# BOARD OF ADJUSTMENT

## MEETING AGENDA
## February 22, 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.** | **Training** | Discussion on Training Topics |
| **7.** | **Adjournment:** | |

Weber County

Weber County Planning Division
www.co.weber.ut.us/planning_commission
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8791
Fax: (801) 399-8862

February 10, 2012

To: Weber County Board of Adjustment

From: Weber County Planning Division

Re: Additional information and the Board of Adjustment meeting, scheduled for **Wednesday, February 22, 2012,** to hear an appeal of a decision to revoke a Land Use Permit (LUP#64-2011) for an elk meat cutting building.

Dear Board Member,

Enclosed you will find a memorandum that has been submitted by Mr. Bret Barry and his legal counsel. This memo is in response to information submitted by Mr. Garet Jones' legal counsel and is intended to be included as a part of all materials that were previously prepared and delivered as your Board of Adjustment packet dated January 26, 2012. If you have discarded or have misplaced any portion of this previously delivered packet please contact us immediately.

Sincerely,

Scott Mendoza
Weber County Planning Division
(801)399-8769

Enc.

BEFORE THE WEBER COUNTY BOARD OF ADJUSTMENT

| | | |
|---|---|---|
| RICHARD RALPH AND RULON KENT JONES,<br>APPELLANTS<br><br>Adv.<br><br>WEBER COUNTY,<br>RESPONDENT<br><br><br>Adv.<br><br>BRET BARRY,<br>INTERVENOR/RESPONDENT | ) | MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO JONES' SUMMARY OF ISSUES AND ARGUMENTS |

Bret Barry owns his home at 4221 N 3800 E, Liberty, UT. His home is less than 150 feet from a meat cutting and packaging facility that the Jones family has installed in an outbuilding on their property. Mr. Barry respectfully intervenes in the Jones appeal to provide essential facts and arguments in support of staff's revocation of the Jones permit.

## I. FACTUAL BACKGROUND

Last summer, Weber County staff issued a permit for a meat cutting facility as a permitted agricultural use in the AV-3 zone. Staff's original action was in error and caused Mr. Barry loss of the quiet enjoyment of his home. Mr. Barry appealed to this body and requested an Ombudsman's opinion. During that process Mr. Barry endured the penetrating noise of the Jones' bone saws, odor from decaying elk waste and increased traffic from daily elk corpse deliveries, packaged meat shipments, employees and commercial supplies.

From the outset, Mr. Barry and his neighbors challenged staff's original determination that the meat cutting facility could be permitted so close to their homes. Exhibits A and B. Despite their concerns and despite Mr. Barry's appeal to this Board, the Appellants completed construction of the meat cutting facility and commenced meat cutting immediately next door.

Mr. Barry timely filed notice of appeal and sought an independent advisory opinion from the Office of Property Rights Ombudsman to determine whether staff had validly concluded that a meat cutting facility in the AV-3 zone was a permitted use. Exhibit C.

Briefing before the Ombudsman's Office took several months and included the following Evidence (which, together with their separate exhibits is submitted into the record of this proceeding):

1. Mr. Barry's request for Ombudsman Opinion and a memo and exhibits detailing the facts and the law, dated August 24, 2011. Exhibit D
2. Jones response, with a memo of legal arguments, dated October 5, 2011. Exhibit E
3. Mr. Barry's reply dated October 8, 2011. Exhibit F
4. County' response, with a memo of legal arguments, dated October 11, 2011. Exhibit G
5. Mr. Barry's reply, with a memo of legal arguments, and exhibits dated October 17, 2011. Exhibit H
6. County response dated October 27, 2011. Exhibit I
7. County staff report dated August 25, 2011. Exhibit J
8. Nelson letter dated November 3, 2011. Exhibit K.

The issue that is currently on appeal before this Board was thoroughly presented to the Ombudsman.

The Jones' attorney had argued that staff could interpret the Code "liberally," in favor of the Jones' use. He argued that Mr. Barry was bound by staff's discretion in interpreting the provisions in the AV-3 zone, even if it were wrong. He takes a different position at this time.

Mr. Barry argued that the meat cutting use is not permitted in the zone: it is an impermissible "agricultural business". The Ombudsman agreed. As a result, the County Commission directed staff to revoke the Jones permit.

During the extended briefing schedule, the Jones' appellants processed well over 100 trophy-quality elk that had been harvested off-site. See Exhibit L (photos). Elk carcasses were

transported from the Jones' remote hunting ranch to Mr. Barry's neighborhood. Carcasses were stacked in planked flatbeds and parked on the street in front of Mr. Barry's home. This happed on a daily basis. Exhibit M.

Neighbors were surprised by the number of elk that the Jones family were processing immediately adjacent to their homes. Neighbors' photos also documented the transformation of their quiet street into an industrial meat locker. Exhibit L.

**2. OMBUDSMAN DECISION**

In November, 2011, the Ombudsman rendered an opinion that the Jones' meat cutting facility is an illegal agricultural business in the AV-3 zone. Contrary to the Jones' brief before this Board, the Ombudsman did not distinguish between wild or domestic elk in order to reach his conclusion that the use was not permitted in the AV-3 zone. The Ombudsman found that the business was not an "ancillary an incidental" use to the agricultural activity that is permitted on his 6.15 acre parcel:

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

Exhibit O p.7. The Ombudsman concluded:

> The elk cutting and packing business at the [6.15 acre] parcel is an agricultural business or industry inescapably similar to those prohibited in the ordinance, and goes well beyond meat cutting ancillary to animal husbandry. The Landowners are in the business not just of selling livestock produced on the farm, but of selling the opportunity to hunt elk on private property, under a guided hunt, and offering cutting and packaging services when an elk is successfully obtained.
>
> The Property owners acknowledge that very *few elk are kept on the Parcel and the vast majority of the elk processed at the Parcel are obtained and killed elsewhere*.

Exhibit O p.8 (emphasis added).

## 3. DOMESTICATED ELK CUTTING AND WRAPPING IS AN ILLEGAL AGRICULTURAL BUSINESS IN THE AV-3 ZONE.

Appellants contend that the Ombudsman was confused with the facts and rendered his opinion on the mistaken assumption that the elk that is butchered in the Parcel is wild and not domesticated elk. This is not true. However, even if the Jones' attorney were correct, it does not support a reversal by this Board: domesticated elk meat cutting and wrapping is an illegal agricultural business in the AV-3 zone.

Even if the meat cutting facility were legal, the Jones' permit was to process elk that were "bred, grazed, handled (vaccinated and ear tagged) and raised on this property." Exhibit N. The property is 6.15 acres and holds 7 domesticated elk.

A fair reading of the Ombudsman opinion is that it was important to him that the elk are not raised on the Parcel: The butcher shop is not ancillary to the husbandry of a few elk raised on the Parcel. As such, the butcher shop is an agricultural business or industry prohibited in the AV-3 zone. This makes abundant sense: if the butchered elk were raised and butchered on the Parcel, the carcass cutting would be limited to a handful or elk. This limitation would diminish the noise of the bone saw. It would substantially decrease traffic impacts. It would decrease odor and neighborhood disturbance.

## 4. THE BUTCHER SHOP IS TOO CLOSE TO MR. BARRY'S HOME UNDER WC CODE SECTION 5B-3.

Even if the Jones' meat cutting facility were limited to processing the few elk that are raised on the 6.15 acre parcel, the shop is nevertheless too close to Mr. Barry's home under WC Code Section 5B-3. Code Section 5B=3 allows limited, agricultural businesses on Parcels exceeding five acres if they comply with certain distance requirements from residences. Elk butchering is not an included business.

Allowed businesses include:

> 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:

. . .

3. *Not be closer than two hundred (200) feet to any dwelling, public or semi public building on an adjoining parcel.*

(Emphasis added).

Mr. Barry's home is far less than 200 feet from the Jones' meat cutting facility. Further, as the Ombudsman correctly noted, the list in WCC Section 5B-3 is "extraordinarily specific". Opinion p. 10. It does not include a catchall phrase like "such as". It does not even include the "raising and grazing of" elk.

## 5. LEGAL IMPORTANCE OF THE OMBUDSMAN'S ADVISORY OPINION

The Ombudsman's opinion is important to follow in this case. The Ombudsman is a very experienced land use attorney. His office has issued hundreds of advisory opinions. Without exception, local governments have always followed his advice.

The Ombudsman's Advisory Opinion process was developed by the state legislature to provide a prompt, objective review of local land use decisions. Ombudsman review is helpful, because it is offered at a time in which the local government can correct its errors and avoid the expense and uncertainty of litigation. The process is available to any "potentially aggrieved" by a decision of a local land use authority. U.C.A. Section 13.43.205. Mr. Barry sought Ombudsman review as an aggrieved neighbor. His home was the closest home in the neighborhood to the meat cutting facility and stands the most to lose if the County does not enforce its written rules.

The state legislature has encouraged parties to resolve their land use disputes in the Ombudsman's office by requiring the challenging party in District Court to pay the opposing party's attorneys fees if they disregard the Ombudsman's opinion and the district court rules in harmony with the Ombudsman's advice. U.C.A. Section 13.43.206(12). In this case, if the Board reverses staff's decision to revoke the Jones' permit and if the district court decides that the

permit should have been revoked, then the County would have to pay Mr. Barry's attorneys' fees as a penalty for disregarding the Ombudsman process.

## 6. APPELLANT'S BURDEN OF PROOF.

The state Land Use Development and Management Act provides that the appellant bears the burden of proof before this Board. U.C.A. Section 17.27a.705. This means that a Board of Adjustment decision to uphold staff's permit revocation will be sustained on appeal if there is *any* evidence in the record to support its decision. The Ombudsman's opinion, alone, is sufficient evidence to sustain a Board decision to support staff's decision to revoke the permit.

## CONCLUSION

For the reasons stated herein, the Board of Adjustment should deny the Jones' appeal and should affirm the staff's decision to revoke the Jones' permit. There is substantial evidence in the record to support staff's decision. Staff's decision is legally sound. It is supported by an independent advisory opinion from a land use law expert. The decision to revoke the Jones' permit protects adjacent neighbors' property rights. This Board should not reverse the staff decision on appeal.

Respectfully submitted this 10th day of February, 2012

Jodi Hoffman

Jodi Hoffman, Hoffman Law
Attorney for Bret Barry