



## BOARD OF ADJUSTMENT

---

### MEETING AGENDA September 26, 2013 4:30 p.m.

*\*Pledge of Allegiance*

#### Regular Agenda Items

1. BOA 2013-08 Consideration and action on a variance request for a new dwelling to encroach up to 65 feet into the required 75 foot front yard setback and up to 30 feet into the required 40 foot side yard setback on Lot 101 of Green Hill Country Estates Phase No. 6 (Tracy and Sherie Frehner, Applicants)
2. Adjournment

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



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



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a variance request for a new dwelling to encroach up to 65 feet into the required 75 foot front yard setback and up to 30 feet into the required 40 foot side yard setback on Lot 101 of Green Hill Country Estates Phase No. 6

**Agenda Date:** Thursday, September 26, 2013

**Applicant:** Tracy and Sherie Frehner

**File Number:** BOA 2013-08

### Property Information

**Approximate Address:** 1306 North Maple Drive

**Project Area:** 2.9 Acres

**Zoning:** Forest Zones (F-5 and F-40)

**Existing Land Use:** Vacant lot

**Proposed Land Use:** Construction of a new single-family dwelling

**Parcel ID:** 21-085-0005

**Township, Range, Section:** T6N, R2E, Section 4

### Adjacent Land Use

<b>North:</b> Residential	<b>South:</b> Open Space
<b>East:</b> Residential	<b>West:</b> Residential

### Staff Information

**Report Presenter:** Sean Wilkinson  
swilkinson@co.weber.ut.us  
801-399-8765

**Report Reviewer:** JG

## Applicable Ordinances

- Weber County Land Use Code Title 104 (Zones) Chapter 9 (Forest Zones F-5, F-10, and F-40)
- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)

## Background

The applicant is requesting a variance to allow a new dwelling to encroach up to 65 feet into the required 75 foot front yard setback and up to 30 feet into the required 40 foot side yard setback on Lot 101 of Green Hill Country Estates Phase No. 6. The lot has a total area of 2.9 acres but only approximately one acre of the lot can be built on due to steep slopes identified on the subdivision plat. In addition to the limited size, most of the buildable area is located in an F-40 Zone which has larger setbacks (75 foot front, 40 foot sides, 30 foot rear) than the F-5 Zone (30 foot front, 20 foot sides, 30 foot rear) which is typical for most of the lots in the subdivision. There is also a stream adjacent to the rear boundary of the buildable area which has a 50 foot setback from the high water mark. When all of these setbacks are applied, the buildable area is reduced to a sliver that is only approximately 20 feet wide at its widest point (see Exhibit C).

The steep slopes, stream corridor setback, and F-40 Zone setbacks severely limit the ability to build a single-family dwelling on this lot. Therefore, the applicant has requested this variance in order to obtain permits to build the proposed dwelling. The variance is large and a small portion of the proposed dwelling is located within 10 feet of the front property line adjacent to Maple Drive. However, the dwelling is designed to maximize the front yard setback area to the largest extent possible, while not encroaching into the 50 foot stream corridor setback and creating the need for another variance.

## Summary of Board of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Zoning Ordinance. In order for a variance to be granted it must be shown that the following criteria have been met:

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

The applicant has submitted a narrative addressing the above criteria, which is attached as Exhibit A. Staff's analysis and findings are discussed below.

- a. Based on the physical constraints of this property and the additional setback requirements described above, it is unnecessary to strictly enforce the 75 foot front yard and 40 foot side yard setback requirements. Literal enforcement of this requirement would place an unreasonable hardship on the applicant by not allowing a dwelling to be built. While other properties in this area have similar hardships associated with steep topography, only four other lots in the subdivision are in the F-40 Zone. This is not a self-imposed or economic hardship because the hardship is created by the physical attributes of the property, including the steep topography, stream corridor, and limited building area.
- b. The special circumstances attached to this property are the physical attributes of the property associated with the steep topography, stream corridor, and limited building area. Other lots in the F-40 Zone typically have at least 40 acres which provides relief from the larger setbacks.
- c. The physical property boundary conditions would deprive the applicant of the ability to build a dwelling if the setback requirements are strictly enforced. Single-family dwellings are allowed in the F-40 Zone, other properties in this area have dwellings, and the applicant will be denied a right to build that others possess. The requested variance will restore the right to build that is being affected.
- d. The applicant has received approval of the proposed dwelling location from the Green Hill Country Estates HOA. The proposed variance also protects the stream corridor which is encouraged by the Ogden Valley General Plan.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. Approval of the variance allows the applicant to build a dwelling and maintain the stream corridor, and provides relief from the physical hardships associated with the property.

### **Conformance to the General Plan**

Single-family dwellings are allowed as a permitted use in the F-40 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan.

## Conditions of Approval

- Meeting the requirements of applicable County review agencies.
- Obtaining a land use permit and a building permit prior to construction.

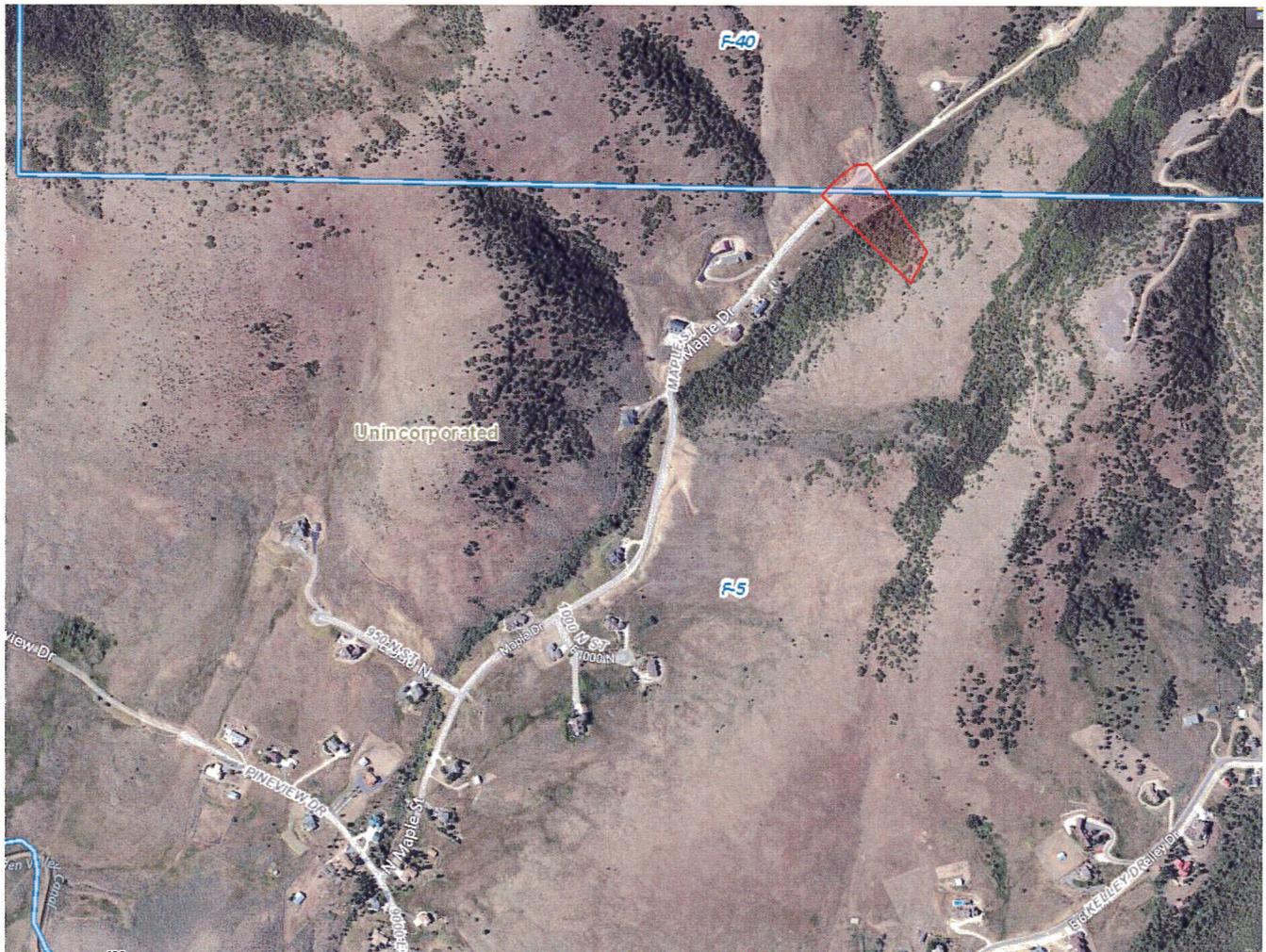
## Staff Recommendation

Staff recommends approval of the variance for a new dwelling to encroach up to 65 feet into the required 75 foot front yard setback and up to 30 feet into the required 40 foot side yard setback on Lot 101 of Green Hill Country Estates Phase No. 6., based on its compliance with the applicable variance criteria listed in this staff report.

## Exhibits

- Applicant's Narrative
- Green Hill Country Estates Phase No. 6
- Site Plan with Setbacks
- Site Plan with Dwelling
- E-mail from Green Hill Country Estates HOA

## Location Map



# Exhibit A

## Applicant Narrative

Please explain your request.

Lot 101 Green Hills Subdivision, Huntsville is zoned FS and F40. The F40 zoning boundary requires a  
75' front setback  
50' rear setback  
40' side yard setback

We are requesting a variance of  
65'-0" on front setback  
30'-0" on side setback (north)

## Variance Request

Explain how the variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

With the current F40 setbacks required, there is not enough square footage available to put a dwelling on this lot. This creates an unreasonable hardship to build a single family dwelling, which is the general purpose of the plan. You will note from the attached topographical survey, the extreme slope of this lot dictates a home to be located on the upper NE location of the property which is zoned F40. See sheet C1 attached outlining the FS and F40 setbacks on the property.

Variance Request (continued...)

List the special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

All other building lots below Lot 101 are zoned F5, and all other lots are larger than Lot 101. The F40 zoning line, crosses the NE portion of the property therefore, not giving the same requirements as the rest of the subdivision. We are then deprived of adequate buildable space to place a home on this lot.

Based upon the previously stated special circumstances, clearly describe how the property covered by this application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.

Granting of this variance enables us to enjoy the same privileges as the rest of the subdivision. This variance is essential in order to place a home on this lot. See the attached proposed site plan from the Architect.

Variance Request (continued...)

Explain how the previously listed special circumstances are not considered to be economic or self-imposed hardships.

The hardships described are not self-imposed. As described, the hardships of building on this property is a result of the zoning requirements.

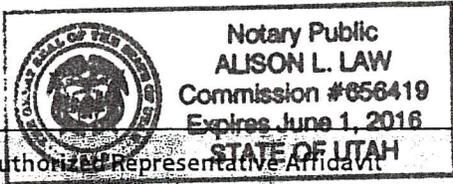
Property Owner Affidavit

I (We), Tracy - Sherie Frehner, 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.

[Signature] (Property Owner)

[Signature] (Property Owner)

Subscribed and sworn to me this 27 day of August, 2013



[Signature] (Notary)

Authorized Representative Affidavit

I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), \_\_\_\_\_ to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

\_\_\_\_\_  
(Notary)

# Green Hill Country Estates Phase No. 6

A Cluster Type Subdivision  
A part of Sections 3, 4, 9, & 10, T6N, R2E, SLB&M, U.S. Survey  
Weber County, Utah



Scale: 1" = 100'

NOTE  
10' Utility and Drainage Easements each side of Property Line as indicated by dashed lines, except as otherwise shown.

**Property Line Curve Data**

(14) Δ = 30°53'23" R = 246.46' L = 132.87' LC = 151.27' N 2°24'06" W	(23) Δ = 53°14'58" R = 55.00' L = 51.12' LC = 49.30' S 31°13'33" W	(32) Δ = 5°29'24" R = 978.69' L = 93.78' LC = 93.74' N 48°44'50" E
(15) Δ = 28°14'43" R = 98.11' L = 97.12' LC = 97.12' S 3°43'26" E	(24) Δ = 59°23'41" R = 55.00' L = 57.02' LC = 54.50' S 87°32'52" W	(33) Δ = 9°26'32" R = 385.52' L = 63.53' LC = 63.46' S 44°46'16" W
(16) Δ = 18°23'12" R = 199.01' L = 63.87' LC = 63.59' S 19°35'32" W	(25) Δ = 54°04'17" R = 55.00' L = 51.91' LC = 50.00' N 35°43'09" W	(34) Δ = 11°15'52" R = 385.52' L = 75.79' LC = 75.67' S 34°25'04" W
(17) Δ = 6°03'56" R = 435.52' L = 46.11' LC = 46.09' S 31°49'06" W	(26) Δ = 64°20'12" R = 55.00' L = 81.78' LC = 58.52' N 23°29'06" E	(35) Δ = 46°37'55" R = 149.01' L = 121.28' LC = 117.96' S 5°28'10" W
(18) Δ = 14°38'28" R = 435.52' L = 111.29' LC = 110.99' S 42°10'18" W	(27) Δ = 48°18'27" R = 55.00' L = 46.37' LC = 45.01' N 79°48'25" E	(36) Δ = 30°53'23" R = 296.46' L = 159.81' LC = 157.90' N 2°24'06" W
(19) Δ = 11°58'19" R = 928.69' L = 194.35' LC = 193.70' N 43°30'23" E	(28) Δ = 49°40'47" R = 10.00' L = 26.01' LC = 25.21' S 79°07'15" W	
(20) Δ = 5°47'24" R = 2002.42' L = 202.36' LC = 202.27' S 40°24'56" W	(29) Δ = 10°58'14" R = 1016.35' L = 194.90' LC = 194.31' S 48°47'45" W	
(21) Δ = 10°58'14" R = 1066.35' L = 204.18' LC = 203.86' S 48°47'45" W	(30) Δ = 5°47'24" R = 1352.42' L = 197.30' LC = 197.22' S 40°24'56" W	
(22) Δ = 49°40'47" R = 30.00' L = 28.01' LC = 25.21' N 29°26'28" E	(31) Δ = 5°28'55" R = 978.69' L = 110.72' LC = 110.66' N 40°45'41" E	

**Street Centerline Curve Data**

(k) Δ = 30°53'23" R = 271.49' L = 146.35' LC = 144.58' N 2°24'06" W T = 75.00'	(d) Δ = 11°58'19" R = 953.69' L = 199.27' LC = 198.91' N 43°30'23" E T = 100.00'
(m) Δ = 48°37'55" R = 174.01' L = 141.53' LC = 137.75' S 5°29'10" W T = 75.00'	(z) Δ = 5°47'24" R = 1977.42' L = 199.35' LC = 198.95' S 40°24'56" W T = 100.00'
(n) Δ = 20°42'24" R = 410.52' L = 148.36' LC = 147.36' S 39°08'20" W T = 75.00'	(r) Δ = 10°58'14" R = 1041.55' L = 199.39' LC = 199.08' S 48°47'45" W T = 100.00'

Common Area "K"

Common Area "K"

- Legend**
- = Set Hub and Tack
  - = Set 5/8" Rebar, Cap & Fencepost
  - ⊙ = Location of street monument to be set.

**Note:**  
Refer to ADEC Slope Stability Report dated July 1998, on file at the County Recorder's Office.

- ▨ Areas designated as "slide" areas are not to be disturbed, and Non-Buildable Areas
- ▨ Designates 25% or greater slope.
- ▨ Buildable Area, unless otherwise noted.

(Lines separating buildable areas and areas greater than 25% slope are taken from aerial topography and are approximate.)

WEBER COUNTY RECORDER

OFFICE NO. 166484

FILED FOR RECORD AND RECORDED IN BOOK 142 OF OFFICIAL RECORDS PAGE 142

RECORDED FOR JAMES ALAND

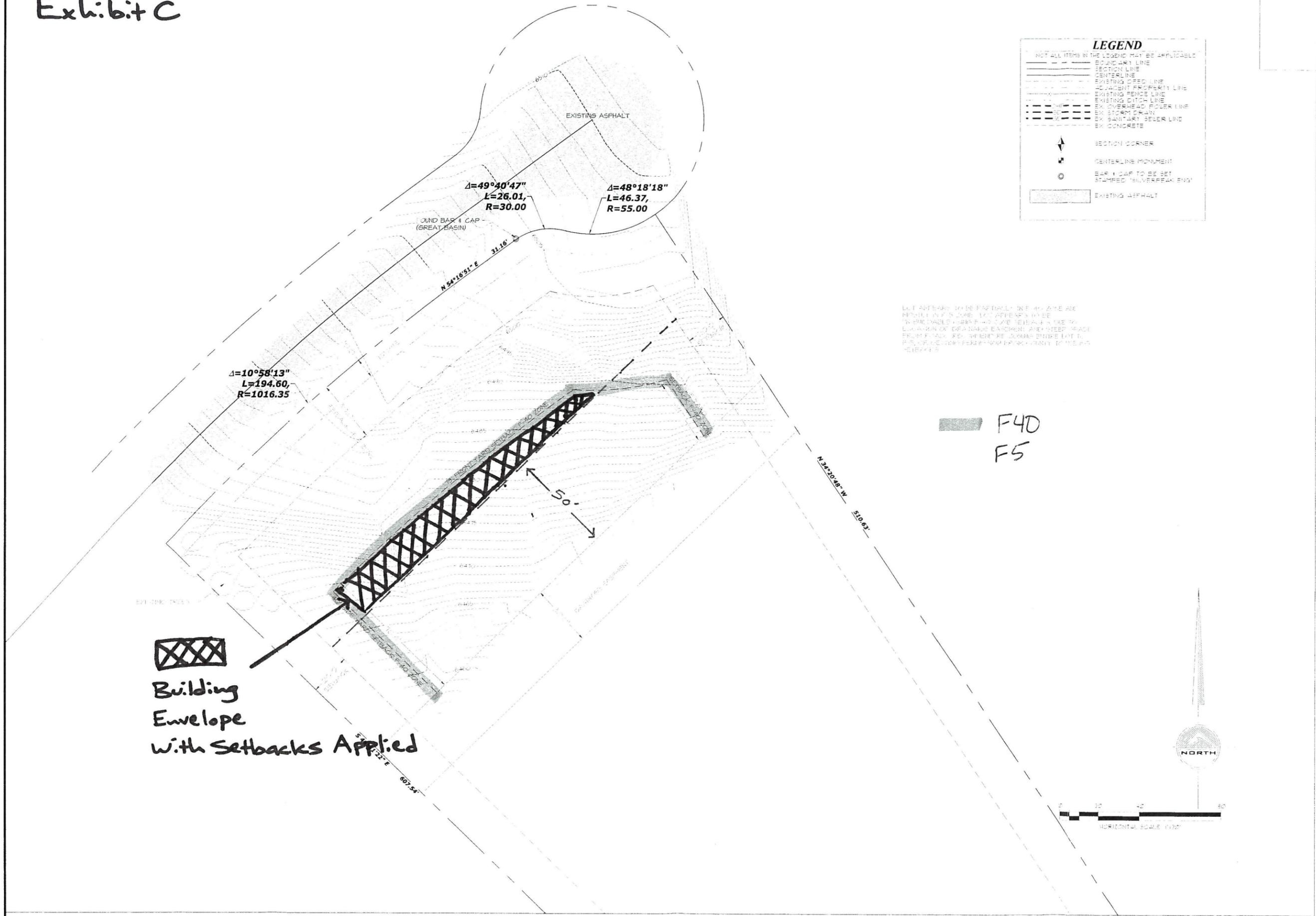
DAVID CRISP

WEBER COUNTY RECORDER

BY: *James Warner*

DEPUTY

# Exhibit C



SEAL:

DATE:   
 PROJECT: C.C.   
 DRAWN BY: C.C.   
 PLOT: 08-27-2013

DRAWING DESCRIPTION:   
 TOPO

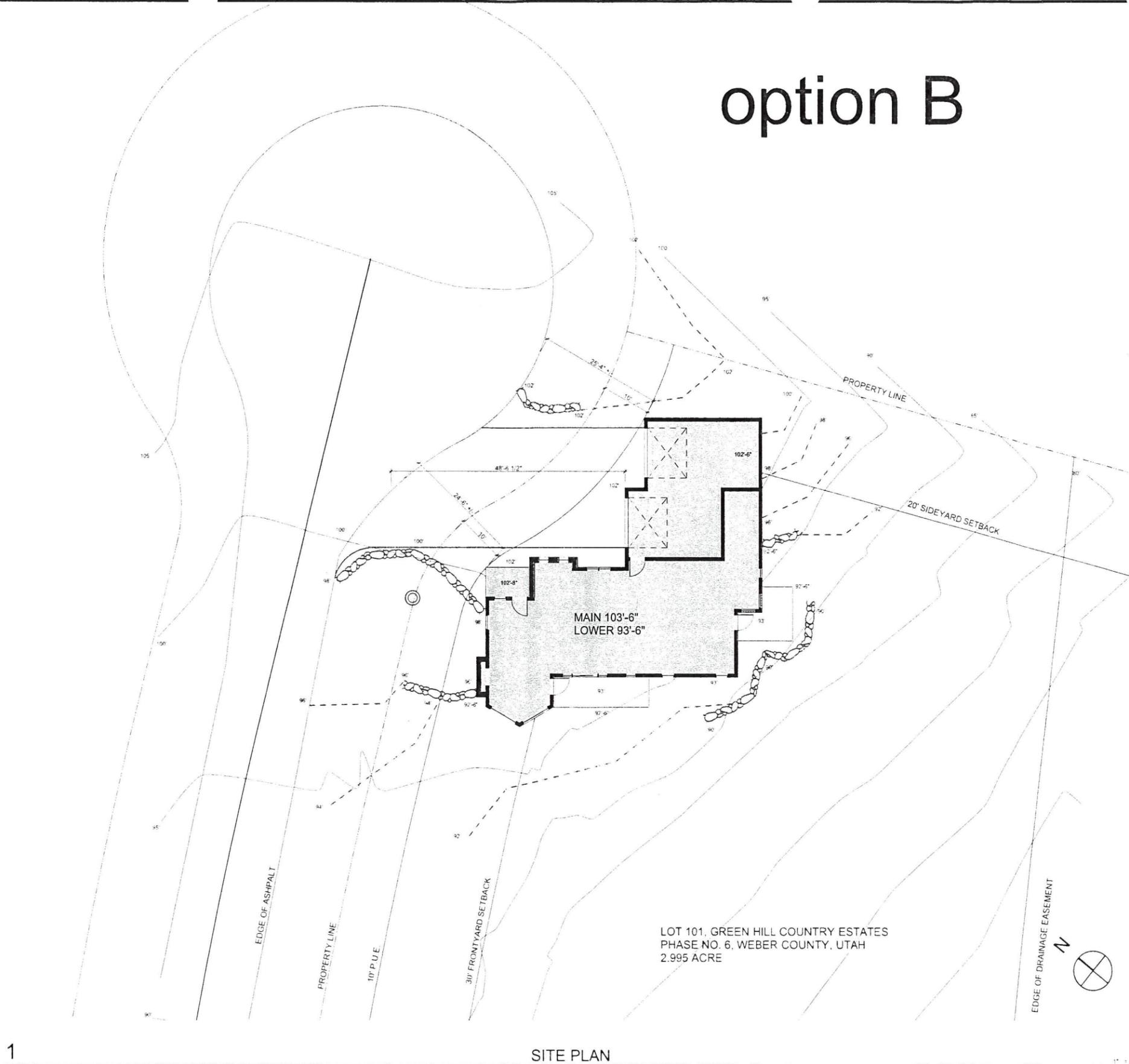
177 E. ANTELOPE DR. #B  
LAYTON, UT 84044  
PHONE: (801) 499-5054  
FAX: (801) 499-5065



LOT 101 GREEN HILL COUNTRY ESTATES  
WEBER COUNTY, UTAH

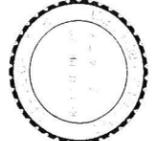
SHEET NUMBER:   
 C1

# option B



1

SITE PLAN

<p><b>Nielson Architecture Planning, Inc.</b> Kelly Nielson, Architect 1333 South 2375 West Syracuse, Utah 84075 801-775-0846 o 801-564-7200 m</p>  <p>Professional Stamp Not valid with out Original Signature</p>	<p><b>NIEDERHAUSER Builders, Inc.</b> Clare Niederhauser, G.C. 2536 East Gentile Street Layton, Utah 84040 801-721-9333</p>	<p>A MOUNTAIN HOME FOR THE <b>F R E H N E R S</b> 1306 North Maple Drive, Huntsville, Utah</p>	<p>PROJECT NO: 1312 DATE: August 12, 2013 DRAWN BY: KMN CHKD BY: COPYRIGHT: Nielson Architecture/Planning, Inc</p>	<p>SHEET TITLE SITE PLAN</p>	<p>C-1</p>	<p>SHEET 2 OF</p>
--	---	--	--	----------------------------------	------------	-------------------

*Email from Green Hills HOA approving setback request*

Johnson, Brad G. (Salt Lake City, UT)

to ghhoa email, drsvigh, bseeut, Sam, Diane, me

**Exhibit E**

hi Sherrie

hope this email finds you well..

the hoa board has been looking at your plans. We feel that with the 24ft public utility easement from the edge reasonable to us and something we can live with.. again, please make sure these plans are approved by Wel after the plans are approved by the county, please contact us on other questions and concerns. We will need beautiful home as well.

thanks for working with us.

sincerely

brad johnson  
HOA President

## Frehners, Lot 101

Sherie/Green Hills x

**Sherie Frehner** <sherief@mesa-ae.com>

to BRAD Johnson, Kelly, Tracy, James, CBNDRHSR

Hello Brad,

Please see the attached proposed site plan with the recommendations from the Architect. We would like to a 30'-0" setback as outlined in the CC&R's because of the extreme slope of Lot 101.

As you can see, Option B places the home at the 10' P.U.E. (public utility easement) and reduces the easterr allow a 10' basement (current design is 12') and will allow a walk-out basement scenario. In reference to the n the North East would still be 70' away and higher elevation.

The hardship of building on this lot would be alleviated by:

1. reducing excavation
2. reduces import of foreign materials for fill
3. reduces disruption of the native soils below home
4. shorter sewer line
5. minimizes or removes the need to cut the asphalt for the new sewer line

If you have any questions or concerns, please let us know. We would be happy to meet with the Board to dis experts in this area so would need to rely on our consultants for their expertise.

Our consultants are:

Nielson Architecture & Planning  
Kelly Nielson, Architect  
[nielarch@gmail.com](mailto:nielarch@gmail.com)  
[801.564.7200](tel:801.564.7200)

Silver Peak Engineering (Topo Survey)  
Joshua Jensen, P.E., S.E.  
**Silver Peak Engineering**  
177 East Antelope Drive #B  
Layton, Utah 84041  
[801-499-5054](tel:801-499-5054)

Elk Ridge Engineering (Septic & Sewer)  
Jim Ormsbee, P.E.  
[jimormsbee@elk-eng.com](mailto:jimormsbee@elk-eng.com)  
5460 E 2200 N, Suite 2  
Eden, UT 84310  
[\(801\) 745-1677](tel:(801)745-1677)  
[\(801\) 791-5544](tel:(801)791-5544) cell

Niederhauser Builders (General Contractor)