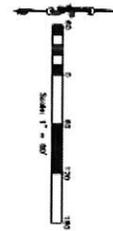
## Phase-4

### Improvement Plans

WEBER COUNTY, UTAH  
 JUNE 2014



- Sheet Index**
- Sheet 1 - Cover/Index Sheet
  - Sheet 2 - Notes/Legend/Street Cross-Section
  - Sheet 3 - 4075 West St. 10+00.00 - 23+50.00
  - Sheet 4 - 4075 West St. 14+00.00 - 19+00.00
  - Sheet 5 - 2275 South St. 10+00.00 - 14+00.00
  - Sheet 6 - Detention Basin
  - Sheet 7 - Storm Water Pollution Prevention Plan Exhibit
  - Sheet 8 - Storm Water Pollution Prevention Plan Details



**Engineer's Notice To Contractors**

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF REEVE & ASSOCIATES, INC. NO PORTION THEREOF IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF REEVE & ASSOCIATES, INC. ANYONE WHO VIOLATES THIS NOTICE SHALL BE SUBJECT TO THE FULL AND COMPLETE LIABILITY OF REEVE & ASSOCIATES, INC. FOR ANY DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE INCURRED BY REEVE & ASSOCIATES, INC. AS A RESULT OF SUCH VIOLATION.

**Revised: 3-17-15**

**Paralegal Contact:**  
 KATHLEEN V. BUCK & RONNEY H. BUCK, TR  
 4115 West 2300 South  
 Provo, UT 84601  
 Tel: (801) 540-7225

**Call Toll Free:**  
 1-800-902-4111  
 No money down. See you on the job.



**Blue Acres Subdivision Phase-4**  
 WEBER COUNTY, UTAH

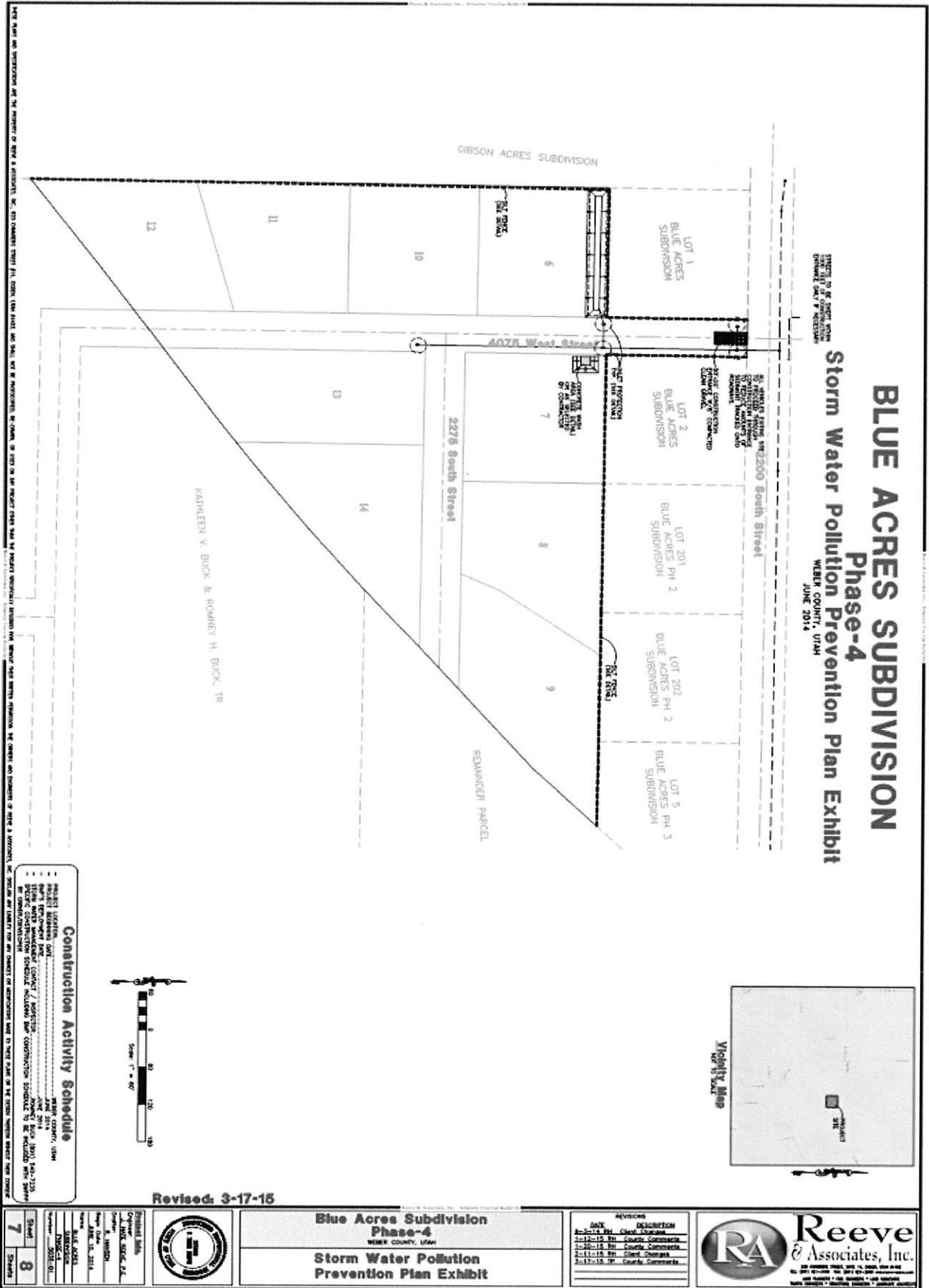
**Cover/Index Sheet**

DATE	DESCRIPTION
10-21-14	ADD COUNTY COMMENTS
11-10-14	ADD COUNTY COMMENTS
12-22-14	ADD COUNTY COMMENTS
01-27-15	ADD COUNTY COMMENTS
02-17-15	ADD COUNTY COMMENTS

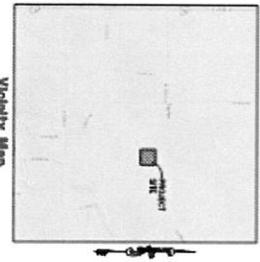
**Reeve & Associates, Inc.**  
 4115 West 2300 South, Provo, UT 84601  
 Tel: (801) 540-7225, Fax: (801) 540-7226  
 www.reeveandassociates.com

Sheet	8
1	8

Exhibit C- Blue Acres Subdivision Phase 4 Improvement Drawings



**BLUE ACRES SUBDIVISION**  
**Phase-4**  
**Storm Water Pollution Prevention Plan Exhibit**  
WEBER COUNTY, UTAH  
JUNE 2014



**Construction Activity Schedule**

ACTIVITY	START DATE	END DATE
PERMIT APPLICATION	JUNE 2014	JUNE 2014
PERMIT REVIEW	JUNE 2014	JUNE 2014
CONSTRUCTION SCHEDULE	JUNE 2014	JUNE 2014



Revised: 3-17-16

	<p><b>Blue Acres Subdivision</b> <b>Phase-4</b> <b>Storm Water Pollution</b> <b>Prevention Plan Exhibit</b></p>	<table border="1"> <thead> <tr> <th>DATE</th> <th>REVISION</th> </tr> </thead> <tbody> <tr> <td>1-1-14</td> <td>PH 4</td> </tr> </tbody> </table>	DATE	REVISION	1-1-14	PH 4	1-1-14	PH 4	1-1-14	PH 4	1-1-14	PH 4	1-1-14	PH 4	<p><b>Reeve &amp; Associates, Inc.</b> 1000 WEST 1000 SOUTH, SUITE 100, SALT LAKE CITY, UT 84119 TEL: 313-333-3333 WWW.REEVE-ASSOCIATES.COM</p>																	
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Exhibit E- Architectural Renderings/Elevations

The image displays architectural elevations for a residential building. It includes a detailed front elevation and a right side elevation. The drawings show a two-story structure with a gabled roof, a prominent chimney, and a mix of exterior finishes including stone, brick, and horizontal siding. Numerous windows and doors are depicted with specific details. A large red stamp is overlaid on the right side of the drawing, containing the text: "AUTHORIZED COPY BID COPY ONLY NOT FOR CONSTRUCTION".

**WARNING:** Submitting this bid constitutes an offer to purchase the property and the bidder agrees to be bound by the terms and conditions of the contract documents, including the contract documents, and to be bound by the terms and conditions of the contract documents, including the contract documents, including the contract documents.

**NOTICE:** The drawings are for informational purposes only and are not to be used for construction. The drawings are not to be used for construction.

**RIGHT SIDE ELEVATION**  
SCALE: 1/8" = 1'-0"

**FRONT ELEVATION**  
SCALE: 1/8" = 1'-0"

**FRONT / RIGHT SIDE ELEVATIONS**

**HABITATIONS**  
RESIDENTIAL DESIGN GROUP

PROJECT NO. 1000000000  
DATE: 10/10/2006  
DRAWN BY: J. ROBERTSON  
CHECKED BY: N. GOSWAMI  
SCALE: 1/8" = 1'-0"

4 of 20

Copyright 2004 Habitations

Exhibit E- Architectural Renderings/Elevations

**LEFT SIDE ELEVATION**

**REAR ELEVATION**

**REAR / LEFT SIDE ELEVATIONS**

**HABITATIONS RESIDENTIAL DESIGN GROUP**

**WARNING: NOT FOR CONSTRUCTION**

**BID COPY ONLY**

**LABORATIONS**

**CONSTRUCTION**

1/2" = 1'-0"

5/8" = 1'-0"

20

REAR / LEFT SIDE ELEVATIONS

HABITATIONS RESIDENTIAL DESIGN GROUP

Copyright 2014 Habitations