BOARD OF ADJUSTMENT

MEETING AGENDA
January 26, 2012
4:30 p.m.

Pledge of Allegiance

Regular Agenda Items

1.	**Minutes:**	Approval of the October 27, 2011 meeting minutes
2.	**BOA 2011-10:**	Consideration and action on an appeal of an administrative decision, by the Weber County Planning Division, to revoke a Land Use Permit for Parcel #22-010-0001, located at 3788 E 4100 N, Liberty owned by Richard Ralph & Rulon Kent Jones. The appellant's claim is that the Planning Division erred in its decision to revoke Land Use Permit #64-2011. (Garet Jones, Applicant)
3.	**Election:**	Election of Chair and Vice Chair for 2012
4.	**Schedule & Information:**	Approval of 2012 Meeting Schedule and Member Information List
5.	**Rules of Order:**	Review of the Board of Adjustment Policies & Procedures
6.	**Adjournment:**	

Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action on an appeal of an administrative decision, by the Weber County Planning Division, to revoke a Land Use Permit for parcel #22-010-0001, (located at 3788 E 4100 N, Liberty) owned by Richard Ralph & Rulon Kent Jones. The appellant's claim is that the Planning Division erred in its decision to revoke Land Use Permit #64-2011.
Agenda Date:	Thursday, January 26, 2012
Applicant:	Garet Jones
File Number:	BOA 2011-10

Property Information

Approximate Address:	3788 East 4100 North, Liberty
Project Area:	6.15 Acres
Zoning:	Agricultural Valley-3 Zone (AV-3)
Existing Land Use:	Residential and Agriculture
Proposed Land Use:	Expand Agricultural Use
Parcel ID:	22-010-0001
Township, Range, Section:	T7N, R1E, Section 20

Adjacent Land Use

North:	Residential	**South:**	Residential
East:	Residential	**West:**	Residential/Agriculture

Staff Information

Report Presenter:	Scott Mendoza smendoza@co.weber.ut.us 801-399-8769
Report Reviewer:	RS

Applicable Ordinances

- Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)
- Weber County Zoning Ordinance Chapter 1 (General Provisions/Definitions)
- Weber County Zoning Ordinance Chapter 5B (Agricultural Valley – 3)

Background

Description of Events

In June of 2011, the Weber County Planning Division reviewed a Land Use Permit Application and subsequently issued a permit (LUP#64-2011) for, what was interpreted by the Planning Staff to be, an agricultural use on a parcel located at 3788 E 4100 N in Liberty, Utah, which is situated within the Agricultural Valley-3 (AV-3) Zone. See Map #1, on page 3 of 3, for approximate parcel location. The applicant (Mr. Garet Jones) for the Land Use Permit described the proposed use, generally, as a 1200 square foot (domesticated elk) meat cutting building that would be a part of an existing domesticated elk raising operation taking place on and off the subject property. See Exhibit "A" for the Land Use Permit Application, description, and proposed site plan.

Following the issuance of the Land Use Permit, a resident (Mr. Bret Barry), neighboring the Joneses' parcel, filed an appeal to the Board of Adjustment challenging Staff's decision to issue the Land Use Permit. Mr. Barry's appeal raised a number of issues; however, his appeal to the Board of Adjustment did not take place due to a request, received from Mr. Barry's legal counsel (Jodi Hoffman-Hoffman Law), to postpone the hearing until a time that they were able

to obtain an Advisory Opinion from the State of Utah's Department of Commerce – Office of the Property Rights Ombudsman (OPRO). See Exhibit "B" for Mr. Barry's request for an OPRO Advisory Opinion.

The OPRO reviewed Mr. Barry's request for the Advisory Opinion and then directly contacted Weber County and the Joneses, providing both parties with the opportunity to respond to the issues brought forward in Mr. Barry's submission to the Ombudsman's Office. See Exhibit "C" for the OPRO's letter to Weber County soliciting a response. Also see Exhibits "D" and "E" for responses, to the Ombudsman's Office, prepared by the Weber County Attorney's Office and the Joneses' legal counsel (Jason K. Nelsen-Nelsen Law Offices, P. C.) respectively.

After receiving responses from Weber County and the Joneses, the OPRO shared those responses with Mr. Barry and his legal counsel who chose to submit an additional "brief" which addresses the information presented by Weber County and the Joneses in Exhibits "D" and "E". See Exhibit "F" for Mr. Barry's "brief".

In November of 2011, the OPRO presented its opinion and Weber County reacted by rescinding Land Use Permit #64-2011. See Exhibit "G" for the Advisory Opinion prepared by the Office of the Property Rights Ombudsman. Also see Exhibit "H" for the Weber County Planning Division Letter rescinding LUP#64-2011.

On December 5th, 2011, the Joneses submitted this appeal to the Weber County Board of Adjustment. See Exhibit "I" for the appellant's packet (3-ring binder) for background, legal arguments, photos, supporting documents, and overall application to the Board of Adjustment.

Ombudsman's Advisory Opinion and Revocation of LUP #64-2011

In a Letter dated November 8, 2011 and as previously mentioned above, the OPRO presented its opinion which supported the Planning Division Staff's interpretation of the Weber County Zoning Ordinance as it relates to the Staff having the legal right to issue land use permits for certain permitted uses, and meat cutting being permitted as an accessory use to a farming or livestock operation. However, in this particular situation, the OPRO found that the Joneses' meat cutting operation goes beyond what is a permitted use in the AV-3 Zone.

The Advisory Opinion Letter concludes by stating the following:

> *Ordinance language is readily found to support the County's interpretation of its own ordinance that County staff is the land use authority to issue permits for permitted uses in the zone, and that meat cutting ancillary to farming is permitted in the AV-3 Zone. The County's interpretation of those ordinances is correct, and accordingly not illegal. However, the County ordinance language, as it presently stands, prohibits certain agricultural industry or business in the AV-3 Zone. The business undertaken by the Landowner, guided hunting with cutting and processing wild elk obtained off the lot, is inescapably of that type and prohibited in the zone.*

On November 21st, 2011, the Weber County Planning Division informed the Joneses that it, on behalf of Weber County, would comport with the Ombudsman's opinion. Accordingly, Land Use Permit #64-2011 was rescinded allowing until December 6, 2011 to cease operations.

Appellant Request

Chapter 29 (Board of Adjustment) of the Weber County Zoning Ordinance states that one of the duties and powers of the Board is *"To hear and decide appeals where, it is alleged by the appellant that, there is an error in any order, requirement, decision, or refusal made in the enforcement of this Ordinance."* The appellant, Mr. Garet Jones in this case, is requesting that the Board of Adjustment consider his appeal and determine whether or not the Planning Division made an error in its decision to rescind Land Use Permit.

Mr. Jones' legal counsel has provided some background and has prepared legal arguments to support their position that; 1) elk farming is agriculture, 2) the elk meat cutting building is agriculture or a "related purpose" as permitted by Weber County ordinance, 3) the Joneses' meat cutting activities do not extend beyond their domesticated elk farming operation, 4) an elk meat cutting building is not prohibited in the AV-3 Zone, and 5) Weber County should not have rescinded the Land Use Permit.

Summary of Board of Adjustment Considerations

- Considering all information presented, did the Planning Division make an error in its decision to rescind Land Use Permit #64-2011?

Exhibits

A. Land Use Permit Application, description, and proposed site plan.
B. Mr. Barry's request for an OPRO Advisory Opinion.
C. OPRO's letter to Weber County soliciting a response to the request for an Advisory Opinion.
D. Weber County Attorney's Office response to the Ombudsman's Office.
E. Joneses' (legal counsel) response to the Ombudsman's Office.
F. Mr. Barry's "brief" addressing Weber County and Jones responses to Ombudsman's Office.
G. Advisory Opinion prepared by the Office of the Property Rights Ombudsman
H. Weber County Planning Division Letter rescinding LUP64-2011.
I. Appellant's packet (3-ring binder) consisting of background, legal arguments, photos, other supporting documents, and overall application to the Board of Adjustment.

Map #1 – Jones Property (Parcel 22-010-0001)

Minutes of the Board of Adjustment Meeting held October 27, 2011 in the Weber County Commission Chambers, Room 108, 1st Floor, 2380 Washington Blvd, commencing at 4:30 p.m.

Present: Celeste Canning, Vice Chair; Douglas Dickson; Deone Smith; Max Hohman; Rex Mumford
Absent/Excused: Robert Heffernan, Phil Hancock
Staff Present: Robert Scott, Planning Director; Sean Wilkinson, Planner; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

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Regular Agenda Items

1. **Minutes:** Approval of the September 8, 2011 Meeting Minutes

   MOTION: Douglas Dickson moved to approve the minutes with the noted corrections. Deone Smith seconded the motion. A vote was taken and Vice Chair Canning stated that the minutes were passed unanimously.

2. **BOA 2011-08:** Consideration and action on a request for a special exception for access at a location other than across the front lot line on Bybee Drive located in the Residential Estates 20 (RE-20) Zone, at approximately 6247 S. Bybee Drive. (Jeffrey S Holden, Applicant)

   Ben Hatfield reviewed the staff report. Staff recommends approval of the request for a special exception to access property at a location other than across the front lot line based on the staff findings:

   a. Special circumstances are attached to the property covered by the application which does not generally apply to other property in the same zone.
   b. Special or unique boundary conditions exist regarding the property for which an application has been submitted.
   c. Topographic or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access.

   Staff has determined that the criteria listed in a, b, and c has been met. The special circumstances (a) and unique boundary conditions (b) attached to the property are the multiple easements and aqueduct which prohibits access from across the front lot line. Due to the depth of the aqueduct (c) and its resulting grade, left an undesirable conditions for the driveway. A more desirable location for access would be from the requested location. At the time of the staff report, the Engineering Department had not completed their review of this, but have not completed their review, and it is staff's recommendation is for approval of the request for special exception to access property at another location other than across the front lot lines based on the findings.

   Jeffrey Holden, Applicant said that staff covered pretty much everything, it's just that Weber Basin is concerned that if they put the driveway over the aqueduct, the weight of the vehicles visiting the residents could create a problem as well, so it would be nice to have a place where people are going to park off of their easement.

   Doug Dickson asked if the easement on the two different owners, does that have any effect, would that be recorded from both property owners. Vice Chair Canning replied that from her understanding, this already has an easement. Mr. Hatfield added Lot 2 has an easement across Lot 1, he would just locate it in the same location as that, there is not an additional ingress/egress on that additional lot because he owns the property.

   Rex Mumford asked then the width of this existing easement, do you know what that width is and does that meet all codes as far as two residents to share that driveway? Ben Hatfield replied that it

is 20 feet and he didn't know if there was an exact ordinance or code that says how wide a driveway needs to be. In looking at flag lots the minimum width is 20 feet, and looking at other right-of-ways that they would grant, they would be 16 feet and that would exceed that.

Rex Mumford said this existing driveway goes across the same Weber Basin easement, and is there a weight issue with the existing different that it would be on the alternate. Mr. Hatfield replied not that he knew of but the applicant would have to answer that. Mr. Holden replied they would have the same issue in the street, because the pipe actually goes across the property and then across the Bybee Drive. As long as traffic is just driving over it, they just don't want any extended stay with the weight over the top of it.

Vice Chair Canning said that the existing driveway has been in use for 40 years. Mr. Holden replied that it's been an existing driveway for 50 years and he has already recorded a maintenance agreement between me and the flag lot owner, and we've agreed to the terms of that.

MOTION: Rex Mumford made a motion to BOA 2011-08 to grant a special exception for access at a location other than the front lot line on Bybee Drive located in the Residential Estates 20 (RE-20) Zone, at approximately 6247 S. Bybee Drive and adopt the staff's planning report. Deone Smith seconded the motion. A vote was taken and Vice Chair Canning stated that the minutes were passed unanimously.

AMENDED MOTION: Rex Mumford made a motion to BOA 2011-08 to grant a special exception for access at a location other than the front lot line on Bybee Drive located in the Residential Estates 20 (RE-20) Zone, at approximately 6247 S. Bybee Drive. Deone Smith seconded the motion. A vote was taken and Vice Chair Canning stated that the minutes were passed unanimously.

3. **BOA 2011-09:** Consideration and action on a request for a special exception to allow access to Lot 1 of Jensen Glade Subdivision at a location other than across the front lot line, located in the Forest Valley 3 (FV-3) Zone, at approximately 4129 East Nordic Valley Drive. (Michael & Melanie Jenson, Applicants)

Sean Wilkinson reviewed the staff report. After reviewing the request for a special exception, staff has determined that the criteria listed in (a), (b), and (c) have been met as described below. The criteria listed in (d) are required to be met and will be inspected as part of the driveway access construction. The special circumstance (a) and unique boundary condition (b) attached to the property is the steep slope from Nordic Valley Drive onto the lot which makes access across the front lot line difficult and dangerous. The slope is steep enough that cutting a driveway into the hillside at the required distance from the asphalt is undesirable and dangerous (c) at the original location because it would result in grades steeper than 15%. A more desirable location for access is the proposed driveway from Nordic Valley Drive through Lot 1-R of Blake Holley Subdivision. This access has less steep grades, provides a safer access, can meet applicable County standards, and can be used as a joint access if a future home is built on Lot 1-R of Blake Holley Subdivision. Staff recommends approval of this special exception to allow access to Lot1 of Jensen Glade Subdivision at a location other than across the front lot line, based on staff findings listed above.

Melanie Jensen, applicant, said she did not have more information and if there were any questions for her.

Chair Canning asked if it was her intention to designate these two lots together as a single building lot and you are not selling one of the lots. Ms. Jensen replied that they might someday but for now they are keeping them apart and they are hoping to never sell it, but we want to keep those options open.

Rex Mumford asked is there a requirement of that second lot was ever build upon to share that driveway. Mr. Wilkinson replied there is not necessarily a requirement that they share a driveway, they would probably want to see that, for safety and coming out onto the road, and that is certainly something that they would like at such time that a home is proposed on that lot.

Rex Mumford asked how sharp is that radius the drawing indicates that it is quite sharp? Mr. Wilkinson replied the drawing is not to scale, and will be able to meet the criteria listed in the ordinance. Our engineer has been on site with the Jensen's to discuss that.

Doug Dickson asked if the topography to that other lot conducive to building where they don't have the same problem. Mr. Wilkinson replied yes and in coming up where that driveway is going to go, it can follow the contours a little bit better, than just cutting straight across the contours onto this lot. It will make for a better access probably for both lots in the future.

Deone Smith asked if there was already a recorded right-of-way? Mr. Wilkinson replied there is not.

MOTION: Deone Smith motion to approve BOA 2011-09 to approve on the action on a request for a special exception to allow access to Lot 1 of Jensen Glade Subdivision at a location other than across the front lot line, located in the Forest Valley 3 (FV-3) Zone, at approximately 4129 East Nordic Valley Drive and adopt the staff's planning report. Doug Dickson seconded the motion. A vote was taken and Vice Chair Canning stated that the minutes were passed unanimously.

4. **Other Business:**
Rob Scott said he wanted to remind the board of the Annual Appreciation Dinner and he hoped everyone would be able to attend.

3. **Adjourn:** The meeting was adjourned at 5:10 p.m.

Respectfully Submitted,

Kary Serrano

Kary Serrano, Secretary,
Weber County Planning Commission

2012

JANUARY

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CALENDAR KEY:

- Western Weber County Township
- Ogden Valley Township (1st Tues. Work Session)
- Board of Adjustment (Scheduled only if a case is received)
- WACOG
- County Holidays
- County Paydays

NOTES

APRIL

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WEBER COUNTY

Weber County Planning Division 2380 Washington Blvd., Suite 240, Ogden UT 801-399-8791 http://www.co.weber.ut.us/planning

2012

JULY

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CALENDAR KEY:

- Western Weber County Township
- Ogden Valley Township (1st Tues. Work Session)
- Board of Adjustment (Scheduled only if a case is received)
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NOTES

OCTOBER

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WEBER COUNTY BOARD OF ADJUSTMENT
RULES OF PROCEDURE AND ETHICAL CONDUCT

A Board of Adjustment shall be governed by the provisions of all applicable Statutes, County Ordinances and these rules.

I

MEMBERS

The Board of Adjustment shall each consist of five voting members, and two alternates, all of whom shall be citizen members appointed by the County Commission in accordance with the provisions of Utah Code Annotated and Weber County Ordinances .

II

OFFICERS AND DUTIES

A. Chair and Vice Chair

The Board of Adjustment shall elect annually, during the first regularly scheduled meeting in January, a Chair and Vice Chair who may be elected to succeed themselves for one additional term only. The Chairman shall be elected from the voting members of the Board of Adjustment by a majority of the total membership. The Chair, or in his/her absence or incapacity, the Vice Chair, shall preside over all meetings and hearings of the Board of Adjustment and shall execute all official documents and letters of the Board of Adjustment.

B. Secretary

The Director of Planning or his/her designated Staff member shall be the Secretary of the Board of Adjustment.

III

MEETINGS

A. Quorum

Three (3) or more members shall constitute a quorum for the transaction of business and the taking of official action; however, in the case of only three members in attendance, a unanimous vote shall be required to approve or deny an application.

B. **Time of Meeting**

Regular meetings shall be held on the second and fourth Thursdays of each month, or at the call of the Chair, at a time to be scheduled by Staff in the Weber County Commission Chambers of the Weber Center, 2380 Washington Blvd., Ogden. The date of the regular meeting may be changed by the majority of the total membership of the Board of Adjustment provided at least one week notice is given each member of the new date of a regular meeting.

C. **Meetings Open to the Public**

All regular or special meetings of the Board of Adjustment shall be open to the public.

D. **Order of Business**

The order of business shall be:

1. Approval of the minutes of previous meeting
2. Petitions for Variance, Special Exceptions or other applicable matters.
3. Other Business
4. Adjournment

The Board of Adjustment may change the order of business or consider matters out of order for the convenience of the applicants or other interested persons.

E. **Voting**

An affirmative vote of the three (3) or more of the voting members present at the meeting shall decide all matters under consideration by the Board of Adjustment unless otherwise provided for in these rules. Voting shall be by voice vote. The Chair votes on all questions unless the Chair has declared a conflict of interest on a specific issue under consideration before the Board of Adjustment. No voting member of the Board shall be allowed to abstain from voting on any matter under consideration by the Board, unless that member has declared a conflict of interest on the matter under consideration before the Board of Adjustment.

F. **Parliamentary Procedure**

Parliamentary procedure in Board of Adjustment meetings shall be governed by Robert's Rules of Order, as revised.

G. **Suspension of Rules**

The Board of Adjustment may suspend any of these rules by a majority vote of the entire Board.

H. Record of Meetings

The Secretary of the Board of Adjustment shall keep an accurate record of the proceedings and perform other duties as the Board of Adjustment may determine.

J. Meeting Agenda

The Planning Director or his designated Staff member shall review items proposed for the Board of Adjustment meeting agenda to determine whether all requirements necessary for Board of Adjustment consideration have been complied with. The Board shall establish reasonable deadlines for submission of applications and other items for Board of Adjustment consideration prior to a Board of Adjustment meeting to allow sufficient time for staff and agency review.

K. Non Performance or Misconduct - Removal from Office

In the event any member of the Board of Adjustment shall fail to attend more than seventy percent of the Board of Adjustment meetings held during any one year, the member may be removed from office by an affirmative vote of the majority of the County Commission. Any member of the Board of Adjustment may be removed for cause, upon written charges, by an affirmative vote of the majority of the County Commission. The member

shall be provided a Public Hearing, if requested.

IV

CONSIDERATION OF APPLICATIONS

A. Hearing Procedure

Any person may appear in person, by agent or attorney at any meeting of the Board of Adjustment. The order of procedure in the hearing of each application shall be as follows:

1. Presentation by the Planning Staff of the application, including staff recommendation. Presentation shall include the reading of pertinent written comments or reports concerning the application.
2. Additional presentation by applicant or his/her agent.
3. Public comments in favor of application.

4. Public comments against application.

5. Rebuttals by invitation of the Chair.

B. Decisions

Decisions and/or recommendations of the Board of Adjustment shall be final at the end of the meeting at which the matter is decided. The Board of Adjustment Staff shall send a Letter of Decision to the applicant, his/her attorney or agent.

V

RULES OF ETHICAL CONDUCT FOR A BOARD OF ADJUSTMENT MEMBER

Preamble

1. Ethical practice has special relevance to all people who are charged with responsibilities in public service. Board members, whose decisions and actions have long-range consequences for later generations, must be keenly concerned to adhere to ethical principles.

2. Codes of ethics, as commonly adopted, present a catalog of temptations that are prohibited. It cannot be an exhaustive catalog: human imagination is sufficiently rich to discover new variations of old temptations. The existence of a code simply puts a challenge, to some, to find a gap or loop-hole. Emphasis must be put not on the letter of prohibition but on the spirit of observance. A performance standard of ethical behavior will be superior to a specification standard.

A. Conflict of Interest

A Board of Adjustment member to whom some private benefits may come as the result of a Board of Adjustment action should not be a participant in the action.

1. The private benefit may be direct or indirect, create a material, personal gain or provide a distinct advantage to relations or to friends or to groups and associations which hold some share of a person's loyalty. However, mere membership itself in a group or organization shall not be considered a conflict of interest as to Board of Adjustment action concerning such groups or associations unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.

2. A Board member experiencing, in his/her opinion, a conflict of interest, should declare his/her interests publicly, abstain from voting on the action, and may excuse himself/herself from the

room during consideration of the action. He/she should not discuss the matter privately or with any other Board member. The vote of a Board member experiencing a conflict of interest who fails to disqualify himself shall be disallowed.

3. A conflict of interest may exist under these rules although a Board member may not believe he/she has an actual conflict; therefore, a Board member who has any question as to whether a conflict of interest exists under these rules should raise the matter with the other Board members and the County Attorney's representative in order that a determination may be made as to whether a conflict of interest exists.

4. No Board of Adjustment member should engage in any transaction in which he/she has a financial interest, direct or indirect, with the agency or jurisdiction that he/she serves unless the transaction is disclosed publicly and determined to be lawful.

5. The Board members that the County Commission, in making appointments to the Board of Adjustment, not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of good character need not be sacrificed. Their withdrawal from participation in planning matters is necessary only in those specific cases in which a conflict of interest arises.

B. <u>Gifts and Favors</u>

Gifts, favors or advantages must not be accepted if they are offered because the receiver holds a position of public responsibility.

The value of a gift or advantage and the relation of the giver to public business should be considered in determining acceptability. Small gifts that come in the form of business lunches, calendars or office bric-a-brac are often, not always, acceptable. In cases of doubt, refuse. In cases of marginal doubt, refuse.

C. <u>Treatment of Information</u>

It is important to discriminate between information that belongs to the public and information that does not.

1. Reports and official records of a public agency must be open on an equal basis to all inquiries. Advice should not be furnished to some unless it is available to all.

2. Information on private affairs that is learned in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action -- such as an

application for Variance or Special Exception -- is requested with respect to them. Only then is a disclosure of relevant information proper.

3. Information contained in studies that are in progress should not be divulged except in accordance with established agency policies on the release of its studies.

4. Prearranged private meetings between a Board of Adjustment member and applicants, their agents, or other interested parties are prohibited. Partisan information on any application received by a Board of Adjustment member whether by mail, telephone, or other communication should be made part of the public record.

D. <u>Political Activity</u>

Membership in a political party and contributions to its finances or activities are matters of individual decision that should neither be required of nor prohibited to Board of Adjustment members.

1. The extent of participation in political activities should be governed by professional judgment as well as limited by any applicable civil service law or regulation.

2. The powers of the Board of Adjustment must not be exercised, nor their duties performed, in any way that will create special advantages for a political party. The special position of a Board of Adjustment member should not be used to obtain contribution or support for a political party and should not be used to obtain partisan favors.

3. Partisan debate of a community's planning program and the consideration of planning in a party's platform is proper. Planning Officials should, however, give political parties equal access to information.

EXHIBIT A
1/3

Weber County Land Use Permit Application

Application submittals are recommended to be submitted with an appointment.
(801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)

Property Owner Contact Information

Name: Rulon Kent Jones	Mailing Address: 398 S N 377 J E Liberty, UT. 84310
Phone: 208 346 6631 / Fax:	
Email Address: rulon@utahelkhunt.com	Preferred Method of Written Correspondence: ☒ Email ☐ Fax ☐ Mail

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s): Garet Kent Jones	Mailing Address of Authorized Person: 2775 N 4904 E Eden Ut 84310
Phone: (801) 814-6261 / Fax:	
Email Address: garet_jones@yahoo.com	Preferred Method of Written Correspondence: ☒ Email ☐ Fax ☐ Mail

Property Information

Address: 3788 E 4100 N Eden 84310	Land Serial Number(s): 22-010-0001

Subdivision Name	Lot Number	Current Zoning	Acreage
	3788		6.15

Culinary Water Provider	Secondary Water Provider	Waste Water Provider	Frontage
	Liberty Irrigation		

Detailed Description of Proposed Use/Structure

Property Owner Affidavit

I (We), Rulon K Jones, 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)

RHONDA FLUSHOTT

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2/3

Authorized Representative Affidavit

I (We), Rulon Jones, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), Garet Jones, 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 24 day of February, 20 11, personally appeared before me Rulon K Jones, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

RHONDA ELLSWORTH
NOTARY PUBLIC
STATE OF IDAHO

Rhonda Ellsworth
4.6.13
(Notary)

Agricultural Description of Property

This 6.15 acre piece of property located on the North West corner of 4100n and 3800e in Liberty has and will be used for agriculture. Elk are bred, grazed, handled (vaccinated and ear tagged) and raised on this property. The handling facility and agricultural storage area is used to store hay, grain and other farm supplies. It is also used to bring the elk into a smaller area in the winter and be worked. The new calves are ear-tagged and micro-chipped in compliance with the Utah Department of Agriculture rules. All the animals are vaccinated once a year to maintain health.

The meat cutting building will be used to butcher and package the elk meat for consumption. It will have a meat grinder to make hamburger, cutting and packaging areas. There will also be freezers to freeze and store the processed meat.

The property is irrigated with the Liberty secondary water system that is in place. It is irrigated during the spring and summer months and any excess hay is harvested and stored. Weeds are controlled and the land is replanted when needed.

There is also an apple orchard, raspberry patch and a garden which are also part of the agricultural use of the property.

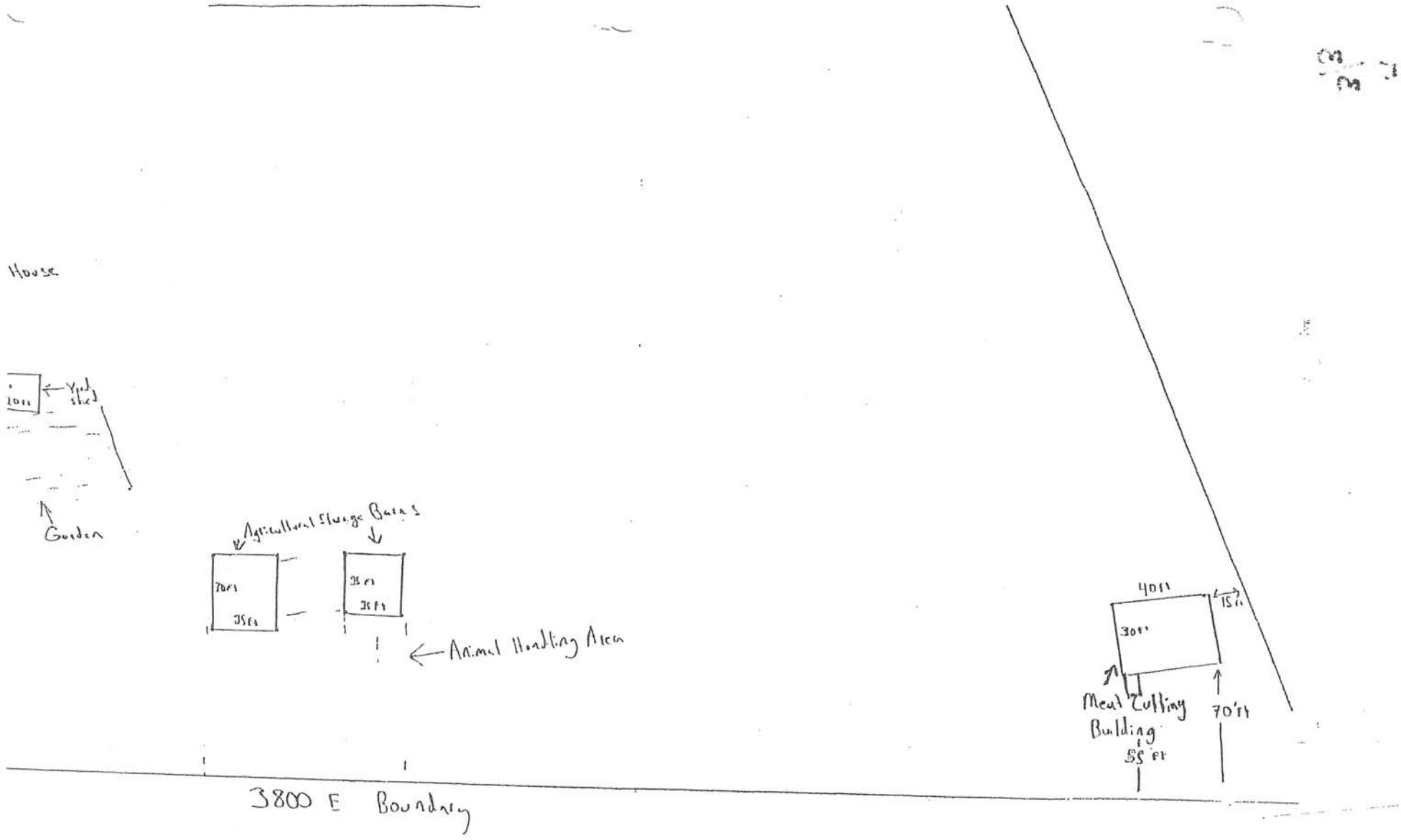
House
10ft
Yard Shed
Garden
Agricultural Sludge Barns
70ft
35ft
35ft
35ft
Animal Handling Area
40ft
15ft
30ft
Meat Cutting Building
55ft
70'ft
3800 E Boundary

EXHIBIT B
1/44

Office of the Property
AUG 2 4 2011
Rights Ombudsman

HOFFMAN LAW

Park City
1887 Gold Dust Lane
Suite 303
Park City, Utah 84060

Salt Lake City
50 So. 600 East
Suite 250
Salt Lake City, UT 84102

(435) 940-1031
(435) 655-8855
jhoffman@xmission.com

August 20, 2011

Brent Bateman
Office of the Property Rights Ombudsman
160 East 300 South
Box 146702
Salt Lake City, UT 84114-6701

Re: Advisory Opinion – Bret Barry adv. Weber County

Brent,

I represent Bret Barry and several of his neighbors who seek to enforce the Uniform Land Use Ordinance of Weber County (Weber County Code or WC Code) to prevent the inception of a custom butchering and meat packaging operation in their quiet agricultural neighborhood. This letter is a factual and legal supplement to the online OPRO Request for an Advisory Opinion form and should be considered as an essential component of Mr. Barry's official request for an OPRP Advisory Opinion.

The legal issues are straightforward:

1. Does the Weber County Zoning Code prohibit a new custom meat cutting, processing and wrapping and shipping operation in the Agricultural Valley-3 (AV-3) zone?;

2. Can Weber County Planning Staff usurp the Ogden Valley Township Planning Commission's designation as the Land Use Authority and render a final interpretation of the Weber County Code that can be appealed only to the Board of Adjustment?

County Law Prohibits Meat Cutting Use in AV-3 Zone

Like most Utah Land Use Ordinances, the Weber County Code prohibits land uses that are not specifically listed as a Permitted or Conditional use in a specific zone.

> 1-3 Interpretation
> In interpreting and applying the provisions of this Ordinance, the requirements contained herein are declared to be the minimum requirements for the purpose set forth. Specific uses listed as Permitted or Conditional uses in a zone are allowed; *uses not listed are not allowed in that zone.*

B
3/44

Weber County Code Section 1-3 (emphasis ours). *See website reference* http://www.co.weber.ut.us/mediawiki/index.php/General_Provisions_%26_Definitions; and see Exhibit A, a compendium of the relevant County Code provisions.

The Weber County Code specifically lists a plethora of land uses that are appropriate in certain zones and are prohibited in others. The Weber County Code specifically includes a *"Meat Custom cutting and wrapping, not slaughtering"* use in some County zones. *See* Exhibit A; WCC Chapter 2-1 Establishment of Zones (31 listed) http://www.co.weber.ut.us/mediawiki/index.php/Zones_%26_Districts. The Meat Cutting use is a conditional use in only three of 31 zones: Commercial Zones (CV-2, C-2 and C-3) *See* 18-5 Commercial Use Table and Chapter 19-5 Commercial Valley Use Table. *See* Exhibit A and http://www.co.weber.ut.us/mediawiki/index.php/Commercial_Zones_C-1,_C-2,_C-3.

"Meat Custom cutting and wrapping, not slaughtering" is not an "allowed" use in any zone in the County. "Meat Custom cutting and wrapping, not slaughtering" is not an allowed or a conditional use in the AV-3 zone. *See* WCC Chapter 5B-2- Permitted Uses (AV-3 zone), 5B-3 Permitted Uses Requiring Five (5) Acres Minimum Lot Size (AV-3 zone) and 5B-4 Conditional Uses (AV-3 zone); Exhibit A. *See* Exhibit A and http://www.co.weber.ut.us/mediawiki/index.php/Agricultural_Valley_Zone_AV-3 .

Staff simply erred in determining that a general term such as "agriculture" supersedes the impact of a specifically defined land use "meat cutting" that is an excluded use in the zone.

The Land Use Permit Application for a Meat Cutting Building:

On February 11, 2011, former Denver Broncos All-Pro Defensive Lineman and local celebrity, Rulon Jones, signed a non-descript Weber County Land Use Permit Application related to the 6.15 acre parcel (Attached as Exhibit B) that did not mention a meat cutting facility. Sometime in June, his representative submitted the same non-descript application, a hand drawn site plan that did not meet the County's definition of a site plan[1] (Exhibit C) and a brief written narrative (Exhibit D) of the proposed construction and change of use. The site plan was not drawn to scale and did not accurately depict the built environment, the proposed construction, access, or the building design. The narrative described a grazing operation and small orchard on the property that was not the subject of the application. It included only three sentences describing a proposal: a meat cutting building that would "be used to butcher and package elk meat for [their clients'] consumption." Exhibit D.

[1] WC Code 1.6 defines a "Site Plan" as: "A plan/document or group of documents, *prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses and primary site development features proposed for a specific parcel of land, including, but not limited to text, photographs, sketches, drawings, maps and other materials intended to* present certain elements of the proposed development, including, but not limited to physical design, siting of buildings and structures, interior vehicular and pedestrian access, the provision of improvements and the interrelationship of these elements." Emphasis ours.

The purpose of the newly proposed custom meat cutting facility was to cut, grind, process, package, refrigerate and ship big game (elk, Shiras moose, buffalo and mule deer) that had been shot by tourists on one of two private elk preserves that are owned and promoted by Mr. Jones. The website describes the game herds as "self-propagating" on the Jones' Broadmouth Canyon (UT) and Blackfoot (ID) ranches. *See* http://www.utahelkhunt.com/about-broadmouth-elk-hunts.html. These state-licensed hunting ranches are miles away from the subject property.

Annually, approximately 100 elk, or other big game animals, are shot for sport by tourists on the two ranches.[2] It is these elk, along with a few moose and many mule deer that will be processed in the "meat cutting building" next to Mr. Barry's home in Liberty, UT. State law provides that the elk meat can be possessed by the hunter or by charities. It may not be consumed by the residents of the six acre property.

Tourists pay between $4000 and $6000 for the outfitting, lodging, guides, hunting experience, and custom cut and wrapped meat.[3] Taxidermy is a separate service.

[2] The internet site www.utahelkhunt.com describes Mr. Jones' operation as "Guaranteed Elk Hunts on the West's Largest Wilderness Hunting Preserve". As the site describes:

> *Since 1989, Broadmouth Canyon Ranch has offered world class hunting in the most spectacular big game country of the American West. We offer guaranteed Elk hunts, as well as Shiras Moose, Buffalo, Mountain Lion, and Mule Deer hunts. Choose from two of the most pristine hunting ranches created by lifetime hunter and former NFL All-Pro Rulon Jones. Our hunting ranches comprise two exclusive hunting preserves in the rugged Rocky Mountains of Idaho and Utah and include 10,000 acres of high fence hunting and 60,000 acres of private, free-range hunting. Personal hunting guides assist you as you hunt trophy big game on horseback, foot, or ATV. Broadmouth Canyon Ranch is truly the ultimate hunting experience.*

[3]

	TYPE	PRICE	INFORMATION
Elk Hunts	Trophy	$5,900 plus $488 license	With our trophy hunt, we guarantee an opportunity up to a 340 class bull.
	Management	$3,900 plus license	5X6 Bull and 5X5 Bull
	Cow	$1,900 plus license	
	Free Range	$4,900 plus license	
	Upgrades	Please contact us	We also have elk hunts that we guarantee specific size bulls. For the hunter that would like to choose a particular class of bull, we have bulls up to 600 points. We do not over hunt our ranches and we are at 100% success for elk.
Mule Deer Hunts	All	$5,900 plus license	We have averaged around 90% on deer hunts over the past 14 years
Cougar Hunts	All	$3,900 plus license	
Buffalo Hunts	All	$3,900 plus license	Buffalo hunts are offered 60 miles from the famous Yellowstone and Teton Park herds. Cow hunts are also available.
Shiras Moose Hunts	All	Contact us for prices (license fees on hunts vary based on the State)	We only take three Shiras moose off our ranch per year. The quality of the bulls we take year in and year out cannot be matched anywhere. Moose hunts success has always been 100%.

B
4/44

Staff Interpretation Was Result-Oriented.

Attached as Exhibit E you will find the Weber County Recorder's map of the quarter section comprising the subject area. The AV-3 zone is a transition zone from agriculture to more urban residential development. As Exhibit E reveals, this is a neighborhood. It is not an active or large agricultural production area. It is composed of homes on two to five acre lots. Immediately next door to the proposed meat packing site is a "cluster subdivision".

However, based on the applicant's representation that the 6.15 acres is part of a 25,000 acre "fair chance" hunting preserve (that is approximately four miles away), Staff determined that the meat cutting use was a permitted agriculture use in the AV-3 zone.

Staff has provided its research notes, attached hereto as Exhibit F, to serve as the evidence of the logic they employed to reach this interpretation. The logic is:

1. The Weber County Code defines "agriculture" as: "Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, *but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.*" Emphasis ours.

2. Disregarding the italicized language above that prohibits "*agricultural industry or business such as fruit packing plants . . . or similar uses*" in the AV-3 zone, Staff focused on the words "animal husbandry" as the pertinent language in the definition of agriculture.

3. Staff then left the Weber County Code in search of support from other unrelated sources:

    a. First, it drew from a definition in the U.C.A. Chapter 17-41, *The Agriculture and Industrial Protection Areas* section of state law to conclude that "Agriculture production" includes the production of livestock for commercial purposes.

    b. Disregarding the fact that Chapter 17-41 was in fact a restriction on their local zoning power, and that the subject area is not an "Agricultural Protection" Area under the state statute, Staff then drew from another definition in Chapter 17-41, which states that "crops, livestock and livestock products includes: . . . livestock *as defined in Subsection 59-2-102(27)(d)* [The State Tax Code]";

    c. Subsection 59-2-102(27)(d) is a definition of personal property in the State Tax Code. Livestock is personal property under the State Tax Code and includes "domestic [not domesticated] animals";

B
5/44

d. From there, the Staff reasons that since the state legislature recently passed the Domesticated Elk Act, then [follow me] Elk farms are "agriculture". Whew!

See Staff Notes, Exhibit F (emphasis added). Staff does no similar mental gymnastics with respect to the moose and mule deer that will be processed in the building. There is no "Domesticated Moose Act," nor "Domesticated Mule Deer Act," that would similarly tie the acts of remote sport hunting to agriculture in an agriculture transition zone.

Staff's leap from the notion that "Elk is agriculture" to "Meat Cutting (elk, moose and mule deer) is a permitted agriculture use in the AV-3 zone" is detailed in Staff's Response to Mr. Barry's appeal before the Board of Adjustment. *See* Exhibit G, pp 2-3. The logic is amazingly result-oriented. Staff reasons that:

1. Even though the Weber County Code defines the term "agriculture" differently than does the state, Staff looked to a different, more helpful definition of "agriculture" in an un-referenced section of Utah state law to conclude that:

   "'Agriculture' means the science and art of the <u>production of plants and animals</u> useful to man <u>including the preparation of plants and animals</u> for human use and disposal by marketing or otherwise." (Emphasis theirs)

2. Then, it stated: "The Planning Staff considered the proposed 'meat cutting' activity to be a part of the 'preparation' as included in the above Utah State Code definition of 'agriculture'." Again, this is a state code definition of agriculture, not the WC Code definition of agriculture, which does not mention "preparation". See Exhibit A Section 1.6.

3. Finally, Staff explained that:

   "Due to the inclusion of the word 'preparation'[4], the Planning Staff referred to Utah State Code for more specific information. The following is the Utah State Code definition of 'prepared' and 'process':

   'Prepared' means slaughtered[5], canned, salted, rendered, boned, <u>cut up</u> or otherwise manufactured or processed.

   'Processed' means <u>to cut, grind</u>, manufacture, compound, smoke, intermix, or prepare meat or poultry products."

---

[4] "Preparation" appears only in the State definition of 'agriculture'. The state definition conflicts with the WC Code definition.

[5] Never mind the fact that animal slaughter in the AV-3 zone is specifically prohibited outside of "family food production" i.e. food the family will eat.

B 6/44

Staff Report to the Weber County Board of Adjustment, Exhibit F, p.3 (emphasis theirs).

Despite the World Class Mental Gymnastics, Staff Missed Several Controlling WC Code Provisions

1. Meat Cutting is a Specific Use Category in the WC Code That is Prohibited in the AV-3 Zone.

In its result-focused reasoning, Staff did not mention how, or even that, it was distinguishing this "custom meat cutting" use from the more specific "Meat Custom Cutting" use designation in the Weber County Code. Using traditional rules of statutory construction, the specific term controls the general term. Read as a whole, the Weber County Code has clearly regulated "Meat Cutting" and "Slaughtering for profit" out of the AV-3 zone.

2. AV-3 Zone Clearly Limits "Agriculture" Uses

Nevertheless, even if the "Meat Cutting" use weren't a clear land use designation in the WC Code, Staff also disregarded the notion that under the County's AV-3 zone, even agriculture uses are limited to modest farming operations that are limited to on-site food production or are separated from adjoining properties by significant distances.

First, the WC Code specifically excludes "any agriculture industry or business" from the definition of the use "agriculture" *countywide*. Exhibit A Section 1.6.

Second, the WC Code even further restricts agriculture uses in the AV-3 zone:

5B-3 Permitted Uses Requiring Five (5) Ares Minimum Lot Area

1. Dairy farm and milk processing and sale *provided at least fifty (50) percent of milk processed and sold is produced on the premises*
2. Farms devoted to the hatching, raising (including fattening as an incident to raising) of chickens, turkeys, or other fowl, rabbits, fish, frogs or beaver
3. Fruit and vegetable storage and packing plant *for produce grown on premises*.
4. The keeping and raising of *not more than ten (10) hogs more than sixteen (16) weeks old*, provided that no person shall feed any such hog any market refuse, house refuse, garbage or offal other than that produced on the premises.
5. The raising and grazing of horses, cattle, sheep or goats *as part of a farming operation*, including the supplementary or full feeding of such animals *provided that* such raising and grazing when conducted by a farmer in conjunction with any livestock feed yard, livestock sales or slaughter house shall:
    1. not exceed a density of twenty-five (25) head per acre of used and;

2. be carried on during the period of September 15 through April 15 only;

3. *be not closer than two hundred (200) feet to any dwelling, public or semi-public building on an adjoining parcel of land; and*

4. *not include the erection of any permanent fences, corrals, chutes, structures or other buildings normally associated with a feeding operation*

See Exhibit A; http://www.co.weber.ut.us/mediawiki/index.php/Agricultural_Valley_Zone_AV-3 (italics ours).

Under the WC Code, in the AV-3 zone, even simple grazing of traditional farm animals is restricted to a greater distance from a dwelling (200 feet) than is either the elk grazing or the elk meat cutting operation when it is conducted by the farmer in conjunction with a slaughter house.

Mr. Barry's home is less than 200 feet from the proposed meat cutting building. The building itself is an un-insulated, steel-roofed, sound-magnifying, structure that will be in daily production from September through April (cutting and grinding 100 elk carcasses). Judging from the current construction noise, high pitched whining from the band saws that cut the game carcasses will permeate the interior of Mr. Barry's home on a daily basis. By far, this use is more intense in kind and quality than any of the regulated uses in the AV-3 zone. Yet under Staff's interpretation, it is not even considered a conditional use.

In its response to Mr. Barry's appeal to the Board of Adjustment, Staff reasoned that none of the codified limitations on agriculture in the AV-3 zone apply to the proposed use because:

> "Section 5B-3(5) [a limitation on agriculture] specifically and unambiguously states 'the raising of horses, cattle, sheep or goats' and then assigns additional requirements to operations that raise and graze 'horses, cattle, sheep or goats.' This list does not serve as a list of examples due to the fact that words like "such as", "for example", or "not limited to" are not used. Due to this the Planning Staff concluded that the list was created decidedly and intentionally; therefore, the standards listed in A through D above apply [only] to farm operations that involve those specifically listed animals."
>
> See Exhibit G at p. 4

In truth, Staff has concluded both that the County:

1. does not separately regulate "meat cutting" (even though it appears as a specific use in the Code); and

2. has *intentionally* restricted the animal husbandry of horses, cattle, sheep or goats to a greater degree than it has restricted animal husbandry associated with elk, moose, or mule deer production.

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8/44

Staff Circumvented the Clear Role of its Land Use Authority

Staff's determination was not reviewed or approved by the WC Code-designated Land Use Authority. Weber County Code Section 1.4 specifically states that if there is a conflict between provisions in the Code, the Planning Commission "shall rule on which provisions apply." See Exhibit A and http://www.co.weber.ut.us/mediawiki/index.php/General_Provisions_%26_Definitions .

Code Section 1.4 grants Staff had no authority to determine a conflict of interpretation. Traditional rules of statutory construction inform that the very specific "Meat cutting" designation in the code controls the more general "agriculture" use allowed in Section 5B-3.

County Staff is Bound by its Code

The Land Use Development and Management Act provides that a County government cannot disregard the land use laws it has adopted:

> (2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

U.C.A. Section 17.27a.508(2).

While the County has virtually limitless authority to zone and to determine the uses that are appropriate in each zone, it must do so by law and not by fanciful logic.

Under state law, neighbors have a right to enforce the Land Use Tables associated with each zone. Neighbors have a right to rely on the land use definitions included in their land use code.

State law prevents Staff's disregard of the law and its attempt to bootstrap conflicting, *ultra vires* definitions into their land use code.

Current Procedural Posture

Mr. Barry has timely appealed Staff's decision to permit the meat cutting use. He has had no recourse to the Land Use Authority.

At Mr. Barry's request, Staff has postponed a scheduled Board of Adjustment hearing on his appeal. They have determined that it is prudent to await your opinion before proceeding any further.

Conclusion

In summary, we contend that Staff erred in two respects:

B
9/44

1. It determined that a general "agriculture" use designation in the AV-3 zone includes a custom meat packing plant and thereby supersedes the WC Code's specific and clear prohibition of a "meat cutting and wrapping" use in the AV-3 zone; and

2. It did not allow the Land Use Authority to interpret what it has characterized as conflicting land use designations in the WC Code. Without ordinance-based authority, Staff simply circumvented the authority of the Planning Commission to authorize a result-oriented interpretation of the WC Code.

On behalf of Bret Barry and each of his neighbors, we respectfully request an Advisory Opinion from your office on this matter.

Sincerely,

Jodi Hoffman

Jodi Hoffman
Hoffman Law

Cc: Bret Barry
Chris Allred

Attachments: Exhibits A-G

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10/44

B

11/44

Exhibit A

General Provisions & Definitions

From Weber County Wiki

Contents

1-1 Short Title

This Ordinance shall be known as the "Uniform Land Use Ordinance of Weber County, Utah." The Township Planning Commissions are to be the Land Use Authority, with due responsibility to administer the Land Use Ordinance. Any appeals of the Land Use Authority will be heard by the Board of Adjustment as outlined in Chapter 29 of the Land Use Ordinance. Appeal of Conditional Use applications will be heard by the Board of County Commissioners.

1-2 Purpose

This ordinance is designed and enacted and for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Weber County, State of Utah, including amongst other things, the lessening of congestion in the streets, or roads, securing from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the County's agricultural and other industries, and the protection of both urban and non-urban development.

1-3 Interpretation

In interpreting and applying the provisions of this Ordinance, the requirements contained herein are declared to be the minimum requirements for the purpose set forth. Specific uses listed as Permitted or Conditional uses in a zone are allowed; uses not listed are not allowed in that zone.

1-4 Conflict

This Ordinance shall not nullify the more restrictive provisions of covenants, agreements, other ordinance or laws, but shall prevail notwithstanding such provisions which are less restrictive. Where a conflict exists between various provisions of this ordinance, the Planning Commission shall rule on which provision applies.

1-5 Effect on Previous Ordinances and Maps

The existing ordinances of the County covering the zoning of areas and districts in Weber County, in their entirety and including the maps heretofore adopted and made a part of said ordinances are hereby superseded and amended to read as set forth herein; provided, however, that this Ordinance including the attached maps, shall be deemed a continuation of previous ordinances, and not a new enactment, insofar as the substance of revisions of previous ordinances is included in this Ordinance, whether in the same or

different language; and this Ordinance shall be so interpreted upon all questions of construction, including but not limited to questions of construction, relating to tenure of officers and boards established by previous ordinances and to questions of conforming or nonconforming use, buildings and structures, and to questions as to the dates upon which such uses, buildings or structures become conforming or nonconforming.

1-6 Definitions

For the purpose of this Ordinance, certain words and terms are defined as follows: words used in the present tense include the future; words in the singular number include the plural and the plural for singular; words not included herein but defined in the Building Code or other County codes shall be construed as defined therein. References to the Ogden Valley area also include the Ogden Canyon area.

A

ABANDONMENT

To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure.

ABUTTING

Having a common border with, or being separated from such a common border by a right-of-way.

ACREAGE, GROSS

A total of all (non-developable and developable) land area that lies within a project boundary.

ACREAGE, ADJUSTED GROSS

A total of all land area that lies within a project boundary and is classified as "developable" by this or any other County, State or Federal law, ordinance or regulation.

ACREAGE, NET DEVELOPABLE

A total of all land area that lies within a project boundary and has not been excluded from use in density calculations or deemed "undevelopable" by this or any other County, State, or Federal law, ordinance or regulation. The area within existing and proposed public and private road rights-of-ways shall not be counted towards "Net Developable Acreage."

AGRICULTURE

Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.

AGRICULTURAL PARCEL

A single parcel of land, at least 5.0 acres in area if vacant, or 5.25 acres with a residential dwelling unit. This definition needs to be fulfilled in order to qualify for the agricultural building exemption.

F

FAMILY

One or more persons related by blood, marriage, or adoption, plus domestic employees serving on the premises, or a group of not more than four (4) persons who need not be so related, living together as a single nonprofit housekeeping unit.

FAMILY FOOD PRODUCTION

The keeping of not more than the following number of animals and fowl:

Group A

- 2 Sheep
- 2 Cows
- 2 Goats

Group B

- 20 Rabbits
- 20 Chickens
- 20 Pheasants
- 10 Turkeys
- 10 Ducks
- 10 Geese
- 20 Pigeons

provided however, that only two (2) kinds of Group B animals and fowl may be kept on parcels of less than 40,000 sq. ft. and not more than 3 kinds of Group A and B Animals or Fowl at any one time on parcels of less than 2 acres. An additional number of animals and fowl as listed above may be kept for each one acre in the parcel over and above the first 40,000 sq. ft. up to a maximum of five times the number.

SITE PLAN

A plan/document or group of documents, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses and primary site development features proposed for a specific parcel of land, including, but not limited to text, photographs, sketches, drawings, maps and other materials intended to present certain elements of the proposed development, including, but not limited to physical design, siting of buildings and structures, interior vehicular and pedestrian access, the provision of improvements and the interrelationship of these elements.

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14/44

2-1 Establishment of Zones

For the purpose of this Ordinance, the Territory of Weber County to which this Ordinance applies is divided into thirty-two (32) classes of zones as follows:

- Residential Estates Zone RE-15
- Residential Estates Zone RE-20
- Gravel Zone G
- Agricultural Zone A-1
- Agricultural Zone A-2
- Agricultural Zone A-3
- Agricultural Valley Zone AV-3
- Forestry Zone F-5
- Forestry Zone F 10
- Forestry Zone F-40
- Forest Valley Zone FV-3
- Shoreline Zone S-1
- Commercial Valley Resort Recreation Zone CVR-1
- Residential Zone R-1-12
- Residential Zone R-1-10
- Forest Residential Zone FR-1
- Residential Zone R-2
- Residential Zone R-3
- Forest Residential Zone FR-3
- Residential Mobile/Manufactured Home Park Zone RMHP
- Residential Manufactured Home Zone RMH-1-6
- Commercial Zone (Neighborhood) C-1
- Commercial Zone (Limited) C-2
- Commercial Zone (Business District) C-3
- Commercial, Valley Zone CV-1
- Commercial, Valley Zone CV-2
- Manufacturing Zone M-1
- Manufacturing Zone M-2
- Manufacturing Zone M-3
- Manufacturing Valley MV-1
- Open Space Zone O-1

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15/44

Agricultural Valley Zone AV-3

From Weber County Wiki

5B-1 Purpose and Intent

The purpose of the AV-3 Zone is to designate farm areas, which are likely to undergo a more intensive urban development, to set up guidelines to continue agricultural pursuits, including the keeping of farm animals, and to direct orderly low-density residential development in a continuing rural environment.

Contents

[hide]

5B-1A Agriculture Preferred Use

Agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone.

5B-2 Permitted Uses

1. Accessory building or use customarily incidental to any permitted or conditional use
2. Agriculture, agricultural experiment station; apiary; aviary; aquarium
3. Animals or fowl kept for family food production as an accessory use
4. Cemetery; chinchilla raising, convalescent or rest home
5. Church, synagogue or similar building used for regular religious worship
6. Cluster subdivision in accordance with Chapter 22B of this Zoning Ordinance
7. Corral, stable or building for keeping animals or fowl, provided such structure shall be located not less than one hundred (100) feet from a public street and not less than twenty-five (25) feet from any rear or side lot line
8. Fruit or vegetable stand for produce grown on the premises only
9. Golf course, except miniature golf course
10. Greenhouse and nursery limited to sale of materials produced on premises and with no retail shop operation
11. Home occupations
12. Household pets which do not constitute a kennel

13. Parking lot accessory to uses allowed in this zone
14. Private park, playground or recreation area, but not including privately owned commercial amusement business
15. Private stables, horses for private use only and provided that not more than two (2) horses may be kept for each twenty thousand (20,000) square feet of area devoted exclusively to the keeping of the horses.
16. Public building; public park, recreation grounds and associated buildings; public school; private education institution having a curriculum similar to that ordinarily given in public schools
17. Residential Facility for Handicapped Persons meeting the requirements of Chapter 23-13 of this Ordinance
18. Residential Facility for Elderly Persons meeting the requirements of Chapter 23-15 of this Ordinance
19. Single Family Dwelling
20. Temporary buildings for use incidental to construction work. Such building shall be removed upon completion or abandonment of the construction work

5B-3 Permitted Uses Requiring Five (5) Ares Minimum Lot Area

1. Dairy farm and milk processing and sale provided at least fifty (50) percent of milk processed and sold is produced on the premises
2. Farms devoted to the hatching, raising (including fattening as an incident to raising) of chickens, turkeys, or other fowl, rabbits, fish, frogs or beaver
3. Fruit and vegetable storage and packing plant for produce grown on premises.
4. The keeping and raising of not more than ten (10) hogs more than sixteen (16) weeks old, provided that no person shall feed any such hog any market refuse, house refuse, garbage or offal other than that produced on the premises.
5. The raising and grazing of horses, cattle, sheep or goats as part of a farming operation, including the supplementary or full feeding of such animals provided that such raising and grazing when conducted by a farmer in conjunction with any livestock feed yard, livestock sales or slaughter house shall:
    1. not exceed a density of twenty-five (25) head per acre of used and;
    2. be carried on during the period of September 15 through April 15 only;
    3. be not closer than two hundred (200) feet to any dwelling, public or semi-public building on an adjoining parcel of land; and,
    4. not include the erection of any permanent fences, corrals, chutes, structures or other buildings normally associated with a feeding operation

5B-4 Conditional Uses

The following uses shall be allowed only when authorized by a Conditional Use Permit obtained as provided in Chapter 22C of this Zoning Ordinance.

1. Animal hospital or clinic; dog breeding, dog kennels, or dog training school on a minimum of three (3) acres and not exceeding 10 dogs of more than 10 weeks old per acre at any time; provided any building or enclosure for animals shall be located not less than one hundred (100) feet from a public street and not less than fifty (50) feet from any side or rear property line.

B

17/44

2. Animal hospital or clinic, or dog training school on a minimum of three (3) acres and not exceeding 10 dogs of more than 10 weeks old per acre at any time; provided any building or enclosure for animals shall be located not less than one hundred (100) feet from a public street and not less than fifty (50) feet from any side or rear property line
3. Dog breeding and dog kennels on a minimum of two (2) acres, on a legal non-conforming lot, as an accessory use to a single family dwelling, limited to 10 dogs of more than 10 weeks old. Any building or enclosure for the dogs shall be located not less than one hundred (100) feet from a public street and not less than fifty (50) feet from any side or rear property line, as well as being located not closer than 40 feet from the residence and not closer than 70 feet from the nearest adjacent residence
4. Child day care
5. Circus or transient amusement
6. Educational/Institutional identification sign
7. Greenhouse and Nursery limited to the sale of plants, landscaping materials, fertilizer, pesticide and insecticide products, tools for garden and lawn care and the growing and sale of sod
8. Laboratory facility for agricultural products and soils testing 99-9
9. Petting Zoo where accessed by a collector road as shown on the County road plan 2007-2
10. Planned Residential Unit Development in accordance with Chapter 22C of this Zoning Ordinance
11. Private park, playground or recreation area not open to the general public and to which no admission charge is made, but not including privately owned commercial business
12. Private Equestrian Training and Stable facilities on a minimum of 5 acres of land and at a density of not more than ten (10) horses per acre of land devoted exclusively to the keeping of the horses
13. Public Equestrian Training and Stable Facilities on a tract of land with a minimum of 10 acres in area and at a density of not more than 5 horses per acre
14. Public storage facilities developed by a public agency and meeting requirements of Chapter 26 of this Zoning Ordinance
15. Public Utility Substations
16. Radio or television station or tower
17. Raising and slaughtering of rabbits limited to a maximum of five hundred (500) rabbits at any one time
18. Residential facility for troubled youth subject to the requirements listed in Chapter 23-14
19. School bus parking, provided the vehicle is parked at least 30 feet from a public street
20. Slaughtering, dressing and marketing on a commercial scale of chickens, turkeys or other fowl, rabbits, fish, frogs or beaver in conjunction with the hatching and raising of such animals on farms having a minimum area of five (5) acres
21. Sugar beet loading or collection station
22. The overnight parking of not more than one vehicle other than an automobile, light truck or recreation vehicle, of not more than twenty-four thousand (24,000) pounds net weight, on property of not less than two acres in area and upon which the operator has his permanent residence provided that the vehicle is parked at least fifty feet from a public street
23. The use and storage of farm equipment and other related equipment such as a backhoe, front-end loader or up to a ten-wheel truck, to be used by a farm owner, farm employee and/or a contracted farm operator of a bona-fide farm operation

consisting of five (5) acres or more, for off-farm, non-agricultural related, construction work to supplement farm income 2008-31

24. Waste water treatment or disposal facilities meeting the requirements of the Utah State Division of Health Code of Waste Disposal Regulations

25. Small Wind Energy System 2008-8

5B-5 Site Development Standards

Zone	AV-3
Minimum lot area	
Uses listed in 5B-2 & 5B-4	3 acres ft^2
Uses listed in 5B-3	5 acres
Minimum lot width	
Uses listed in 5B-2 & 5B-4	150 ft
Uses listed in 5B-3	300 ft
Minimum yard setbacks	
a. Front	30 ft
b. Side	
i. Dwelling	10 ft[1]
ii. Other main building	20 ft each side
iii. Accessory building	10 ft[2]
iv. Accessory building > 1,000 ft^2	[5]
c. Side (facing street on corner lot)	20 ft
d. Rear	
i. Main building	30 ft
ii. Accessory building	1 ft[4]
Main building height	
a. Minimum	one story
b. Maximum	35 ft
Accessory building height	25 ft[5]

Notes:

1. 1 10 ft with total width of two side yards not less than 24 ft.
2. 1 10 ft except 1 foot if located at least 6 ft in rear of main building.
3. 1 For storage of personal equipment and materials see chapter 23-29.
4. 1 1 foot except 10 feet where accessory building rears on side yard of adjacent corner lot.
5. 1 25 ft unless meeting requirements of Chapter 23-29, Large Accessory Buildings.

5B-6 Permitted Signs

The height, size and location of permitted Commercial signs shall be in accordance with the regulations set forth in Chapter 32-B, Valley Signs, of this Ordinance.

B

19/44

Commercial Zones C-1, C-2, C-3

From Weber County Wiki

18-1 Purpose and Intent

The purpose of the C-1 Neighborhood Commercial, C-2 Community Commercial, and C-3 Regional Commercial Zones is to provide suitable areas for the location of the various types of commercial activity needed to serve the people and commerce of unincorporated Weber County. It is also to separate into three zones uses, based upon type of activity which are compatible and complementary, as well as intensity of land utilization and accessory use needs.

Contents

[hide]

18-2 Site Development Standards

Zone	C-1	C-2	C-3
Minimum lot area	none	none	none
Minimum lot width	none	none	none
Minimum yard setbacks			
a. Front	20 ft[1], 50 ft[2]	20 ft[1], 50 ft[2]	20 ft[1], 50 ft[2]
b. Side	none[3]	none[3]	none[3]
c. Side (facing street on corner lot)	20 ft	20 ft	20 ft
d. Rear	none[4]	none[4]	none[4]
Building height			
a. Minimum	one story	one story	one story
b. Maximum	35 ft	none	none
Maximum lot coverage	Not over 60% of lot area by buildings or accessory buildings.		none

Notes:

1. ↑[1] 20 ft on streets of less than 80 ft in width.
2. ↑[2] 50 ft on streets and highways of 80 ft or more in width.
3. ↑[3] None, except 10 feet adjacent to residential zone boundary.
4. ↑[4] None, except 10 feet where building rears on a residential zone.

18-3 Sign Regulations

The height, size, and location of the permitted signs shall be in accordance with the regulations set forth in Chapter 32 Signs, of this Ordinance. Permitted signs are listed in Section 18-5

18-4 Special Regulations

B

20/44

1. Hereinafter specified permitted and Conditional uses shall be permitted only when the following conditions are complied with:
    1. All manufacturing shall be done within a completely enclosed building.
    2. All uses shall be free from objection because of odor, dust, smoke, or noise.
    3. In the C-1 neighborhood Commercial Zone no entertainment, except recorded music shall be permitted in cafes, cafeterias, ice cream parlors, or restaurants.
2. A car wash shall be permitted subject to the following restrictions:
    1. Operation or use is forbidden between the hours of 10:00 p.m. and 6:00 a.m. on the following morning in C-1 Zones only.
    2. There shall not be more than four washing bays for a manual spray car wash in C-1 Zones only.
    3. Off-street vehicle storage required as follows:
        1. One bay car wash, four spaces in the approach lane
        2. Two bay car wash, three spaces in the approach lane for each wash bay
        3. Three or more bay car wash, two spaces in the approach lane for each wash bay

18-5 Uses

In the following list of possible uses, those designated in any zone as "P" will be a Permitted Use. Uses designated as "C" will be allowed only when authorized by a Conditional Use Permit obtained as provided in Chapter 22C of this Zoning Ordinance. Uses designated "N" will not be allowed in that zone.

Contents: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A

	C-1	C-2	C-3
Accessory buildings and uses customarily incidental to a permitted use	P	P	P
Air conditioning, sales and Service	N	N	P
Altering, pressing and repairing of wearing apparel	P	P	P
Ambulance Base Stations	N	C	P
Amusement enterprises	N	N	C
Animal hospital, (small animals only and provided conducted within completely enclosed building)	N	N	C

B

21/44

Antique, import or souvenir shop	N	P	P
Archery shop and range (provided conducted within completely enclosed bldg)	N	P	P
Art and artists supply store	N	P	P
Athletic and sporting goods (excluding sale or re pair of motor vehicles. motor boats or motors)	N	P	P
Athletic and sporting goods (store including sale or repair of motor vehicles, motor boats or motors)	N	N	P
Athletic Club	N	P	P
Auction establishment	N	N	C
Automobile repair including paint. body and fender, brake. muffler. upholstery or transmission work, provided conducted within completely enclosed bldg.	N	N	P
Automobile. new or used sales and service	N	N	P
Awning sales and service	N	P	P

Top

B

	C-1	C-2	C-3
Baby formula service	P	P	P
Bakery manufacture limited to goods retailed on premises	P	P	P
Bakery Goods manufacturing	N	N	P
Bank or financial institution	P	P	P
Barber shop	P	P	P

B

22/44

Bath and massage establishment	N	P	P
Beauty culture school	N	N	P
Beauty parlor for cats and dogs	N	P	P
Beauty shop	P	P	P
Bed and Breakfast Inn	N	P	P
Bed and Breakfast Hotel	N	C	P
Beer parlor, sale of draft beer	N	N	C
Bicycle sales and service	P	P	P
Billiard parlor	N	N	P
Blue printing or photostating	N	P	P
Boarding house	N	C	P
Boat sales and service	N	C	P
Bookbinding	N	N	P
Book store, retail	P	P	P
Bottling and distribution plant	N	N	P
Bowling alley	N	C	P
Boxing arena	N	N	P

B

23/44

Building materials sales or yard	N	N	P
Bus Terminal	N	P	P

Top

C

	C-1	C-2	C-3
Cabaret	N	N	C
Cafe or cafeteria	P	P	P
Camera store	P	P	P
Candy manufacture	N	N	P
Candy store, confectionery	P	P	P
Carbonated water sales	N	P	P
Carpenter and cabinet shop	N	N	P
Carpet and rug cleaning	N	N	P
Carpet, rug and linoleum service	N	P	P
Car wash, laundry type	N	C	P
Car wash, manual spray	C	P	P
Cash register sales and service	N	P	P
Catering establishment	N	P	P
China, crystal and silver shop	C	P	P

B

24/44

Christmas tree sales	P	P	P
Church	N	C	P
Church, temporary revival	N	C	C
Circus, carnival or other transient amusement	N	C	C
Cleaning and dyeing establishment	N	P	P
Clinics, medical or dental	P	P	P
Clothing and accessory store	N	P	P
Coal and fuel sales office	N	N	P
Communication equipment building	N	P	P
Contractor shop, provided work conducted within a completely enclosed building	N	N	P
Costume rental	N	P	P

Top

D

	C-1	C-2	C-3
Dairy products store	P	P	P
Dance hall	N	N	C
Data processing service and supplies	N	P	P
Delicatessen	P	P	P
Department store	N	P	P

B

25/44

Detective agency	P	P	P
Diaper service, including cleaning	N	P	P
Drapery and curtain store	N	P	P
Drive-it-yourself agency or business	N	P	P
Drug store	P	P	P
Dry cleaning establishment	N	N	P
Dry cleaning pickup station	P	P	P
Dwelling unit as part of a commercial building for proprietor or employee who also serves as a night watchman provided that 3,000 sq. ft. of green area is provided for the family	C	C	N

Top

E

	C-1	C-2	C-3
Educational institution	N	P	P
Educational/Institutional Identification Sign	C	C	C
Egg and poultry store, providing no live bird slaughtering or eviscerating permitted	P	P	P
Electrical and heating appliances and fixtures sales and service	N	P	P
Electronic equipment sales and service	N	P	P
Employment agency	N	P	P
Express and transfer service	N	N	C

Top

F

B

26/44

	C-1	C-2	C-3
Fabric and textile store	P	P	P
Farm implement sales	N	N	P
Film exchange establishment	P	P	P
Five and ten cent store	P	P	P
Florist shop	P	P	P
Frozen food lockers, incidental to a grocery store or food business	P	P	P
Fruit store or stand	P	P	P
Furniture sales and repair	N	P	P
Fur apparel sales, storage or repair	N	P	P

Ten

G

	C-1	C-2	C-3
Garden supplies and plant materials sales	P	P	P
Gift store	P	P	P
Glass sales and service	N	P	P
Government buildings or uses, non-industrial	C	P	P
Greenhouse and nursery (soil and lawn service)	N	P	P
Grocery store	P	P	P

B

27/44

Gunsmith	N	P	P
Gymnasium	N	P	P

Top

H

	C-1	C-2	C-3
Hardware stores	N	P	P
Health club	N	P	P
Health food store	P	P	P
Heliport	N	C	C
Hobby and crafts store	P	P	P
Hospital supplies	N	P	P
Hotel	N	C	P
House cleaning and repair	N	P	P
House equipment display	N	P	P
Household appliance sales and incidental service	N	C	P
Household pets, dwelling units only	P	P	P

Top

I

	C-1	C-2	C-3
Ice cream manufacture	N	N	P

B

28/44

Ice cream parlor	P	P	P
Ice manufacture and storage	N	N	P
Ice store or vending station	P	P	P
Insulation sales	N	P	P
Insurance agency	N	P	P
Interior decorator and designing establishment	N	P	P

Top

J

	C-1	C-2	C-3
Janitor service and supply	N	P	P
Jewelry store sales and service	P	P	P

Top

K

	C-1	C-2	C-3
Knitting mills	N	N	C

Top

L

	C-1	C-2	C-3
Laboratory, dental or medical	N	P	P
Laundry or dry cleaners, laundromat-type	P	P	P
Laundry or dry cleaning establishement	N	N	P

B

29/44

Launderette or laundromat	P	P	P
Lawn mower sales and service	N	P	P
Leather goods, sales and service	N	P	P
Legal office	N	P	P
Library	P	P	P
Linen store	N	P	P
Linen supply service	N	N	P
Liquor store	N	C	C
Locksmith	P	P	P
Lodge or social hall	N	P	P
Lodging house	N	C	P
Lounge	N	N	C
Luggage store	N	P	P
Lumber yard	N	N	C

Top

M

	C-1	C-2	C-3
Machine shop operations incidental to any use permitted in C-3 district	N	N	P
Manufacture of goods retailed on premises	N	C	C

B

30/44

Meat Custom cutting and wrapping excluding slaughtering	N	C	C
Meat, fish and seafood store	P	P	P
Medical office	P	P	P
Millinery	N	P	P
Miniature golf	N	N	C
Mobile Home Sales	N	C	P
Mobile Home Service	N	N	P
Monument works and sales	N	P	P
Mortuary	N	C	P
Motel	N	C	P
Motorboat sales and service	N	C	P
Motorcycle and motor scooters sales and service	N	C	P
Museum	C	P	P
Music Store	N	P	P

Top

N

	C-1	C-2	C-3
Needlework, embroidery or knitting store	P	P	P
Newsstand	P	P	P

Nightclub or social club	N	N	C
Notion store	P	P	P
Novelty store	N	P	P
Nursery school	C	P	P

Top

O

	C-1	C-2	C-3
Office in which goods or merchandise are not commercially created, exchanged or sold	N	P	P
Office supply	N	P	P
Office machines sales and service	N	P	P
Oil burner shop	N	N	C
Optometrist, optician or oculist	P	P	P
Ornamental iron sales or repair	N	C	P

Top

P

	C-1	C-2	C-3
Paint or wallpaper store	N	P	P
Paperhanger shop	N	P	P
Park and playground	P	P	P
Parking lot or garage for passenger automobiles	C	C	C

B

32/44

Pawnshop	N	N	P
Penny Arcade	N	N	C
Pest control and extermination	N	P	P
Pet and pet supply store	N	P	P
Pharmacy	P	P	P
Photographic supplies	P	P	P
Photo studio	P	P	P
Physician or surgeon	P	P	P
Pie manufacture	N	P	P
Plumbing shop	N	C	P
Pony ring, without stables	N	N	C
Pool hall	N	N	P
Popcorn or nut shop	P	P	P
Post office	C	P	P
Printing, lithographing publishing or reproductions sales and services	N	C	P
Private Liquor Club	N	N	C
Professional office	N	P	P

B

33/44

Public Utilities Substation	C	C	C
Public Building Reserved for future use	P	P	P

Q

R

	C-1	C-2	C-3
Radio and television sales and service	C	P	P
Radio, television of FM broadcasting station	N	P	P
Real estate agency	N	P	P
Reception center or wedding chapel	N	C	P
Recreation Center	N	C	P
Recreational vehicle storage	C	C	P
Rental agency for home and garden equipment	N	P	P
Restaurant	P	P	P
Restaurant, drive-in	N	P	P
Roller skating rink	N	C	P
Roofing sales or shop	N	P	P

S

	C-1	C-2	C-3

B

34/44

Second-hand store	N	P	P
Seed and feed store, retail	N	P	P
Service station, automobile excluding painting, body and fender and upholstery work	P	P	P
Service station automobile with rotating brush car wash as accessory use	P	P	P
Sewing machine sale and service	N	P	P
Sheet metal shop and retinning, provided all operations conducted within completely enclosed bldg.	N	N	C
Shoe repair or shoe shine shop	P	P	P
Shoe store	N	P	P
Shooting gallery	N	N	P
Sign manufacture or sign painting	N	N	P
Sign, animated	P[illegible]	P	P
Sign, business	P	P	P
Sign, construction project	P	P	P
Sign, directional	P	P	P
Sign, flat	P	P	P
Sign, Freestanding	P	P	P
Sign, identification and information	P	P	P

Sign, Marquee	P	P	P
Sign, name plate	P	P	P
Sign, off premise	N	P	P
Sign, projecting	P	P	P
Sign, roof	N	P	P
Sign, temporary	P	P	P
Sign, wall	P	P	P
Supermarket	P	P	P

1. ↑ 1.0 1.1 1.2 20 ft on streets of less than 80 ft in width.
2. ↑ 2.0 2.1 2.2 50 ft on streets and highways of 80 ft or more in width.
3. ↑ 3.0 3.1 3.2 None, except 10 feet adjacent to residential zone boundary.
4. ↑ 4.0 4.1 4.2 None, except 10 feet where building rears on a residential zone.
5. ↑ Only time and temperature animated sign in C-1 Zone

Top

T

	C-1	C-2	C-3
Tailor shop	N	P	P
Tavern	N	N	C
Taxi cab stand	P	P	P
Taxidermist	N	P	P
Telegraph office	P	P	P

B

34/44

Temporary building for uses incidental to construction work. Such buildings shall be removed upon the completion of the construction work	P	P	P
Theatre (Theater), indoor	N	P	P
Theatre (Theater), outdoor	N	N	C
Tire recapping or retreading sales and service	N	N	C
Tobacco shop	P	P	P
Tool design (precision) repair and manufacture	N	N	C
Toy store, retail	P	P	P
Trade or industrial school	N	C	P
Trailer sales and service	N	N	P
Travel agency	P	P	P
Truck Terminal	N	N	C

Top

U

	C-1	C-2	C-3
Upholstery shop	C	P	P
Used car lot	N	N	C

Top

V

	C-1	C-2	C-3
Variety store	P	P	P

Vegetable store or stand	P	P	P
Vendor, Short Term (see definition under 1-6)	N	C	C
Ventilating equipment sales and service	N	C	P

Top

W

	C-1	C-2	C-3
Warehouse storage	N	N	P
Weather stripping shop	N	P	P
Welding shop	N	N	C
Wholesale business	N	N	P
Window washing establishment	N	P	P

Top

X

Y

Z

Exhibit G

B

38/44

B

39/44

Exhibit B

Weber County Land Use Permit Application

Application submittals are recommended to be submitted with an appointment.
(801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)

Property Owner Contact Information

Name: Rulon Kent Jones	Mailing Address: 3985 N 377 E Liberty, UT. 84310
Phone: 208 346 6631 / Fax:	
Email Address: rulon@idahelkhunt.com	Preferred Method of Written Correspondence: [X] Email [ ] Fax [ ] Mail

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s): Garet Kent Jones	Mailing Address of Authorized Person: 2775 N 4900 E Eden Ut 84310
Phone: (801) 814-6261 / Fax:	
Email Address: garet_jones@yahoo.com	Preferred Method of Written Correspondence: [X] Email [ ] Fax [ ] Mail

Property Information

Address: 3788 E 4100 N Eden 84310		Land Serial Number(s): 22-010000 01	
Subdivision Name	Lot Number: 3788	Current Zoning	Acreage: 6.15
Culinary Water Provider	Secondary Water Provider: Liberty Irrigation	Waste Water Provider	Frontage

Detailed Description of Proposed Use/Structure

Property Owner Affidavit

I (We), Rulon K Jones, 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 24 day of February, 20 11

RHONDA ELLSWORTH
NOTARY PUBLIC
STATE OF IDAHO

Rhonda Ellsworth (Notary)

B 4/4

Jones Site Plan

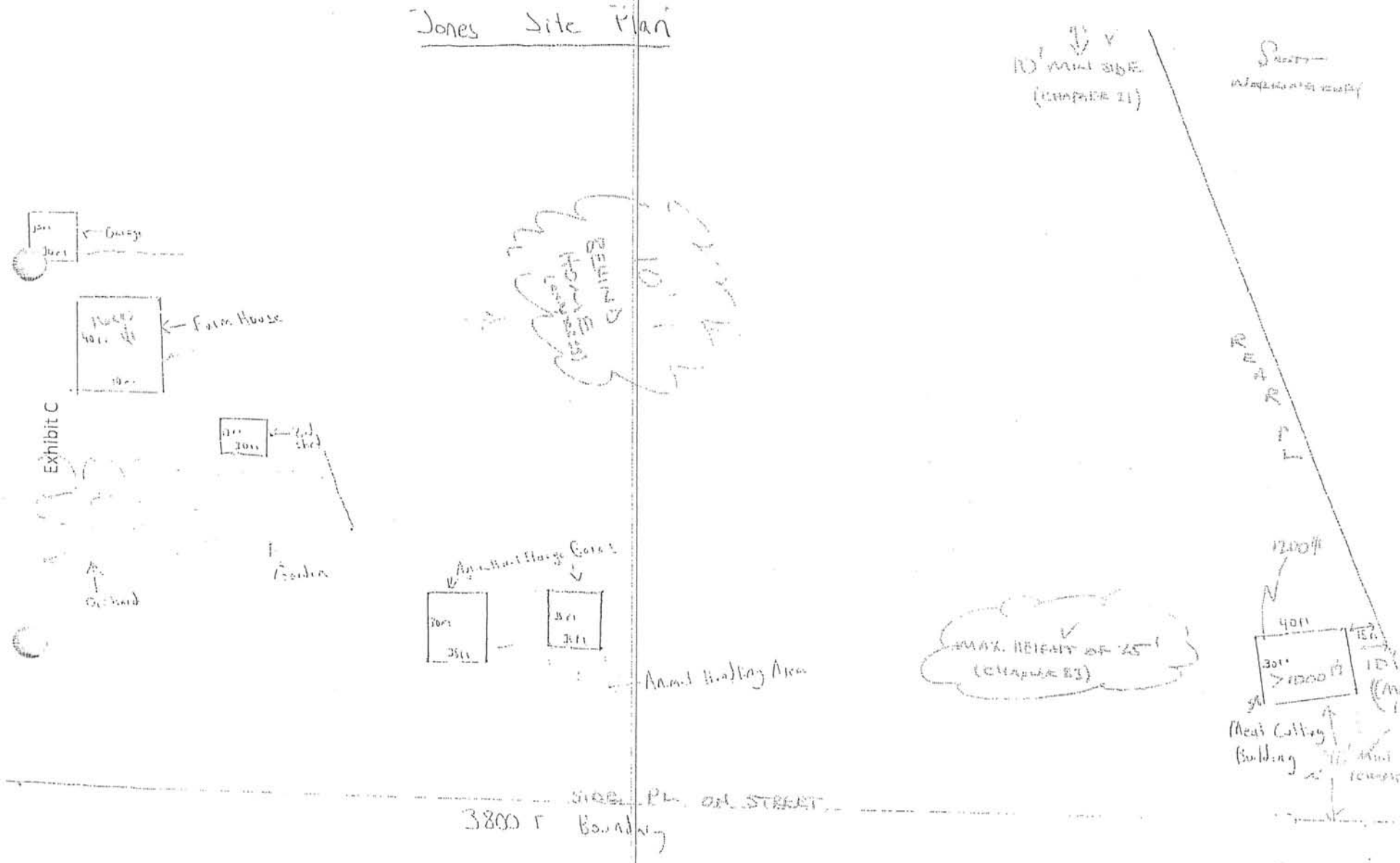


Fig. 3

Exhibit D

Agricultural Description of Property

This 6.15 acre piece of property located on the North West corner of 4100n and 3800e in Liberty has and will be used for agriculture. Elk are bred, grazed, handled (vaccinated and ear tagged) and raised on this property. The handling facility and agricultural storage area is used to store hay, grain and other farm supplies. It is also used to bring the elk into a smaller area in the winter and be worked. The new calves are ear-tagged and micro-chipped in compliance with the Utah Department of Agriculture rules. All the animals are vaccinated once a year to maintain health.

The meat cutting building will be used to butcher and package the elk meat for consumption. It will have a meat grinder to make hamburger, cutting and packaging areas. There will also be freezers to freeze and store the processed meat.

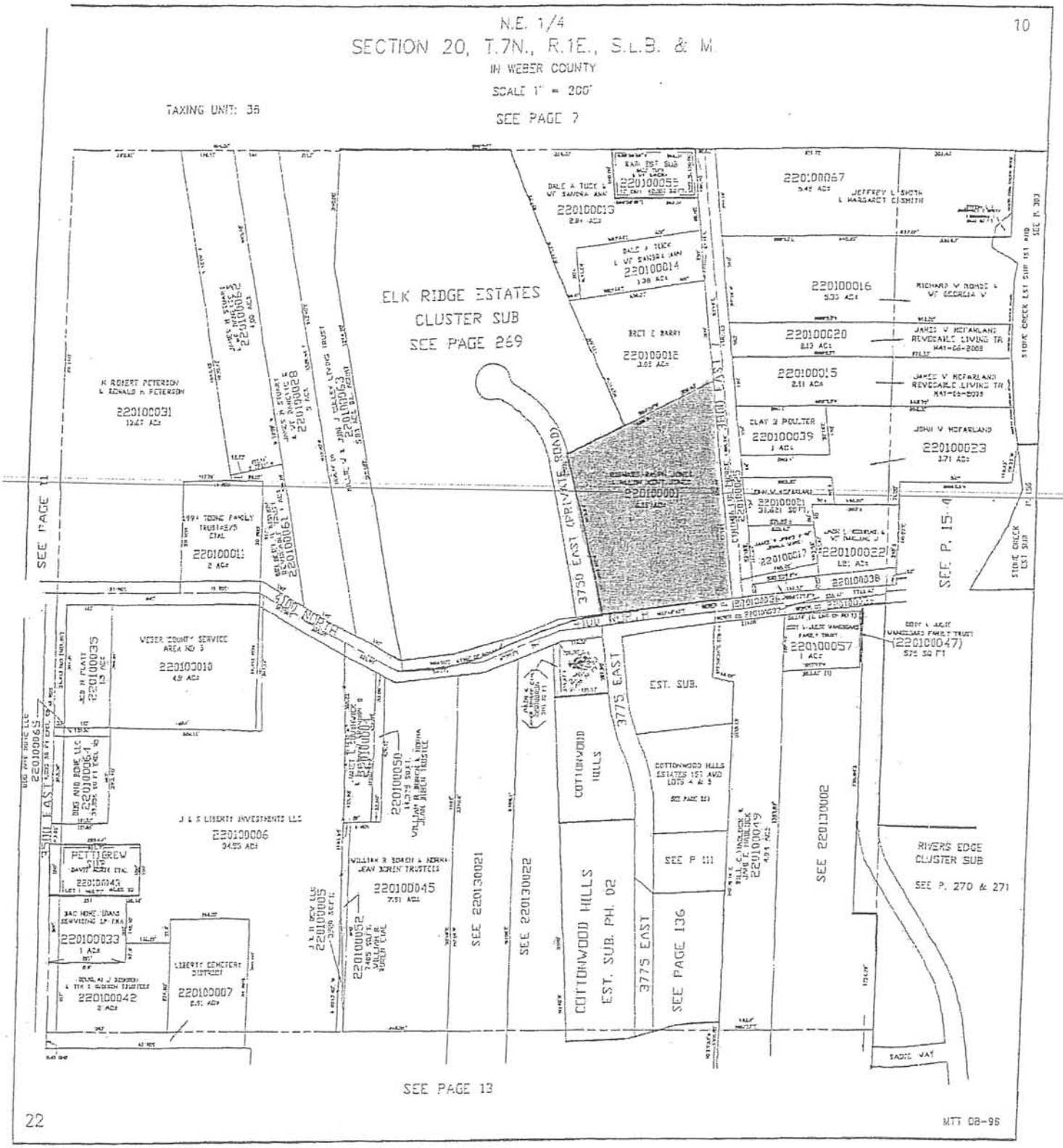
The property is irrigated with the Liberty secondary water system that is in place. It is irrigated during the spring and summer months and any excess hay is harvested and stored. Weeds are controlled and the land is replanted when needed.

There is also an apple orchard, raspberry patch and a garden which are also part of the agricultural use of the property.

Exhibit E

B

42/44



B 43/44

~Agriculture: Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, aquaculture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, , animal hospitals or similar uses.

Exhibit F

B 44/44

4-39-102. Definitions.

As used in this chapter:

(1) "Domesticated elk" means elk of the genus and species cervus elaphus, held in captivity and domestically raised for commercial purposes.

(2) "Domesticated elk facility" means a facility where domesticated elk are raised.

(3) "Domesticated elk product" means any carcass, part of a carcass, hide, meat, meat food product, antlers, or any part of a domesticated elk.

EXHIBIT C

1/3

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

September 6, 2011

Alan D. McEwan, County Clerk/Auditor
Weber County
2380 Washington Blvd, Suite 320
Ogden, Utah 84401

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: ADVISORY OPINION REQUEST – BRET BARRY

PROPERTY ADDRESS: 3187 EAST 4100 NORTH, LIBERTY, UTAH

Dear Mr. McEwan:

Our Office has received the enclosed Request for an Advisory Opinion from Jodi S. Hoffman, on behalf of Bret Barry, which relates to issues involving the Weber County. Under state law, Utah Code § 13-43-206, the Office of the Property Rights Ombudsman (OPRO) is to provide for a process that will result in the issuance of an advisory opinion if requested by a party who might be adversely affected by certain decisions made under the local land use ordinances. Upon receipt of a request for an advisory opinion, the law requires that the OPRO deliver the request to the governmental entity by sending this letter to the person shown on the records at the Department of Commerce, Division of Corporations and Commercial Code, as designated by the governmental entity for the service of a notice of claim under the Governmental Immunity Act. This letter is to satisfy this requirement.

According to the information we have received, Ms. Hoffman states the Weber County Planning Staff approved a land use application for a Meat Custom Cutting Business to be placed in an AV-3 zone. Ms. Hoffman claims the Planning Staff misinterpreted the Weber County land use ordinances and questions the authority of the Planning Staff to interpret those ordinances. The Purpose of this Advisory Opinion will examine whether or not the Weber County Planning Staff complied with mandatory provisions of applicable land use ordinances.

Within four business days of your receipt of this letter, the governmental entity and the person requesting the advisory opinion should contact this office to discuss the issues. You may contact the person making the request directly about the issues - the contact information is on the request form. Please advise us as soon as possible if you are aware of any other necessary parties to this potential dispute.

The opinion may be prepared by an attorney in this office at no additional cost to the parties or an approved neutral from the enclosed list may be appointed by this office. We would prefer that you make that choice together, so please review the list and consider the names, choosing a person that you would both agree to be neutral and credible. Let me know of your choice, if you will, within a week.

If the parties elect to have the opinion prepared by someone other than an attorney in this office, each party to the dispute would pay half of the cost of preparing the opinion. If the person requesting the opinion does not wish to pay any costs associated with its preparation, then we will consider the request as being withdrawn.

I have also enclosed a short summary of the process related to advisory opinions. If you have questions, please let me know. If you would like to provide a written statement of Weber County's position with regard to the law and the facts in the request, please do so as quickly as possible.

The advisory opinion, once completed, will include conclusions as to the issues raised, and state conclusions as to the legality of local land use decisions. The opinion is not binding, and is intended to lead to the settlement of issues. If the issues addressed in the opinion become the subject of a legal action, however, and a court should reach the same conclusion as the person preparing the opinion, on the same facts and circumstances, then the substantially prevailing party in that legal action may recover some attorney's fees and costs from the entity who argued a position contrary to the opinion. The opinion will not be available to the court prior to its reaching a decision in the matter, but only for the purpose of determining if attorney's fees and costs are to be paid.

This request for an advisory opinion does not delay any land use process now underway, including any pending appeals or other review of the land use decisions that are the subject of this request. Weber County may proceed as they wish to process applications and appeals related to this request. The OPRO can also work with Weber County and the person making this request to see if some

solution to the issues raised can be resolved through mediation or other means. Our goal will be to resolve any disputes fairly without the need for unnecessary costs, hassles and delays that may otherwise occur.

Please contact our office with any questions or concerns. Our common email is propertyrights@utah.gov. Thanks for your assistance.

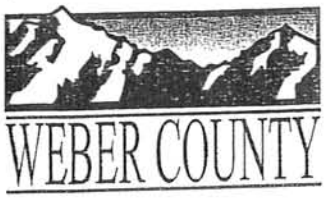
Sincerely,

Brent N. Bateman
Lead Attorney
Office of the Property Rights Ombudsman

cc. Jodi S. Hoffman, Esq.
Christopher F. Allred, Esq.
Scott Mendoza, County Planner
Richard Ralph
Rulon Kent Jones

Encl: Advisory Opinion Summary,
Advisory Opinion Request and Property Owners Statement,
Approved Neutrals List

EXHIBIT D
1/6



ATTORNEY'S OFFICE

2380 Washington Boulevard
Suite 230
Ogden, Utah 84401-1464
Telephone: (801) 399-8377
24 Hour FAX (801) 399-8304

October 11, 2011

Mr. Brent Bateman
Office of the Property Rights Ombudsman
PO Box 146702
Salt Lake City, Utah 84114

RE: Weber County's Response to Advisory Opinion Request – Bret Barry

Dear Mr. Bateman:

Weber County hereby responds to the request for advisory opinion as follows:

In her request for an advisory opinion Ms. Hoffman repeatedly accuses planning staff of providing a "result-oriented" interpretation of the zoning ordinance, suggesting that staff has somehow been improperly influenced by the fact that Rulon Jones played football in the NFL – over 20 years ago. These accusations are completely unsupported and unprofessional. Staff has no personal interest whatsoever in the outcome of this matter. Staff's only interest is in correctly applying the law to Jones' application.

Summary of Planning Staffs Decision to Issue a Land Use Permit

On pages 4 - 5 of her argument, under the heading "Staff Interpretation Was Result-Oriented," counsel constructs a thoroughly confusing rendition of what is alleged to be planning staff's rationale for issuing the land use permit. The analysis is simply wrong. An accurate statement of staffs rationale is described below.

On June 27, 2011 the Weber County Planning Division reviewed a land use permit application and subsequently issued a permit for, what has been interpreted by the planning staff to be, an agricultural use on a parcel located at 3788 E 4100 N in Liberty, Utah. The agricultural parcel (Tax ID# 22-010-000 1) for which the land use permit was issued, is owned by Richard Ralph and Rulon Kent Jones (hereinafter "Jones"). It consists of approximately 6.15 acres and lies within the Agricultural Valley – 3 (AV-3) Zone which lists "agriculture" as a permitted use. During the third week of June, 2011 an authorized representative of the landowners submitted a land use permit application, a site plan, and a written narrative that describes the subject

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2/6

property and the proposed land use. As described in the narrative, the Jones' have proposed to expand their current agricultural activities by utilizing an existing 1200 sq. ft. agricultural building for meat cutting/preparation. It has been represented that the building will only be used for cutting/preparing domesticated elk meat, and not for slaughtering, butchering, or custom cutting other animals including deer or moose.[1] It has also been represented that there would be a limited number of animals (approximately 100) cut and prepared during the fall months only. This would result in an average of about one elk per day.

The first touchstone for staff when reviewing a land use application is specified by the Utah Court of Appeals in *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Ut. App. 1995):

> [B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.

Thus, even if there were any ambiguities in the zoning ordinance, staff (and any other reviewing entity) would have to decide those ambiguities in favor of Jones.

In issuing the land use permit, the Planning Division relied on information provided by Jones, the Weber County Zoning Ordinance, and Utah State Code. Chapter 5B of the Weber County Zoning Ordinance states that "agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone." It lists "agriculture" as a permitted use, and Chapter 1 defines "agriculture" and an "agricultural parcel" in the following ways:

> AGRICULTURE: Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.

---

[1]Although limited hunting for deer and moose might occur on Jones properties, Jones has never indicated that he intends to include deer or moose in his meat cutting activity. In fact, he specifically assured staff that he would not be cutting and preparing deer or moose.

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> AGRICULTURAL PARCEL: A single parcel of land, at least 5.0 acres in area if vacant, or 5.25 acres with a residential dwelling unit. This definition needs to be fulfilled in order to qualify for the agricultural building exemption.

The parcel owned by Jones meets the definition of an "agricultural parcel" and staff determined that the proposed use is "agriculture" ("primarily farming" and a "related purpose"); therefore, it is permitted.

The following describes the rationale behind the planning staff's decision to issue the Land Use Permit:

1. A complete land use permit application packet, certified to be true and correct, was submitted.

2. The Jones property site plan, submitted as a part of their packet, represented that the subject building is in compliance with the development standards found in the zoning ordinance, e.g., use type, structure setbacks, and structure height.

3. After consideration was given to the Weber County Zoning Ordinance, the proposed use was interpreted to be "agriculture" which is a permitted use in the AV-3 Zone.

   Because the County's definition of "agriculture" is quite broad, i.e., agriculture is "primarily farming and related purposes," the planning staff considered whether the proposed meat cutting activity would be a related agricultural purpose. Staff relied, in part, on definitions found in the Utah Agricultural Code in determining that cutting domesticated elk is a related agricultural purpose. The Agricultural Code defines agriculture as follows:

   > "Agriculture" means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.
   >
   > Utah Code Ann. §4-1-8(1).

4. The planning staff considered the proposed "meat cutting" activity to be a part of the "preparation" as included in the above definition of "agriculture." Consistent with staff's interpretation, the Agricultural Code provides the following definitions of "prepared" and "process":

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4/6

> "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.
>
> U.C.A. §4-32-3(37).
>
> "Process" means to cut, grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.
>
> U.C.A. §4-32-3(38).

Even though the Utah Agricultural Code includes "slaughter" in its definition of "prepared," the staff determined that the proposed use was not a "slaughterhouse" due to the lack of activities customarily involved with "slaughtering." That is, the proposed use (meat cutting building) will not include customary activities such as stunning or causing the animals to become unconscious/insensible, exsanguinations (the killing of the animal) skinning, removal of internal organs, or rendering waste materials.

5. Livestock is undoubtedly a product of agriculture; therefore, the planning staff, prior to issuing the land use permit, verified that "domesticated elk" are specifically listed and considered to be "livestock" according to the Utah State Agricultural Code:

> "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, **domesticated elk** as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.
>
> U.C.A. §4-1-8(6) (emphasis added).

Meat Cutting is Not Prohibited in The AV-3 Zone

Counsel asserts that Jones is using his property for "Meat Custom Cutting and Wrapping, not Slaughtering" – a use specifically allowed only in C-2 and C-3 zones. Counsel argues that Jones may not use his AV-3 property for "meat cutting" because "Meat Custom Cutting and Wrapping, not Slaughtering" is not listed as a permitted use in that zone. However, while it is generally true that only those "permitted" or "conditional" uses listed in a particular zone are allowed, some uses are broad enough to include other more specific uses described in other zones.

For example, the AV-3 zone and the R-1, Single Family Residential zone each list "Single Family Dwelling" as a permitted use. Private swimming pools are commonly considered to be uses allowed with single family dwellings, even though "Private Swimming Pool" is not separately listed as a permitted or conditional use in either of

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these zones. If we applied counsel's rigid interpretation, swimming pools would not be allowed in connection with single family dwellings because "Private Swimming Pool" is specifically listed as a permitted use in the CVR-1 zone but not in the AV-3 or R-1 zones. Similarly, a "Ski Resort" is permitted in the FV-5 3 zone. An overly-strict interpretation would prohibit a cafeteria or restaurant commonly associated with a ski resort because those uses are specifically listed as permitted uses in the CV-1 and CV-2 zones but not in the FV-3 zone. Examples like this can be found throughout the zoning ordinance.

As explained previously, it is the county's position that Jones' use of his property for cutting up domesticated elk, or "livestock," falls within the broad definition of "agriculture." Just because a small and specific component of agriculture ("Meat Custom Cutting and Wrapping") happens to also be permitted in a non-agricultural zone, it does not mean it is not also permitted in the AV-3 zone along with a range of other uses under the broad definition of "agriculture."

Meat Cutting is Also an Accessory Use in The AV-3 Zone

The AV-3 zone also specifically permits an "Accessory building or use customarily incidental to any permitted or conditional use." The AV-3 zone permits a wide variety of agricultural uses. It even contemplates a "livestock feed yard, livestock sales or slaughter house." *See Weber County Zoning Ord. §5B-3(5).* Given these identified uses, the definitions in the Utah Agricultural Code, and the broad range of agricultural uses generally permitted in the AV-3 zone, it is apparent that meat cutting would properly be considered an accessory use as well as a "related purpose" under the zoning ordinance definition of agriculture.

The AV-3 Zone is Not a Transition Zone

Counsel characterizes the AV-3 zone as a "transition zone from agriculture to more urban residential development." Although the "Elk Ridge Estates Subdivision" (irony original) happens to be close to the 6.15 acre Jones property, the AV-3 zone is not a transitional zone. In fact, it is the only agricultural zone in the Ogden Valley. Further, while agriculture is a permitted use in some other zones in the Valley, the AV-3 zone is the only zone where agriculture is designated as the "preferred use." *Weber County Zoning Ord. §5B-la.* To emphasize the primacy of agriculture uses over other uses in the zone, §5B-1a states, "All agricultural operations shall be permitted at any time, including the operation of farm machinery and **no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone.**" (Emphasis added).

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Staff Did Not Circumvent The Clear Role of its Land Use Authority

On page 8 of her argument counsel suggests that the planning commission should have been involved in the determination of whether to issue the land use permit: "Staff's determination was not reviewed or approved by the WC Code-designated Land Use Authority." *Weber County Zoning Ord.* § 1-4 states as follows: "Where a conflict exists between various provisions of this ordinance, the Planning Commission and/or Board of Adjustment shall rule on which provision applies." First, as we have pointed out, no conflict exists between provisions of the zoning ordinance. Second, it would be incumbent on the party alleging a conflict to raise the matter to the planning commission or the board of adjustment. In this case, nobody has sought any review from the planning commission, so Section 1-4 is irrelevant.

Please feel free to contact me if you need any additional information from Weber County.

Sincerely,

Christopher F. Allred
Deputy Weber County Attorney

pc: Jason K. Nelson
Jodi Hoffman

EXHIBIT E
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Office of the Property
OCT 0 6 2011
Rights Ombudsman

NELSEN LAW OFFICES, P.C. 3748 Evergreen Drive • Pleasant View, UT 84414 • Phone: 877-699-2250 • Fax: 877-699-6915

Jason K. Nelsen
jason@nelsenlawoffices.com

October 5, 2011

VIA HAND DELIVERY

Mr. Brent Bateman
Office of the Property Rights Ombudsman
160 East 300 South
Box 146702
Salt Lake City, UT 84114-6702

RE: Advisory Opinion Request – Bret Barry
Property Address: 3187 East 4100 North, Liberty, Utah

Dear Mr. Bateman:

I represent the owners of the above-referenced property, Richard Ralph and Rulon Kent Jones (the "Landowners"), in connection with the challenge Mr. Bret Barry has brought concerning the propriety of the land use approval recently provided to the Landowners by Weber County. This correspondence constitutes the Landowner's response to the letter of Ms. Jodi Hoffman on behalf of her client, Mr. Bret Barry (the "Objecting Party"), dated August 20, 2011, in which the Objecting Party requested an advisory opinion from your office.

The Landowner's were surprised by the tone of the Objecting Party's August 20, 2011 correspondence and manner in which it repeatedly demeaned the careful consideration Weber County gave the Landowner's application for a land use approval. For the sake of brevity, I will not recount the procedural history of this matter. The Landowners believe the procedural history has been well documented by both the Objecting Party and Weber County. Further, the Landowners believe the "Staff Report to the Weber County Board of Adjustments" (a copy of which is enclosed herewith) does an excellent job of clearly and thoroughly explaining the legal support for Weber County's decision and the analysis that led to the decision. Therefore, this correspondence will only touch lightly on why the Landowner's believe Weber County's decision and analysis is well supported and legally sound.

The Landowner's primary purpose in providing this response is to clarify/correct certain factual issues raised in the Objecting Party's correspondence. These issues are addressed individually below.

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FACTUAL ISSUES

1. It was not clearly explained in the other submissions in this matter just how small and inconsequential the building/structure in question is. Several color photographs have been attached at Exhibit "A" to this letter to help provide perspective to the issues at hand. The building is a very small, *existing* and almost entirely underground structure. Modifications to the inside of the structure were made to accommodate the meat cutting operation and a secondary roof structure was added to meet the requirements of the Utah Department of Agriculture for this type of facility. The only other addition to the existing structure was condensers (like the air conditioning condenser outside of nearly every modern home) to cool the freezers and environment inside the structure.

2. It should also be noted that, in addition to having a two-layered roof structure and being almost entirely underground, the structure has 12 inch thick concrete walls. The Objecting Party's assertion that noise from the structure "will permeate the interior of Mr. Barry's home on a daily basis" is factually incorrect. An assertion of excess or bothersome noise permeating from the use of knives and a meat cutting saw (which produces no more noise than an standard electric can opener or kitchen mixer) inside an underground structure with a two-layered roof and 12 inch thick concrete walls is without merit or factual basis.

3. A representative from the Utah Department of Agriculture told the Landowners that, based on the unique construction and location of the structure in question, the structure is one of the best of its kind in Utah because of its minimal impact on neighboring landowners.

4. The Objecting Party states that the small meat cutting building will be used to "cut, grind, process, package, refrigerate and ship big game (elk Shiras moose, buffalo and mule deer) that [are] shot by tourists on one of two private elk preserves that are owned by [one of the Landowners]." This statement is incorrect on multiple fronts. The two "preserves" that the Objecting Party refers to are located in Blackfoot, Idaho and Liberty, Utah. No meat from animals harvested on the Blackfoot, Idaho preserve will be cut in the facility in question. Even if that were desired, the practical difficulties of transporting meat that far for cutting would preclude it. Only meat from animals actually raised on the property is question will be cut and packaged in the facility in question. Practical necessity requires this. It is unclear from what source the Objecting Party obtained his belief that moose, deer or buffalo will be cut or packaged in the facility in question, but that did not come from the Landowners or their submissions to Weber County that are part of the record for this matter.

LEGAL ARGUMENT

As noted above, the Landowners believe the legal basis for Weber County's decision is very well explained in the enclosed "Staff Report to the Weber County Board of

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Adjustments." However, in addition to the explanation provided in the enclosed report, it is important to note the following items.

1. Weber County appears to have very carefully considered this application and the proposed use of the property in question. County code was referenced and, where the county code did not provide detailed enough definitions and clarification, Weber County properly referenced state law for further help in defining and clarifying the meaning of terms and concepts. This type of careful deference to definitions given by state law (to assist in defining general terms in the county code) is highly favored, at least in the Landowner's opinion.

2. Pursuant to Utah law, counties are given great deference in interpreting their own land use ordinances. Utah courts have repeatedly upheld the latitude given to counties in interpreting land use ordinances. For example, in Springville Citizens for a Better Community vs. Springville City, 979 P.2d 332, 336 (Utah 1999), the Utah Supreme Court stated:

> *A municipality's land use decisions are entitled to a great deal of deference. [citations omitted] Therefore, "the courts generally will not so interfere with the actions of a city council unless its action is outside of its authority or is so wholly discordant to reason and justice that its action must be deemed capricious and arbitrary and thus in violation of the complainant's rights." [citation omitted] Indeed, the statute that forms the basis of this appeal requires the courts to "presume that land use decisions and regulations are valid." Utah Code Ann. § 10-9-1001(3)(a).*

As clarified below, this same standard would apply to county land use decisions. The *Springville Citizens for a Better Community* Court also noted that the Court will not "substitute our judgment for that of the municipality." *Id.* In *Carrier v. Salt Lake County*, 104 P.3d 1208, 1215 (Utah 2004), the Utah Supreme Court further clarified its position on the great deference given to county land use decisions as follows:

> *a district court is required to "presume that land use decisions ... are valid," id. § 17-27-1001(3)(a)(i), and may decide only "whether the board of adjustment's decision is arbitrary, capricious, or illegal," id. § 17-27-708(2)(a); see also id. § 17-27-1001(3)(a)(ii)*

The foregoing is just a sampling of clear Utah precedent in favor of granting counties latitude in interpreting and applying their land use decisions. As long as the county is careful in its consideration of an application and provides a reasonable basis for its decision, the decision is and should be upheld. In this case, Weber County was careful in reaching its decision and provided excellent analysis for how and why it reached the decision it did. The Landowners believe Weber County's decision is correct and will be upheld on appeal.

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Please contact me with questions or if I can provide any further information. Thank you, in advance, for your time and consideration given to this matter. The Landowners and I appreciate your office's efforts and assistance.

Sincerely,

Jason K. Nelsen
Attorney at Law

Enclosure

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EXHIBIT "A"

Pictures of Subject Building

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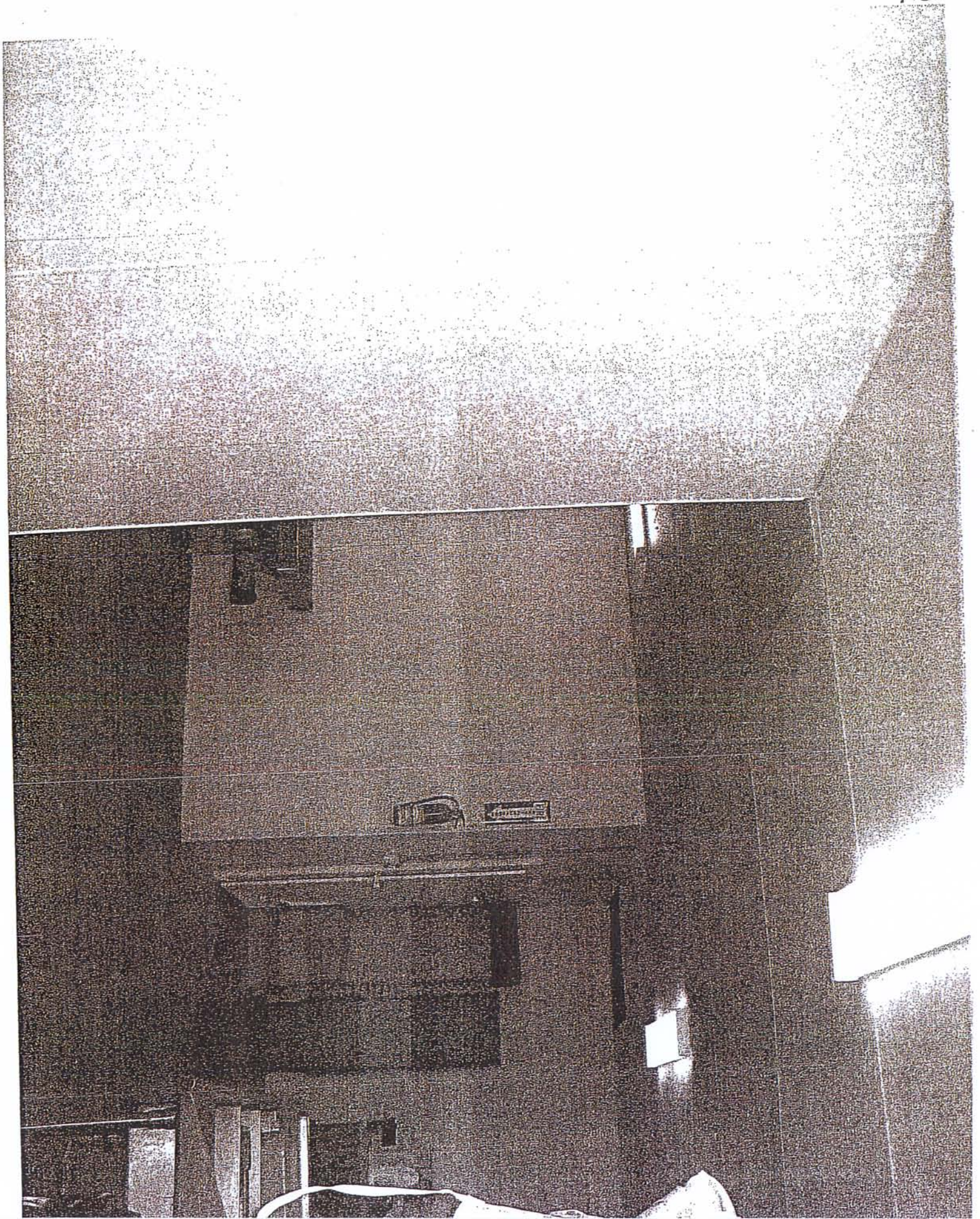

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EXHIBIT
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HOFFMAN LAW

Park City
1887 Gold Dust Lane
Suite 303
Park City, Utah 84060

Salt Lake City
50 So. 600 East
Suite 250
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(435) 940-1031
(435) 655-8855
jhoffmaw@xmission.com

October 17, 2011

Brent Bateman
Office of the Property Rights Ombudsman
160 East 300 South
Box 146702
Salt Lake City, UT 84114-6701

Re: **Advisory Opinion – Bret Barry adv. Weber County—Reply to County Response**

Brent,

This is a brief reply to Christopher F. Allred's response to our request for Advisory Opinion.

Mr. Allred has presented a laudable defense of Weber County Planning Staff. However, he doth protest too much. No one has suggested that any member of the County staff has acted out of personal interest in the outcome. However, we stand by our observation that both the County staff and now their defender have completely missed the notion that there are two distinct property rights a land use authority must defend: 1) the applicant's; and 2) the neighbors.

Mr. Allred's *ad hominem* attack simply highlights the fact that he and the County staff are resolute in defending this applicant's property rights—even property rights that do not exist—without regard to Mr. Barry's property rights in, and reliance on, the proper application of the written zoning laws.

Mr. Allred's defense of "Meat Custom Cutting" in the AV-3 zone is essentially the same "substantial compliance" defense used in *Springville Citizens for a Better Community v. Springville City*. In essence, his response is: What's the big deal here?

First, the big deal is that the neighbors are entitled to rely on the code, as written. Where the code says the term "agriculture" specifically excludes "agricultural industry or business". The neighbors have the right to rely on that code-driven definition. Yes agriculture is a permitted use in the code. No one denies this. However, agricultural industry or business is not.

The law is clear:

> ¶ 30 [Z]oning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof. *See Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981). The irony of the

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> City's position on appeal is readily apparent: the City contends that it need only "substantially comply" with ordinances it has legislatively deemed to be mandatory. Stated simply, the City cannot "change the rules halfway through the game." *Brendle v. City of Draper*, 937 P.2d 1044, 1048 (Utah Ct.App.1997). The City was not entitled to disregard its mandatory ordinances. Because the City did not properly comply with the ordinances governing P.U.D. approval, we conclude that under Utah Code Ann. § 10-9-1001(3)(b), the City's decision approving the P.U.D. was illegal.

Springville Citizens for a Better Community v. Springville City, 979 P.2d 332 (Utah 1999).

The County Code is mandatory. It is not something that staff can interpret 'around'. "Agricultural industry or business" is not a permitted use in the AV-3 zone.[1]

Second, even if there weren't a specific exception for agricultural industry or business in the code, and even if "Meat Custom Cutting" weren't a use that was specifically relegated by the code to certain commercial zones, Mr. Allred's contention that "meat cutting" is an ancillary use would have to stand on its own merits: It would have to be convincing.

Unlike the definition of "agriculture", the term "ancillary use" is not defined in the Weber County Code. As such, it is proper to look for a commonly accepted definition of that term:

In one zoning code, the definition of ancillary use: "means subordinate and directly related to, and dependent upon, a principal use, building or structure."

In another, it means: "A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use."

Generally, the term "ancillary" means: "of secondary support or significance;" or "subordinate; subsidiary."

These definitions make sense as applied to the swimming pool associated with a home or even to a cafeteria associated with a large ski resort. Those are secondary to the primary use, and without additional neighborhood impact.

However, in this case, the applicant's agricultural parcel is very small—6.15 acres. Over the past several years, there have been a total of 8 live elk (a bull and seven cows) grazing the property. There have been virtually no neighborhood impacts associated with the elk grazing. The neighbors did not object to this agricultural use.

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[1] Mr. Allred correctly states that "livestock feed yard, livestock sales or slaughter house(s)" are allowed in the AV-3 zone. He fails to note, however, that those uses must be more than 200' from any dwelling. Mr. Barry's home is far closer than the required siting distance.

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In contrast, in one week the facility processed more than 35 elk carcasses (or 5 times the number of elk living on the small farm).

There is nothing "ancillary" about this use. It is the dominant and omnipresent use that the unsuspecting neighbors now endure. It is not subordinate to the primary use, or even directly related thereto (the 7 grazing elk on the 6.15 acres are not those elk that are killed to support the meat cutting business). It is not commonly associated with the elk grazing and results in far different and far greater impacts than the principle use. I have attached a photo of the neighborhood impact for your reference. I will warn you, it is graphic.

Finally, Mr. Allred completely missed the import of our argument regarding the Code's delegation of the role of Land Use Authority to the Planning Commission and unresponsively that Mr. Barry and his neighbors were not diligent in protecting their rights to both Planning Commission and Board of Adjustment review of staff's misinterpretation of the code.

Clearly, the County Code designates the Planning Commission as the Land Use Authority.

> The Township Planning Commissions are to be the Land Use Authority, with due responsibility to administer the Land Use Ordinance. Any appeals of the Land Use Authority will be heard by the Board of Adjustment as outlined in Chapter 29 of the Land Use Ordinance.
>
> General Provisions 1-1.

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There is no Code-based exception for staff's role as Land Use Authority in the code. As such, this is a matter that should have been publicly noticed and before the Planning Commission. It was not.

It is not enough that the County "practice" is to allow staff to issue permits for "permitted uses". By state law, the Code must to delegate to staff the authority to act as the land use authority for such purposes. U.C.A. §17.27a.302(1)(c). It does not.

Further, responding to Mr. Allred's concerns: when Mr. Barry and his neighbors first became aware of the issued permit, they literally papered the County with their objections. The chronology of Mr. Barry's diligence is detailed in my original request. His diligence has continued with vigilance since my original request. I have attached Mr. Barry's July 28, 2011 letter to the County Commission to this reply as an example of how clearly and comprehensively Mr. Barry expressed his concerns. His timely appeal to the Board of Adjustment was attached to my original request. The County does not dispute the timeliness of his appeal

In reply, we contend that Staff erred in two respects:

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1. It determined that a general "agriculture" use designation in the AV-3 zone includes a custom meat packing plant and thereby supersedes the WC Code's specific and clear prohibition of a "meat cutting and wrapping" use in the AV-3 zone and the designation of "agricultural industry or business" as a permitted use; and

2. It did not allow the Land Use Authority to interpret what it has characterized as conflicting land use designations in the WC Code. Without ordinance-based authority, Staff simply circumvented the authority of the Planning Commission to authorize a result-oriented interpretation of the WC Code.

On behalf of Bret Barry and each of his neighbors, we respectfully request an Advisory Opinion from your office on this matter. Thank you in advance of your consideration.

Sincerely,

Jodi Hoffman

Jodi Hoffman
Hoffman Law

Attachments: photo
July 28 correspondence

EXHIBIT G
1/13

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Advisory Opinion Requested by:	Bret Barry
Local Government Entity:	Weber County
Applicant for the Land Use Approval:	Rulon Kent Jones
Type of Property:	Agricultural Lot
Date of this Advisory Opinion:	November 8, 2011
Opinion Authored By:	Brent N. Bateman, Lead Attorney Office of the Property Rights Ombudsman

Issues

(1) Is a custom butchering and meat packing business a prohibited use in the County's AV-3 zone? and

(2) Does the Weber County Code authorize the planning staff to serve as the land use authority in this matter?

Summary of Advisory Opinion

The Weber County Ordinances permit staff to act upon and grant requests for permitted uses. The ordinance also permits ancillary agricultural uses such as meat cutting and packing in the AV-3 zone. This is especially so in light of the maxim that ordinances are to be interpreted broadly to permit land uses, along with the limited deference that the County has to interpret its own ordinances. However, the Landowners' meat cutting and packaging operation is not simply ancillary to an agricultural use at the Parcel. It is part of a larger hunting, cutting, and packing business undertaken at the Parcel and other locations. The Weber County Ordinance expressly prohibits the type of agricultural industry and business undertaken by the Landowners in the AV-3 Zone. Those considerations of interpretation and deference do not extend far enough to permit the type of agricultural business or industry that the Landowners have undertaken here.

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2/13

Review

A request for an advisory opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A request for an Advisory Opinion was received from Jodi S. Hoffman, on behalf of Bret Barry, on August 24, 2011. A copy of that request was sent via certified mail to Alan D. McEwan, County Clerk/Auditor, for Weber County, at 2380 Washington Blvd, Suite 320, Ogden, Utah 84401. The return receipt was signed and delivered on September 7, 2011, indicating it had been received by the County. A copy of the materials regarding the request was also sent to Mr. Rulon Kent Jones, owner of the subject parcel, at 3985 North 3775 East, Liberty, Utah 84310. Mr. Jason K. Nelsen, Attorney for Rulon Kent Jones, submitted a response to the Office of the Property Rights Ombudsman on October 6, 2011, which included a copy of the Staff Report to the Weber County Board of Adjustment, dated August 25, 2011 along with several other attachments. Mr. Christopher F. Allred submitted a response on October 13, 2011. Ms. Hoffman submitted a response on October 18, 2011 and October 19, 2011. Over the ensuing several weeks, all parties sent multiple submissions, by email and regular mail, some with attachments and exhibits.

Evidence

The following documents and information with relevance to the issue involved in this advisory opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, submitted by Jodi S. Hoffman, on behalf of Brett Barry, and received by the Office of the Property Rights Ombudsman, August 24, 2011.
2. Response submitted on behalf of Rulon Kent Jones by Jason K. Nelsen of Nelsen Law Offices, P.C., dated October 5, 2011, and all attached documents.
3. Letter dated October 8, 2011 from Ms. Hoffman.
4. Response submitted on behalf of the County by Christopher F. Allred, Deputy Weber County Attorney, dated October 11, 2011
5. Letter dated October 17, 2011 from Ms. Hoffman with attachments.
6. Letter dated October 27, 2011 from Mr. Allred.
7. Staff Report to the Weber County Board of Adjustment on the appeals of the Weber County Planning Commission on its decision to issue a Land Use Permit, dated August 25, 2011.
8. Letter dated November 3, 2011 from Mr. Nelsen.

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3/13

Background

Richard Ralph and Rulon Kent Jones ("Landowners") own a parcel located at 3788 E 4100 N in Liberty, Weber County, Utah (the "Parcel"). The Parcel consists of approximately 6.15 acres and lies within the Agricultural Valley-3 (AV-3) Zone. Next to the parcel is a cluster subdivision known as, with irony that will soon be apparent, Elk Ridge Estates.

During June, 2011 a representative of the Landowners submitted a land use permit application for the Parcel, which according to the County included a site plan and a written narrative describing the subject property and the proposed land use. According to the County, the Landowners proposed utilizing an existing 1200 sq.ft. building on the Parcel for meat cutting and preparation. The Landowners indicated to the County, and continue to assert now, that the building will only be used for cutting and preparing elk meat and no other game.[1] On June 27, 2011 staff at the Weber County Planning Division reviewed the land use permit application and subsequently issued a land use permit. Since the permit was issued, the Landowners have undertaken improvements of the building on the Parcel to facilitate the meat cutting operation, and have apparently received a business license.

Bret Barry is a resident of the Elk Ridge Estates and, according to his attorney, lives less than 200 feet from the meat cutting building at the Parcel. He and several of his neighbors object to Weber County's approval of the land use application. Mr. Barry and/or his neighbors have made timely appeal of that approval to the Weber County Board of Adjustment, claiming that the permits were issued in violation of Weber County Code. Through his attorneys, Hoffman Law, Mr. Barry has requested this Advisory Opinion to address two questions: (1) Is a custom butchering and meat packing business a prohibited use in the County's AV-3 zone? and (2) does the Weber County Code authorize the planning staff to serve as the land use authority in this matter? The County has agreed to postpone the Board of Adjustment appeal pending release of the requested Advisory Opinion.

Analysis

I. Standard for Reviewing Land Use Decisions

In *Fox v. Park City*, 2008 UT 85, the Utah Supreme Court recently explained the standard of review for land use decisions. A review of a decision by a land use authority "is limited to whether a land use authority's decision is arbitrary, capricious, or illegal." *Id.* at ¶11. *See* UTAH CODE § 17-27a-801(3)(a)(ii). The Court goes on to explain that there are two parts to the "arbitrary, capricious or illegal" analysis:

[1] The County indicates that they received no indication that any animal besides elk would be processed at the property, and that there would be a limited number of carcasses (approximately 100) cut and prepared during the fall months only. Further, the Landowners indicate that in an average week, only 6-8 elk carcasses are processed at the facility, and that no more than 15 elk have been processed in a single week.

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> First, a land use authority's decision is arbitrary or capricious only if it is not supported by substantial evidence in the record. A land use authority's decision is illegal if it violates a law, statute, or ordinance in effect at the time the decision was made.

Fox, 2008 UT 85 at ¶11 (citations omitted). Accordingly, a decision is not arbitrary and capricious if it is supported by substantial evidence on the record. On the other hand, a decision is illegal where it violates a law or ordinance in effect. Mr. Barry claims that the decision is illegal because the permit was issued in violation of the Weber County Code.

Where a determination of illegality must be based upon the interpretation of an ordinance, the standard of review is correctness. *Fox,* 2008 UT 85 at ¶11. Review of an ordinance interpretation for correctness requires consideration of the principles of statutory interpretation. "In interpreting the meaning of . . . [o]rdinance[s], we are guided by the standard rules of statutory construction." *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207, 210 (Utah Ct. App. 1998). Interpretation of an ordinance begins with the plain language of the ordinance, and a court is to "give effect to the plain language unless the language is ambiguous." *Lovendahl v. Jordan School Dist.*, 2002 UT 130, ¶ 21; *see also Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, ¶ 9. The "primary goal . . . is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve." *Foutz v. City of South Jordan*, 2004 UT 75 ¶ 11. Statutes should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996). Furthermore, it must be presumed "that each term included in the ordinance was used advisedly." *Carrier*, 2004 UT 98, ¶30.

In addition, the *Fox* court explained, "we also afford some level of non-binding deference to the interpretation advanced by the land use authority." *Fox,* 2008 UT 85 at ¶11. However, this deference must be tempered by the principle that land use provisions are to be construed in favor of permitting the land use:

> [B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.

Rogers v. West Valley City, 2006 UT App 302, ¶15. Accordingly, land use ordinances allowing uses should be liberally construed to allow the use, and ordinances restricting uses should be narrowly construed. Moreover, this deference is further tempered by the principle that a local government must follow the mandatory provisions of its own ordinance: "(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances." UTAH CODE § 17-27a-508(2). Accordingly, the local jurisdiction, while given deference in interpreting its own ordinances, is not free to use that deference to interpret a meaning contrary to the ordinances it creates.

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5/13

II. The County Has Properly Interpreted Its Own Code to Permit Staff to Act as Land Use Authority in This Matter

Barry objects to the decision by the County to grant the permit by arguing that staff was not the land use authority authorized to make the decision. Under Utah law, the land use authority is "a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application." UTAH CODE § 17-27a-103(27). Weber County Code Section 1.1 reads as follows:

> 1.1 Short Title
> The Ordinance shall be known as the "Uniform Land Use Ordinance of Weber County, Utah." The Township Planning Commissions are to be the Land Use Authority, with due responsibility to administer the Land Use Ordinance. Any appeals of the Land Use Authority will be heard by the Board of Adjustment as outlined in Chapter 29 of the Land Use Ordinance. Appeal of Conditional Use applications will be heard by the Board of County Commissioners.

By its plain language, this provision designates the township planning commissions as the land use authority under the entire code. This designation complies with the statute and is effective.

Nevertheless, a County can designate more than one land use authority, assigning each to make decisions on specific applications. *See* UTAH CODE § 17-27a-302(1)(c). Weber County argues that Weber County Code Section 30.4 designates a different land use authority for issuing permitted and conditional use permits:

> 30-4 Land Use Permit Required
> In order to verify zoning requirements and setbacks for permitted or conditional uses, no structure, including agricultural structures, shall be constructed, changed in use, or altered, as provided or as restricted in the Weber County Zoning Ordinance, until and unless a Land Use Permit is approved and issued by the Planning Director or designee.

This ordinance says that a Land Use Permit for permitted or conditional uses shall be approved and issued by the Planning Director or designee. Although this designation of the Planning Director or designee as a land use authority could certainly be clearer, this designation suffices to meet the definition in UTAH CODE § 17-27a-103(27). To the extent that those two ordinance provisions conflict, the County's interpretation designating the Planning Commission is the general land use authority, while the Planning Director or designee is the specific land use authority to issue permits for permitted uses, is reasonable. This interpretation is necessary in order to make both ordinances relevant and meaningful.[2]

Moreover, where land use permits for permitted uses are concerned, it is eminently reasonable and good policy to delegate that responsibility to staff rather than to the Planning Commission.

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[2] Statutes should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

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6/13

Where a County has listed a particular use as a permitted use, the County has already indicated that it desires that use in the zone, and will allow the use without conditions. In other words, where an applicant for a permitted use submits an application, the only decision to be made is whether that application complies with the ordinance in effect – not whether or not the use is acceptable or should be allowed in the zone. The policy decision regarding that use has already been made. To require a planning commission to review and decide on every application for a permitted use is at best, a waste of time and resources, and at worst, a potential violation of the County Land Use and Management Act, in that the policy decision regarding the use will be made again and again despite the ordinance. The County, under its authority and limited deference to interpret its own ordinances, has determined that the ordinance designates staff to make such decisions. That interpretation has support in the language of the Weber County Code, and is within the County's discretion.

Barry further argues that, because he and his neighbors objected openly to the issuance of the permit, that he raised a conflict regarding the permit. Therefore, according to Barry, the following provision in the Weber County Code returns the decision to the Planning Commission:

> 1-4 Conflict
> This Ordinance shall not nullify the more restrictive provisions of covenants, agreements, or other ordinances or laws, but shall prevail notwithstanding such provisions which are less restrictive. Where a conflict exists between various provisions of this ordinance, the Planning Commission shall rule on which provision applies.

The County counters that if such a conflict exists, it is incumbent on the party raising the conflict to appeal the conflict to the Planning Commission under this ordinance. This interpretation is preferable to one where the Planning Commission is obligated to provide its interpretation *sua sponte* whenever an interested party objects. It does not appear that, despite the clear action by Barry and his neighbors to oppose the permit, that any party invoked this ordinance as the proper forum to appeal or review of the decision. In any event, this ordinance cannot be read to designate or change the designation of a land use authority under the ordinance. This section 1-4 states that the Planning Commission shall rule on which of two conflicting provisions apply. It does not appoint the Planning Commission to act upon the application, as required by statute in such a designation. Accordingly, this interpretation of the County's ordinances is within the County's discretion, and meets the correctness standard.

III. The Agricultural Use of the Parcel Does not Comply with the Zoning Code

Mr. Barry further objects to the issuance of the permit on the basis that the meat cutting activities on the Parcel are prohibited within the AV-3 zone. The County has interpreted its code to determine that meat cutting is an ancillary and incidental use to agriculture as permitted in the zone, and has issued the permit on that basis. There is ample justification in the language of the code to support the County's interpretation that general ancillary agricultural uses are permitted within the AV-3 zone, which could include certain meat cutting activities. However, the specific

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7/13

operation and activities of the Landowners goes beyond what is permitted in the zone. Even when strictly construed,[3] the ordinance prohibits the elk meat cutting operation of the Landowners as a prohibited agricultural industry or business.

The Weber County Zoning Ordinance not only lists agriculture as a permitted use, but designates it as a preferred use in the AV-3 Zone.

> Agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone.

Weber County Code section 5B-1A. The Ordinance states that, as part of that preferred use, "all agricultural operations shall be permitted at any time" within the zone. Also, where agricultural operations conflict with other uses in the zone, the agricultural activities shall not be restricted.

The Ordinance further defines "Agriculture" as:

> AGRICULTURE: Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.

Weber County Code section 1-6. Accordingly, any agricultural operations that fit this definition are permitted in the AV-3 Zone at any time. As the County points out, *animal husbandry* is included in the definition or agriculture. According to the Code, any animal husbandry activities are permitted in the zone at any time, and shall not be restricted when they conflict with other uses in the zone. Moreover, Section 5B-3 of the Code mentions the use of slaughterhouses in the AV-3 zone. For the County to interpret "animal husbandry" to include ancillary activities such as meat cutting is within its discretion. The definition of agriculture is quite broad, and contains significant room for interpretation.

Barry notes correctly that elsewhere in the County ordinances meat cutting is listed as a conditional use, but not so here, and should be considered prohibited on that basis. Although this reasoning is sound, section 5B-1A states that "*all* agricultural operations shall be permitted at any time" within the zone. That statement should be given meaning, and provides room to include as permitted in the AV-3 Zone a wide variety of agricultural operations, even if they are not specifically listed. Accordingly, the language in the Ordinance provides ample support for the County's interpretation that ancillary meat cutting is a permitted agricultural activity within the AV-3 Zone.

However, other statements in the County ordinances should also be given meaning, such as the remainder of the County's definition of agriculture in section 1-6: "but not the keeping or raising

[3] As stated above, ordinances restricting land uses are to be strictly construed. *Rogers v. West Valley City*, 2006 UT App 302, ¶15.

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8/13

of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses." Also, Weber County Code section 1-3 states that: "Specific uses listed as Permitted or Conditional uses in a zone are allowed; uses not listed are not allowed in that zone." These must be read in concert with Weber County Code section 5B-1A and the remainder of the Code. Ordinances should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

In order to make all parts of that ordinance relevant and meaningful, the restriction on agricultural industry and businesses must be read to limit terms such as farming and animal husbandry. Accordingly, although it may be reasonable to interpret terms like "animal husbandry" to include ancillary farming activities such as meat cutting and packing, as the County has done, that activity is prohibited if it is an agricultural industry or business such as those listed.[4] The ordinance then lists the kind of agricultural industries and businesses that are prohibited. Nevertheless, even under a narrow interpretation of this restriction, the restriction is not limited to those industries or businesses listed – fruit packing plants, fur farms or animal hospitals. The ordinance also restricts businesses similar to those listed – "or similar uses."

The elk cutting and packing business at the Parcel is an agricultural business or industry inescapably similar to those prohibited in the ordinance, and go well beyond meat cutting ancillary to animal husbandry. The Landowners are in the business not just of selling livestock produced on a farm, but of selling the opportunity to hunt an elk on private property, under a guided hunt, and offering cutting and packaging services when an elk is successfully obtained.[5] The Landowners indicate that the elk are taken from the Landowners private herd located in the Ogden Valley.[6] The property owners acknowledge that very few elk are kept on the Parcel, and the vast majority of elk processed at the Parcel are obtained and killed elsewhere. The elk are then brought to the parcel for processing. It does not appear that the Landowners are farming domesticated elk as that term is defined in UTAH CODE § 4-39-102,[7] and processing that elk for consumption on or off of the farm. Rather, the Landowners are offering for sale guided hunts of wild elk on private lands, and processing and packing that elk meat as part of that business. This is very similar to a business that permits customers to pick their own fruit on or off of the parcel, and to bring it to the parcel for processing and packing. A fruit packing business or industry is expressly excluded from the definition of agriculture in Weber County. The facility for cutting and packing meat is quite similar to a fruit packing plant in this respect. The Landowners' operation can also be said to be similar to a fur farm or animal hospital in multiple respects, such

[4] It seems clear from this definition, as well as many other provisions of the code, some of which are discussed later, that the AV-3 zoning designation is intended for agricultural uses, but residential purposes are also of high import. The agricultural uses, while permitted, are to be carried out on a scale more compatible with the residential uses.

[5] It appears that such hunts, at least in some circumstances, are guaranteed.

[6] It is presumed for purposes of this Advisory Opinion, but not conclusive, that those hunts are conducted exclusively on land owned by Landowners but not on land owned by the public or others.

[7] The Domesticated Elk Act, UTAH CODE § 4-39-102 *et seq.*, has strict rules and requirements that must be followed in order to farm domesticated elk. The Act prohibits activities such as releasing domesticated elk into the wild and requires certain procedures such as such as specific fencing, marking, and transportation requirements. The information provided for this Advisory Opinion indicates that the Landowners' activities are outside of the requirements of the Domesticated Elk Act, which leads to the conclusion that the elk being processed at the Parcel are not domesticated elk under the act, but instead are a private herd of wild elk.

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as the animals that are no longer living are processed and stored at the facility. As an agricultural industry or business similar to those listed, the elk cutting and packing activity is prohibited by the Code.

The activities of the Landowners at the Parcel go well beyond meat cutting ancillary to farming or animal husbandry. This is especially evident where the elk cutting business is processing wild elk that are not raised or kept on the Parcel, but are obtained from wild areas.[8] Moreover, if the hunted elk are wild elk and not domesticated elk, whether found on the Landowners' property or otherwise, it is difficult to see how they can be said to be farmed or otherwise fit under a definition or agriculture. Only Domesticated Elk are included in the Utah Code statutory Definition of "Livestock." *See* UTAH CODE § 4-1-8. Wild elk are not included. Accordingly, the cutting and packing of wild elk obtained off of the Parcel would not be ancillary to the farming operation at the Parcel, even if the Parcel was used to farm domesticated elk. In addition, it is neither the size of the operation at the Parcel, nor the actual number of animals processed, nor the actual level of noise or disturbance to the neighbors which takes the operation beyond cutting and packing ancillary to farming. It is the use – an agricultural industry or business – that the County has prohibited in its ordinances.

As the County points out, the Code does permit some agricultural industry or business. However, a review of those ordinances further indicates that the Landowners' activities are an industry or business prohibited in the AV-3 Zone, even when viewed broadly. The AV-3 zone designation for a parcel more than 5 acres in area (such as the Parcel) permits the following activities:

> 5B-3 Permitted Uses Requiring Five (5) Ares Minimum Lot Area
> 1. Dairy farm and milk processing and sale provided at least fifty (50) percent of milk processed and sold is produced on the premises.
> 2. Farms devoted to the hatching, raising (including fattening as an incident to raising) of chickens, turkeys, or other fowl, rabbits, fish, frogs or beaver.
> 3. Fruit and vegetable storage and packing plant for produce grown on premises.
> 4. The keeping and raising of not more than ten (10) hogs more than sixteen (16) weeks old, provided that no person shall feed any such hog any market refuse, house refuse, garbage or offal other than that produced on the premises.
> 5. The raising and grazing of horses, cattle, sheep or goats as part of a farming operation, including the supplementary or full feeding of such animals provided that such raising and grazing when conducted by a farmer in conjunction with any livestock feed yard, livestock sales or slaughter house shall:
> 1. not exceed a density of twenty-five (25) head per acre of used and;
> 2. be carried on during the period of September 15 through April 15 only;
> 3. be not closer than two hundred (200) feet to any dwelling, public or semi-public building on an adjoining parcel of land; and,
> 4. not include the erection of any permanent fences, corrals, chutes, structures or other buildings normally associated with a feeding operation

[8] Those elk are hunted, and therefore located presumably in wild areas. They certainly would not be hunted while standing in a corral or pen.

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The Landowners' operation on the Parcel cannot be reconciled with the agricultural industries or businesses permitted here. For example, milk processing and sale is permitted where no less than 50% of the milk is produced on the premises. Attempting the analogy, it appears undisputed that more than 50% of the animals processed at the Parcel are produced away from the Parcel. It seems unlikely that the County would place greater restrictions on the processing and sale of milk than the processing and sale of elk meat.

Most importantly, however, is that this list is extraordinarily specific regarding the types of animals that can be raised, and what businesses or industry can be undertaken with each type of animal. The ordinance permits horses, cattle sheep, goats, hogs, chickens, turkeys, fowl, rabbits, fish, frogs, and beaver. Permitted operations related to each of these animals are listed.[9] This listing is specific and complete enough to include frogs and beaver. No provision or language can be found to indicate that other animals not listed may be included or added. Even the phrase "or other livestock" cannot be found.[10] When interpreting a statute, it must be presumed "that each term included in the ordinance was used advisedly." *Carrier*, 2004 UT 98, ¶30. Moreover, the Weber County Code states that "Specific uses listed as Permitted or Conditional uses in a zone are allowed; uses not listed are not allowed in that zone." Weber County Code section 1-3. The rules of ordinance interpretation compel the conclusion that only those specific agricultural businesses or industries, related to those specifically listed animals only, are permitted. Elk, or an agricultural business or industry related to elk, are not listed and therefore not permitted.[11]

The important maxim from *Rogers v. West Valley City*, that zoning ordinances restricting property uses should be strictly construed to permit the use, does not justify a complete abandonment of the ordinance language or the principles of ordinance interpretation, and cannot be stretched so far. Likewise, the deference given to the County to interpret its own ordinances – "some level of non-binding deference" – is limited by, among other things, the statutory principle that a local government must follow the mandatory provisions of its own ordinance. UTAH CODE § 17-27a-508(2). The ordinance language prohibiting agricultural industry or business and excluding elk from the very specific and complete list of permitted agricultural businesses must be given effect. An attempt to fit the Landowners' elk cutting and packing business into this definition, when so similar to the expressly restricted business, renders the plain language of the ordinance, even when narrowly interpreted, ineffective and meaningless. Accordingly, neither a narrow interpretation of the restrictions in this Ordinance, nor the County's limited deference to interpret its own ordinances, can permit the Landowners' elk processing and packing business in the zone.

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[9] The code mentions, and presumably therefore permits, slaughter houses but only in conjunction with horses, cattle, sheep, or goats.

[10] Not even state law provisions that add domesticated elk to a definition or livestock can add to the local ordinance that so specifically lists the types of animals the word livestock refers to or businesses that can be undertaken on a parcel with those specific animals.

[11] It appears for the same reasons that even general farming of domesticated elk may be prohibited in the AV-3 Zone.

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Conclusion

Ordinance language is readily found to support the County's interpretation of its own ordinance that County staff is the land use authority to issue permits for permitted uses in the zone, and that meat cutting ancillary to farming is permitted in the AV-3 Zone. The County's interpretation of those ordinances is correct, and accordingly not illegal. However, the County ordinance language, as it presently stands, prohibits certain agricultural industry or business in the AV-3 Zone. The business undertaken by the Landowners, guided hunting with cutting and processing wild elk obtained off the lot, is inescapably of that type and prohibited in the zone.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

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NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

EXHIBIT
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Weber County Planning Division

November 21, 2011

Mr. Richard Ralph and Rulon Kent Jones
3788 E 4100 N
Liberty, Utah 84310

RE: Elk Cutting Building

Dear Sirs:

As you are aware, the Weber County Planning Division's decision, to issue a Land Use Permit (LUP #64-2011) for your proposed meat cutting building, has been appealed to the Weber County Board of Adjustment. The appeal has not taken place because of a request, received from the appellant, to postpone the hearing subsequent to the appellant obtaining an Advisory Opinion from the State of Utah's Department of Commerce – Office of the Property Rights Ombudsman.

The Office of the Property Rights Ombudsman has reviewed the appellant's request and has rendered its opinion which is that your particular meat cutting operation goes beyond what is permitted, is not simply ancillary to the agricultural use on your property, and *"is inescapably of that type of business prohibited in the zone."*

After careful consideration of all matters at hand, the Planning Division, on behalf of Weber County, has determined that it will comport with the Ombudsman's opinion. Accordingly, the Land Use Permit issued to you on June 27th, 2011 is rescinded effective December 6, 2011. If you feel that the retraction of this Land Use Permit is in error, you may appeal this decision to the Weber County Board of Adjustment.

If you have any questions or have an interest in the appeal process, please call the Weber County Planning Office at (801) 399-8791.

Sincerely,

Scott Mendoza
Planner

Cc: Board of Weber County Commissioners
Christopher F. Allred, Deputy Weber County Attorney
L. Nate Pierce, Operations Director
Robert O. Scott, Planning Director
Iris Hennon, Code Enforcement
Craig C. Browne, Building Official
Michael Tuttle, Weber County Engineering (Business Licence)
Jason K. Nelson, Nelson Law Office, P.C.
Jodi Hoffman, Hoffman Law
Bret Barry, Appellant
Brent Bateman, Office of the Property Rights Ombudsman